

U.S. Maintenance Agreement for the FaxCentre F12/WorkCentre M15

Terms and Conditions General — For U.S. and Canada Agreements

GENERAL TERMS: The following terms apply to Maintenance Agreements for the FaxCentre F12 and the WorkCentre M15/15i:

1. **EQUIPMENT AND PRODUCTS.** "Equipment" refers to all equipment identified on the face of this Agreement for which Xerox will be providing Basic Services. "Products" refers to all software, and supplies ordered under this Agreement. You represent that the Products and Equipment are for your own use (rather than resale) and that they will not be used primarily for personal, household or family purposes.
2. **BASIC SERVICES.** Xerox will provide the following Basic Services under this Agreement:
 - A. **REPAIRS AND PARTS.** Xerox will make adjustments and repairs necessary to keep Equipment in good working order. Parts required for repair may be new, reprocessed, or recovered. All replaced parts/materials will become Xerox's property.
 - B. **HOURS AND EXCLUSIONS.** Unless otherwise stated, Basic Services will be provided during Xerox's standard working hours (excluding Xerox-recognized holidays) in areas within the United States, its territories, and possessions open for repair service for the Equipment at issue. Basic Services shall cover repairs and adjustments required as a result of normal wear and tear or defects in materials or workmanship (and shall exclude repairs or adjustments Xerox determines to relate to or be affected by the use of options, accessories, or other connected products not serviced by Xerox as well as any non-Xerox alterations, relocation, service, supplies, or consumables).
 - C. **INSTALLATION SITE.** The equipment installation site must conform to Xerox's published requirements throughout the term of this Agreement.
 - D. **REMEDY.** If Xerox is unable to maintain the Equipment as described above, Xerox will, as your exclusive remedy for Xerox's providing Basic Services, replace the Equipment with an identical product or, at Xerox's option, another product of equal or greater capabilities. This replacement product shall be subject to these same terms and conditions including any remaining Maintenance Agreement period.
 - E. **PC/WORKSTATION REQUIREMENTS.** In order to receive Basic Services and/or Software Support for equipment requiring connection to a PC or workstation, you must utilize a PC or workstation that either (1) has been provided by Xerox or (2) meets Xerox's published specifications.

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3. **INTELLECTUAL PROPERTY INDEMNITY.** Xerox will defend and indemnify you if any Product is alleged to infringe someone else's U.S. intellectual property rights provided you promptly notify Xerox of the alleged infringement and permit Xerox to direct the defense. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless it preapproves them in writing. To avoid infringement, Xerox may modify or substitute an equivalent Product, refund the price paid for the Product (less the reasonable rental value for the period it was available to you), or obtain any necessary licenses. Xerox is not liable for any infringement-related liabilities outside the scope of this paragraph including but not limited to infringement based upon a Product being modified to your specifications or being used or sold with products not provided by Xerox.
4. **LIMITATION OF LIABILITY.** Xerox shall not be liable to you for any direct damages in excess of \$10,000 or the amounts paid hereunder, whichever is greater, and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement, whether the claim alleges tortious conduct (including negligence) or any other legal theory. In addition, XEROX DISCLAIMS THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. You may not assign any rights or obligations under this Agreement without Xerox's prior written consent.
5. **CARTRIDGES.** To enhance print quality, the cartridge(s) in many models of Equipment have been designed to cease functioning at a predetermined point. In addition, many Equipment models are designed to function only with cartridges that are newly manufactured original Xerox cartridges or with cartridges intended for use in the U.S. Equipment configuration which permits use of non-newly manufactured original Xerox cartridges may be available from Xerox at an additional charge. Certain cartridges are also sold as Environmental Partnership Cartridges; you agree that these cartridges remain the property of Xerox and you shall return them to Xerox for remanufacturing once they cease functioning.
6. **COMMENCEMENT, EXPIRATION, AND BREACH.** Maintenance agreements will commence upon expiration of the standard 90-day warranty and expire 12, or 36, months thereafter, as applicable. If you breach this Agreement, Xerox, may discontinue service on this equipment.
7. **MISCELLANEOUS.** This Agreement constitutes the entire agreement as to its subject matter, supersedes all prior and contemporaneous oral and written agreements, and shall be construed under the laws of the State of New York (without regard to conflict-of-law principles). Xerox may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Agreement which shall be considered an equivalent to the original; in addition, Xerox may accept this Agreement either by its signature or commencing performance (e.g., Equipment delivery). All changes to this Agreement must be made in a writing signed by both parties; accordingly, any terms on your ordering documents shall be of no force or effect. In any action to enforce this Agreement, the parties agree to waive their right to a jury trial and to pay the prevailing party's costs and expenses, including reasonable attorneys' fees.

SOFTWARE TERMS: The following additional terms apply only to transactions covering Application Software and/or Xerox-brand Printing System, DocuTech, Color, High-Volume and Digital Copier-Duplicator, or Document Centre Products:

8. **SOFTWARE LICENSE.** The following terms apply to copyrighted software and the accompanying documentation, including but not limited to operating system software, provided with or within the Equipment ("Base Software"). This license does not apply to any Diagnostic Software nor to any software and accompanying documentation made subject to a separate license agreement.
 - A. Xerox grants you a non-exclusive, non-transferable license to use the Base Software within the United States, its territories, and possessions (the "United States") only on or with the Equipment with which (or within which) it was delivered. You have no other rights to the Base Software and, in particular, may not (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer this software; (2) activate any software delivered with or within the Equipment in an unactivated state; or (3) allow others to engage in same. Title to the Base Software and all copyrights and other intellectual property rights in it shall at all times reside solely with Xerox and/or its licensors (who shall be considered third-party beneficiaries of this Agreement's software and limitation of liability provisions).
 - B. Xerox may terminate your license for any Base Software (1) immediately if you no longer use or possess the Equipment or are a lessor of the Equipment and your first lessee no longer uses or possesses it or (2) upon the termination of any agreement under which you have rented or leased the Equipment.
 - C. If you transfer possession of the Equipment, Xerox will offer the transferee a license to use the Base Software within the United States on or with it, subject to Xerox's then-applicable terms and license fees, if any, and provided the transfer is not in violation of Xerox's rights.

9. **SOFTWARE SUPPORT.** During the period that Xerox provides Basic Services for the Equipment, Xerox will also provide software support for the software, including but not limited to operating system software, provided with or within the Equipment (“Base Software”) under the following terms:
 - A. Xerox will assure that Base Software performs in material conformity with its published specifications and will maintain a toll-free hotline during standard business hours to answer related questions.
 - B. Xerox may make available new releases of the Base Software that primarily incorporate coding error fixes and are designated as “Maintenance Releases”. Maintenance Releases are provided at no charge and must be implemented within six (6) months after being made available to you. Each new Maintenance Release shall be considered Base Software governed by these Software Terms. New releases of the Base Software that are not Maintenance Releases, if any, may be subject to additional license fees at Xerox’s then-current pricing and shall be considered Base Software governed by these Software Terms (unless otherwise noted). You agree to return or destroy all prior releases.
 - C. Xerox will use reasonable efforts, either directly and/or with its vendors, to resolve coding errors or provide workarounds or patches, provided you report problems in the manner specified by Xerox.
 - D. Xerox shall not be obligated (a) to support any Base software that is two or more generations older than Xerox’s most current release or (b) to remedy coding errors if you have modified the Base Software.
10. **DIAGNOSTIC SOFTWARE.** Software used to maintain the Equipment and/or diagnose its failures or substandard performance (collectively “Diagnostic Software”) is embedded in, resides on, or may be loaded onto the Equipment. The Diagnostic Software and method of entry or access to it constitute valuable trade secrets of Xerox. Title to the Diagnostic Software shall at all times remain solely with Xerox and/or Xerox’s licensors. You agree that (1) your acquisition of the Equipment does not grant you a license or right to use the Diagnostic Software in any manner and (2) that unless separately licensed by Xerox to do so, you will not use, reproduce, distribute, or disclose the Diagnostic Software for any purpose (or allow third parties to do so). You agree at all times (including subsequent to the expiration of this Agreement) to allow Xerox to access, monitor, and otherwise take steps to prevent unauthorized use or reproduction of the Diagnostic Software.