

# GENERAL TERMS AND CONDITIONS OF XEROX AG

## Maintenance

*These general terms and conditions are for information only. The Xerox AG General Terms and Conditions in German or French apply.*

### 1. SCOPE AND APPLICATION

- 1.1 These Terms and Conditions ("Terms") apply to the maintenance of hardware and software (operating and application software, customer-specific software) to be provided by Xerox AG ("Xerox").
- 1.2 The provision of other services requires a separate agreement. Any software developments or adaptations require the conclusion of a separate service agreement.
- 1.3 Xerox's separate Terms of Business apply to the issues of rights of use, such as software licenses and IP.
- 1.4 Except as provided in the Agreement between the Parties, neither Party shall acquire any right, title or interest in the other Party's Intellectual Property or its licensors.
- 1.5 These Terms apply unless otherwise agreed in writing in the individual case. The customer's general terms and conditions of business or delivery shall not apply, even if reference is made to them in the customer's offer or other associated documents.

### 2. DURATION OF CONTRACT

- 2.1 Term: The term begins with the installation of the equipment or, where required, with the acceptance or, if the equipment is already installed, with the signing of a maintenance contract. For the Software, maintenance services, unless otherwise agreed, begin on the date of delivery or, if the Software is installed by Xerox, on the date of installation.
- 2.2 Renewal: Upon expiration of the originally agreed upon fixed term, the Agreement will be renewed for twelve (12) months at a time. The automatic renewal of this Agreement will continue until the end of the intended life of the equipment or service on the product type as notified to Customer by Xerox or one party terminates the Agreement in writing with ninety (90) days' notice prior to the annual renewal date.
- 2.3 End of Software Maintenance Obligations: Software maintenance obligations automatically end when Customer's right to use the product ceases (license termination).
- 2.4 Restriction of maintenance services: Maintenance services may be limited if the device and the software installed on it are moved outside of the Xerox maintenance zones and outside of Switzerland and the Principality of Liechtenstein.

### 3. MAINTENANCE SERVICE AND SOFTWARE SUPPORT

- 3.1 For the purposes of these terms and conditions:
  - a) "Application Software": Software that is separately identified in the Agreement and allows Xerox equipment or third-party equipment to perform functions beyond basic functions and that can be installed on a computer device, workstation or server as described in the Application Software documentation;

- b) "Basic Software": Software that allows Xerox equipment to perform its basic functions;
  - c) "Diagnostic Software": proprietary Xerox software used to evaluate or service Xerox-branded equipment ("Xerox equipment");
  - d) "Optional Print Function" or "ODF": a product (including associated software) that is separately identified in the Agreement and provides an optional print function;
  - e) "Software as a Service" or "SaaS": a hosted service product (including associated software) that is separately identified in the Agreement and that provides the designated optional service;
  - f) "Third-Party Licensed Software": application software, basic software for third-party devices, ODF-related software, or any SaaS-related software (collectively or separately) that is a third-party trademark and includes its accompanying documentation;
  - g) "Xerox Licensed Software": application software, basic software for Xerox equipment, ODF-related software, or any SaaS-related software (collectively or separately) that is a Xerox brand and includes its accompanying documentation, but excludes diagnostic software. Depending on the service, Xerox-licensed software may be referred to in the Agreement as Licensed Software.
  - h) "Xerox Customer Tools" means certain proprietary tools developed and used by Xerox to provide certain services, which are licensed to the Customer in accordance with the terms below (Xerox Customer Tools).
  - i) "Xerox Tools": certain proprietary tools developed and used by Xerox to provide certain services.
- 3.2 The Agreement may specify that maintenance services and software support are part of the services for Xerox equipment and Xerox-licensed software. Depending on the Services, Maintenance Services may be referred to in the Agreement as "Break-Fix".
  - 3.3 Maintenance Services include: a) troubleshooting and maintenance within Xerox Maintenance Zones within Switzerland and the Principality of Liechtenstein and within Xerox Published Maintenance Readiness (see Section 9); b) providing standard consumables (excluding paper and other print media) necessary for operation for equipment with a "Full Service Maintenance Agreement". For products with a "Maintenance Agreement - Consumables Out", consumables such as toner and copy modules, etc. are chargeable.
  - 3.4 Xerox agrees to perform repairs and adjustments necessary to keep Xerox equipment in good working order and to ensure that it operates as specified ("Maintenance Services"). Maintenance Services include repairs and adjustments required due to normal wear and tear or defects in materials or workmanship. The replacement parts required for repairs to such Xerox equipment may be new, reconditioned, or refurbished. The provision of maintenance services is dependent on Customer's ability to

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- resolve problems with Xerox equipment in a timely and efficient manner through Xerox procedures deemed feasible by Customer (including cassette/module replacement) and, where there is no on-site support staff, to provide information and implement recommendations received over the phone. If a problem with Xerox equipment remains unresolved after Customer has performed these actions, Xerox will provide on-site support as provided in the applicable agreement.
- 3.5 Maintenance services do not include the provision and installation of cassettes/modules and other tasks assigned to operating personnel. Xerox is under no obligation to provide maintenance services beyond the "end of life" date established by Xerox for the applicable Xerox equipment model.
- 3.6 Xerox (or a designated service provider) will provide Software Support for Xerox-licensed software ("Software Support"). For Base Software, the maximum period of Software Support availability is no more than five (5) years from the date Xerox stops accepting orders for the applicable Xerox equipment model. For application software and SaaS-related software, Software Support is provided for the duration of the services or for the duration of any support agreement with Xerox. For ODF-related software, software support is provided for five (5) years from the date of installation of the ODF or during any support contract, if longer. Software support requires that Customer always meets all current payment obligations for all software license fees and support fees.
- 3.7 Software support covers the following:
- a) Xerox will operate a Web-based or toll-free hotline during business hours to report problems and answer questions about Xerox-licensed Software. Xerox will use reasonable efforts to ensure that Xerox-licensed Software functions substantially in accordance with its user documentation. Xerox will use reasonable efforts to provide available workarounds or patches, either directly or in conjunction with its suppliers, for problems with Xerox-licensed Software, provided that such problems are reported in the manner specified by Xerox. Xerox has no obligation to fix programming errors or otherwise provide support if Customer has modified the Software in question.
- b) Xerox may provide new versions of Xerox-licensed Software, primarily to correct programming errors, which are referred to as "maintenance updates" or "updates". Maintenance Updates and Updates for Software Support Customers are provided without additional license fees and must be implemented within six (6) months. Updates of Xerox-licensed Software that contain new content or features are referred to as "Feature Releases" and are subject to additional license fees in accordance with Xerox's then-current pricing. Maintenance Updates, Updates and Feature Releases are collectively referred to as "Releases".
- c) Implementation of a Release may require Customer to procure additional hardware and/or software from Xerox or another vendor at Customer's expense. After a Release is installed, Customer agrees to return to Xerox or destroy any previous Releases not used by Customer. Unless otherwise stated, each Release is considered Xerox-licensed Software and is covered by the Software License and Support provisions of this Agreement.
- 3.8 In addition to the provisions of these Terms, additional fees may be payable when Xerox provides maintenance services or software support in the following circumstances:
- a) To repair malfunctions or damage to Xerox equipment caused by the use of non-Xerox supplies (unless such supplies are authorized or initiated by Xerox).
- b) As a result of Customer's changes to or misuse of Xerox equipment, bug fixes, or other support when Customer has modified Xerox-licensed software (unless such changes or modifications have been authorized or initiated by Xerox).
- c) To reinstall Xerox-licensed Software that has been deleted or damaged by Customer.
- d) For fixing problems that affect Xerox-licensed Software but are caused by other software or hardware, including Customer's operating systems and special hardware settings (unless such operating systems and special hardware settings were approved or provided by Xerox).
- e) If Customer, where relevant, has failed to perform actions that are feasible by Customer under paragraph 5.
- 3.9 For the avoidance of doubt, maintenance and repair services for Third Party Equipment or software support for Third Party Licensed Software are provided under the applicable agreement and are equal to the level of maintenance and support provided by the applicable Third Party.
- 3.10 If software support is provided in connection with the Services, the applicable support fees as stated in the fees for the Services are included.
- #### 4. REMOTE DATA ACCESS
- 4.1 Certain services use remote data. Data that is automatically collected by Xerox or transmitted from Xerox to Customer through a) Supplier equipment or existing systems; or b) Xerox tools or Xerox customer tools, if installed on Customer's network. Remote Data may include registration details, meter readings, consumables status, equipment configuration and settings, software version, problem or error codes, and (at Xerox's request) network traffic data ("Remote Data").
- 4.2 Xerox may decide whether to use electronic transmission of Remote Data over Customer's network from one location to another secure off-site location. The decision to use Remote Access is at Xerox's discretion; however, not all supplier equipment or existing systems may use this procedure. Also, the equipment provided for remote access may vary depending on the type and brand of equipment.

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Customer acknowledges that if Remote Access is not used, the relevant equipment will not be visible in Xerox tools or Xerox customer tools. Where Remote Access is used:

- a) Will Xerox provide certain services remotely. This may include the transmission of maintenance updates and upgrades and the diagnosis and modification of Xerox equipment to repair or correct malfunctions;
- b) Remote Data is transferred to and from Customer in a secure manner specified by Xerox (which is described in the applicable agreement to the extent that it involves a Customer responsibility). Certain remote data may be collected by Xerox tools and transferred to a remote server that provides other Xerox tools. Remote Data may be transferred, stored and otherwise processed in the European Economic Area, Switzerland, the United States or any other country in which Xerox, Xerox Affiliates, Authorized Distributors or subcontractors maintain facilities;
- c) Customer agrees that Xerox, Xerox Affiliates, Authorized Distributors and subcontractors may collect and use remote data for billing, reporting, consumable inventory replenishment, support services, and, to the extent permitted by applicable law, to recommend additional products and services and to improve and develop products. Xerox protects Remote Data as confidential customer information, but Xerox has no obligation to keep Remote Data.
- d) Remote Access does not allow Xerox to read, view or download Customer Data, documents or other information stored on or passing through Customer's equipment, existing systems or information management systems.

### 5. XEROX TOOLS

- 5.1 Xerox tools can be used by Xerox to provide the Services. Customer agrees to the following:
- a) Neither Customer nor its agents or subcontractors acquire the right to use, access or operate Xerox tools. Xerox tools are installed and operated only by Xerox or its authorized representatives.
  - b) Ownership of Xerox tools and intellectual property in Xerox tools remains with Xerox and its licensors at all times.
  - c) Xerox tools may be removed by Xerox at Xerox's discretion (provided, however, that such removal does not alter Xerox's obligations to provide services).
  - d) Upon expiration or termination of the agreement, Customer will provide Xerox with reasonable and timely access to its sites so that Xerox can remove any Xerox tool installed at Customer's sites.

### 6. XEROX CUSTOMER TOOLS

- 6.1 If Xerox Customer Tools are provided under the Agreement, Xerox grants Customer a non-exclusive, non-transferable (by law or otherwise) license to install, use and access Xerox Customer Tools solely for the purpose of

obtaining the Services for which they were provided. Customer has no other rights to the Xerox Customer Tools. In particular, Customer is not permitted to do so:

- a) distribute, copy (including making back-up copies), modify, create derivative works from, decompile or reverse engineer Xerox customer tools, except as permitted by applicable law; or
- (b) allow third parties to do so.

- 6.2 Ownership of Xerox customer tools and intellectual property in Xerox customer tools remains with Xerox and its licensors at all times. Certain Xerox Customer Tools may be subject to flow-down terms that are provided separately with the applicable Xerox Customer Tools in a License Agreement or Read Me file.

### 7. SERVICES OF THE CUSTOMER

- 7.1 The Client assumes the following obligations, if applicable:
- a) Observance of Section 4 "REMOTE DATA ACCESS
  - b) Installation of "Maintenance Updates" that are classified by Xerox as installable by Customer;
  - c) Recovering any defects in the Licensed Product that occur in another location or on another Licensed Product.
  - d) Two to three named support representatives with appropriate training and knowledge to communicate with Xerox Support. Xerox provides support only to the Support Representatives.
  - e) Ensure that system operators and users receive appropriate induction training and refresher courses when necessary.
  - f) Ensure the presence of personnel with the necessary knowledge of the Customer's system environment to assist Xerox Support on-site or by telephone.
  - g) Manage, track and archive security codes for all licensed/installed software and license strings.
  - h) For all systems with Licensed Software, either Xerox-owned or Xerox-supplied third-party software, the following information must be maintained:
    - 1. customer-specific configuration files and passwords
    - 2. working methods with all necessary backups of system and user data, as well as all security measures in accordance with company rules. At Xerox's discretion, additional programs and security equipment (e.g., virus protection) supplied by Xerox must be updated and updated by the Customer.
  - i) Provide access to this information to authorized support personnel. Inadequate availability may hinder proper support activities and may result in additional costs.
  - j) Acceptance and installation of the most recent maintenance update of the Licensed Software prior to the date the previous release is no longer supported by Xerox. Exceptions must be confirmed in writing by Xerox.

# GENERAL TERMS AND CONDITIONS OF XEROX AG

## Maintenance

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- k) In the case of reported Software errors: Willingness to assist Xerox Support in troubleshooting as indicated by Xerox. This includes providing test data, initially or in total, by telephone or other electronic means. Xerox assumes that Customer agrees that Xerox may set up access to the system via Remote Diagnostic Tools if deemed practical and appropriate.
- l) Maintain and update any systems to published specifications that are not supplied by Xerox or authorized partners, provided licensed Xerox software is running or stored on them. This applies analogously to third-party software that interacts with licensed Xerox software.
- m) Customer must adequately document the defect in the Licensed Products and provide any necessary test data. The error must be reproducible.
- 8. EXCLUSIONS FROM THE MAINTENANCE CONTRACT**
- a) recovery or correction of lost or destroyed data
- b) Correction of errors caused by operating errors in software and hardware as well as errors caused by unauthorized persons of the customer or unauthorized service personnel.
- c) Support for Software not supplied by Xerox or an authorized Xerox Partner. Support for Software obtained from Xerox or a Xerox Authorized Partner and other Software that runs on a system maintained by Xerox but is not designated as supported software under this Agreement.
- d) Support for Software supplied by Xerox when its performance is affected by the presence of third-party software on the same system.
- e) Maintenance interventions caused by unauthorized changes to the Licensed Software or unauthorized changes to documented or installed system configurations.
- f) Xerox is not responsible in any event for performance disruptions and interruptions caused (i) by Customer's equipment, content, software or data or by services, procurements or maintenance, design or implementation work performed by Customer, its agents or suppliers, (ii) by the failure to transfer physical resources to Xerox or to grant rights of use, access and modification to Xerox, provided that the transfer or (iii) by failing to comply with Customer's obligations to cooperate under the contract.
- 9. SERVICES ON SPECIAL REQUEST OF THE CUSTOMER**
- 9.1 At the informal request of the Customer (documented by Xerox in billing and/or work reports), Xerox can agree to take over, for example, activities excluded from the contract in accordance with Art. 394 ff OR.
- 9.2 Software developments or adaptations require a separate agreement.
- 10. ADDITIONS, CHANGES, TERMINATION OF SERVICES**
- 10.1 Maintenance services may be modified or terminated in accordance with the provisions of these TERMS. At Customer's request, Xerox may agree to perform additional maintenance that is not covered in the maintenance agreement. This requires a separate agreement.
- 10.2 Customer may terminate the Maintenance Agreement in writing at any time within ninety (90) days of the original term of the Agreement. However, all systems must have the same maintenance status.
- 10.3 If, however, Xerox notifies Customer in writing of a change or termination of the maintenance services with ninety (90) days' notice in advance, Customer is entitled to terminate the maintenance agreement in writing with thirty (30) days' notice to the end of the change period. Failing such termination, the change shall be deemed to have been agreed on the day after the end of the modification period.
- 10.4 Customer has the right to terminate the Maintenance Agreement in writing at any time with thirty (30) days' notice if Xerox fails to fulfill its contractual obligations despite a written reminder.
- 10.5 Xerox has the right to terminate the contract without notice if Customer fails to meet its payment obligations despite a reminder. Xerox reserves the right to claim further damages.
- 10.6 The other party may terminate the Agreement if the other party becomes insolvent, such as a petition in bankruptcy or a stay of bankruptcy, a declaration of bankruptcy, an order for a list of goods or a bankruptcy inventory, an application for a moratorium on assets, a liquidation order, the appointment of a trustee, a garnishment, a suspension of payments, a notice of over-indebtedness, or an equivalent event under relevant bankruptcy or insolvency laws.
- 11. READY FOR MAINTENANCE**
- 11.1 Unless otherwise specified, Xerox will provide the Maintenance Services during the currently valid standby times and maintenance zones within Switzerland and the Principality of Liechtenstein as notified (published) by Xerox.
- 11.2 Normal Maintenance Readiness:  
- Monday through Friday (excluding national and regional holidays) between 08:00 a.m. and 5:00 p.m.
- 11.3 Special maintenance readiness:  
- Extended or increased maintenance readiness according to separate agreement.
- 12. CONSUMABLES**
- 12.1 This contract includes the provision of all consumables for the printing system under contract. Xerox will reconcile Customer's material consumption with Customer's specific consumption data and meter readings and will then provide Customer with the necessary consumables in accordance

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- with this data. Xerox does not provide for on-site storage at the Customer's site. Xerox will receive the meter readings from the customer (for example, by means of "Meter Reading Device", meter reading cards or during a technical inspection).
- 12.2 Unless otherwise expressly provided in the Agreement, the following items are not included in the scope of services:
- Speciality Toners and Dry Inks, and associated developers
  - all print media, such as paper and the like.
- 12.3 The consumables shall be delivered exclusively to the contractually agreed address of the customer at which the equipment is installed. Delivery of the Consumables to an alternative delivery address is only possible with the written consent of Xerox and may incur additional costs.
- 12.4 Consumables are ordered by the end customer online via the web application offered or via other ordering options provided by Xerox. If possible and applicable, automatic delivery (ASR) of the consumable materials available under the ASR program will be activated.
- 12.5 With each order, the Customer will ensure that the correct meter readings are provided. In each case, this is done by stating the device serial number assigned to the service contract for which the consumables are ordered. This does not apply if customers use MeterAssistant™.
- 12.6 The consumable materials supplied under the Service Agreement remain the property of Xerox until they are completely consumed by the designated device. Xerox reserves the right to supply repaired or refilled cartridges and CRUs, provided they function as new products.
- 12.7 Customer warrants that the consumable materials supplied under this Agreement will be used by Customer only in the equipment to which the Service Agreement applies. Without limiting Xerox's rights under the Service Agreement, Xerox reserves the right to charge Customer separately for any consumable materials not used in the equipment covered by the Service Agreement in accordance with the then-current rates.
- 12.8 Any consumable materials not used during the term of the contract are the property of Xerox at all times. This consumable material must be returned to Xerox. Xerox also reserves the right to invoice separately for consumable materials that are not returned in accordance with the then-current rates.
- 13. SUBCONTRACTING**
- 13.1 Xerox is entitled to have services performed by third parties (subcontractors or auxiliary persons). It is responsible for the selection, instruction and supervision of the subcontractors.
- 14. INVOICING AND FEES**
- 14.1 The maintenance fees are exclusive of the statutory value added tax (excluding VAT) and are due from installation or acceptance. Faulty and service copies/prints are not deducted, as these are already included in the calculation of the maintenance fees.
- 14.2 Maintenance services which are modified or provided additionally in accordance with Section 9, or if the designated maintenance location or the system to be maintained changes, are subject to separate compensation.
- 14.3 Subject to deviating regulations, the variable maintenance fee for the effective subsequent clicks will be invoiced and charged after the end of a quarter. For the month of installation, the charge is calculated pro rata according to calendar days from the date of installation. Invoicing can be done by both Xerox and Xerox Finance AG. Xerox AG or Xerox Finance AG may request that invoice amounts be collected by direct debit.
- 14.4 Maintenance fees are payable net at the beginning of the maintenance period within thirty (30) days of the invoice date. Additional copies or printing fees are due subsequently on the basis of the meter reading cards or according to the invoice from Meter Reading Device (e.g. MeterAssistant™). If the meter reading cards do not arrive at Xerox as agreed - or if the Meter Reading Device does not provide the appropriate information, Xerox is entitled to demand a payment on account from Customer based on the average monthly volume.
- 14.5 Xerox's invoice is considered accepted by Customer if no written objection is received within ten (10) days of the invoice (invoice date). Complaints must be made in writing, along with a copy of the invoice, to the contact address listed on the Xerox invoice.
- 15. DEFAULT OF PAYMENT**
- 15.1 The customer shall automatically be in default when the due date comes into effect. A default interest of 5% per annum will be charged for a late payment. In addition, a further CHF 25.00 per reminder and a further CHF 35.00 per registered letter will be charged. Collection fees will be charged additionally according to expenditure, whereby they will in any case amount to at least CHF 150.00. We reserve the right to assert any further damage caused by delay.
- 16. PRICE CHANGES**
- 16.1 Xerox has the right to change prices with ninety (90) days written notice.
- 16.2 Xerox may increase the change in prices, fees or overtime rates by a maximum of one of the two amounts below: (i) the increase in the Swiss Consumer Price Index (new index level compared to the level when the price was last set) or (ii) 2%. If an increase is greater than the increase described above, the amount of the increase by the amount in excess

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thereof shall be null and void if Customer notifies Xerox in writing within sixty (60) days. The price increase shall be deemed accepted without a corresponding report. A termination of the contract is explicitly excluded.

- 16.3 Xerox will not increase prices during the first twelve (12) months after the service is commenced. This does not apply to government-mandated price increases.

### 17. COPYRIGHTS / PROTECTION OF THE LICENSED SOFTWARE

- 17.1 Subject to the application of the applicable provisions (TERMS Software & SaaS) of Xerox, Lessee is only entitled to the rights of use expressly granted by contract. The copyrights remain with Xerox or third parties.
- 17.2 Licensee may not remove or alter any notices of confidentiality, proprietary notices or copyright notices on a Licensed Product or the Carrier Media.

### 18. LIABILITY

- 18.1 Each party shall be liable to the other party for the direct damage caused to the other party by culpable breach of this contract.
- 18.2 The liability for damages of the other party caused by intentional or grossly negligent breach of contract is unlimited. In all other cases, liability for damages caused by or in connection with this contract is (a) unlimited for personal injury and (b) for other damages, limited in total to the fee paid by the customer under this contract within six (6) months before the occurrence of the damaging event, but in any case to a maximum of CHF 1 million.
- 18.3 Notwithstanding the foregoing paragraphs, any liability arising out of or in connection with this Agreement for indirect or consequential damages, such as loss of profit, business interruption or loss of data, is excluded to the extent permitted by law.
- 18.4 The Customer is liable for all damages caused to Xerox as a result of the use of the item under maintenance in a manner contrary to care or instructions. The Customer is liable for such damage in accordance with the law and without application of sections 18.2 and 18.3 of these TERMS.
- 18.5 Only the liability provisions agreed between the Customer and the third party shall apply to third-party cloud services. Xerox excludes all liability for third-party cloud services.

### 19. EXPORT CONTROL

- 19.1 The Customer undertakes to comply with all applicable export control regulations in connection with the import, export and re-export of pressure equipment, software or other services under this contract, in particular the relevant regulations of the US Department of Commerce, the US Department of Treasury and the US Department of State.

### 20. DATA PROTECTION

- 20.1 Applicable data protection regulations must be observed.
- 20.2 Within the scope of the contractual relationship with the customer, it is also necessary to process personal data. The Customer gives his consent to this and agrees that Xerox may also disclose such data to third parties, e.g. affiliated companies, suppliers, specialist dealers, service organizations, subcontractors, freight forwarders, credit institutions, etc. in Switzerland or abroad in connection with the processing and maintenance of the business relationship.
- 20.3 Xerox will take appropriate organizational, technical and contractual precautions to ensure data protection.
- 20.4 Xerox will at all times process Customer Data in accordance with Xerox's Privacy Policy and the applicable privacy regulations.
- 20.5 Xerox has appropriate physical, technical and organizational security measures in place to protect against destruction, loss, alteration, disclosure, access, use or processing of Customer Data as a result of accidental or unauthorized or unlawful acts. Xerox will notify Customer immediately in the event of known unauthorized access to or use of Customer Data.

### 21. WRITTEN FORM

- 21.1 Amendments and supplements to the contract must be agreed in writing.

### 22. APPLICABLE LAW AND PLACE OF JURISDICTION

- 22.1 Swiss substantive law shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
- 22.2 Exclusive place of jurisdiction is Zurich ZH, Switzerland. Xerox reserves the right to bring proceedings before other competent courts.

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