



**PUBLIC MEETING**  
**7:00 PM Regular Session**  
**June 7, 2023**  
**MAYOR NICHOLAS BODKIN PRESIDING**

**Agenda**

**Public Hearing 7:01 pm - Common Roots Easement**  
**Public Forum**

1. Grant Projects Update
  - a. Carbon Filtration
    - i. WIIA Grant money has been fully expended.
      1. ARPA Funds allocation
        - a. Carbon Media - \$150,400
        - b. Carbon Filtration Project - \$222,316
  - b. GIGP
  - c. Sewer I&I Close Out
    - i. Saratoga Avenue, update KPI has been approved to proceed with Blacktop per DOT Specifications.

2. Transfers

A 1990.400	A 1210.100	\$11.32	MAYOR PERSONAL SERVICES
A 1990.400	A 1325.100	\$2,150.00	C/T PERSONAL SERVICES
			CONTRACTUAL EXPENSE
A 1325.202	A 1320.400	\$2,400.00	BOOKKEEPING FEB/MARCH
A 1325.413	A 1325.410	\$44.64	C/T OUTSIDE SERVICES
			ATTORNEY CONTRACT APRIL AND
A 1990.400	A 1420.401	\$5,700.00	ESTIMATE MAY SERVICES
A 1440.401	A 1440.402	\$191.95	BLDG INSP MISC
A 1325.414	A 1440.403	\$250.34	BLDG INSP MILEAGE
A 3410.403	A 3410.409	\$1,095.73	FD BLDG REPAIRS
A 7110.406	A 7110.402	\$352.64	COOPERS CAVE BROCHURES
G 8130.101	G 8130.100	\$93.90	SEWAGE DISP PER SVC
G 8130.101	G 8130.800	\$0.24	SEWER DISP FICA

3. Motion to Approve the Bills as Audited
  - a. General Fund - \$37,849.47
  - b. Water Fund - \$4,500.36
  - c. Sewer Fund - \$1,683.72
4. 120 Water Presentation



5. Resident to address the Board per request
  - a. Anthony Girard, 10 Charles Street
6. Motion to allow the Mayor to sign insurance renewal documents
7. Recognize the retirement of staff member after 28 years of service
8. Motion to accept and file DPW, PD, Building Inspector/Code Enforcement and Animal Control Reports for the month of May
9. Recognition of New Fire Department Volunteer
10. Trail Grant/ Memorial Benches
11. Security settings for Village email accounts
12. Motion to approve lease of new copier/fax for PD
13. Fireworks permit fee, former Cool Beans building
  - a. Requesting adjustments to fee amount
14. Old Business
  - a. Bridge lights
  - b. Gazebo
15. New Business
16. Trustee Reports
17. Mayor's Report

## **SOUTH GLENS FALLS ANIMAL CONTROL**

**Report May 2023**

**13 calls on dogs (referred to town, DCO), 4 calls on skunks, 8 on cats (2 referred to County Shelter), 5 calls on foxes, 1 raccoon and 1 injured deer in town (referred to ENCON.**

**E. G. Robbins, ACO**

**June 1<sup>st</sup>, 2023**



**DEPARTMENT OF PUBLIC WORKS**

46 Saratoga Avenue

P.O. Box 1210

South Glens Falls, New York 12803-1210

Telephone (518) 792-4033

Fax (518) 792-0299

**BOARD MEETING**

**June 7, 2023**

**WATER/WASTE WATER TOTALS:**

**WATER: 21,931,000**

**WASTEWATER: 11,990,000**

**Avg. day: 707,000**

**Avg. day: 387,000**

**Max. day: 1,068,000 5/31**

**Max. day: 650,000 5/20**

**Min. day: 474,000 5/3**

**Min. day: 260,000 5/28**

**Town Water: 000,000**

- 1) Emergency Water Shut Offs: 5/11 128 Main St,
- 2) Emergency Sewer Calls: 5/12 48 Harrison Ave, 5/21 8 Charles St, 5/23 86 Spring St Ext,
- 3) 5/3 Water Plant Filter Change Out
- 4) 5/2,4 Pressure Wash Rt 9 Sidewalks
- 5) 5/8,10,11 Remove Trees at Water Plant
- 6) 5/9 Emergency Sewer Replacement 6 Edgewood
- 7) 5/14 China Buffet Fire (clean street, temp fence...)
- 8) 5/15 Parks Maintenance, Start Sprinklers, Trim, Mow
- 9) 5/22 Put Up All New Flags, Put Out Benches Along Main St
- 10) 5/25,26 Parade Prep Along The Parade Route and Park
- 11) 5/30 Blacktop Sewer/Water Ditches
- 12) 5/31 Trim Trees and Weed Trim Along Coopers Cave Rd
- 13 Vehicle/Building Maintenance, Locations, Trail Maintenance, Yard Waste Pick Up, and Sweeping is ongoing.

**TJ Chagnon**

**Public Works Superintendent**

# Water System Operation Report

Public Water System Name <b>Village of South Glens Falls</b>	Reporting Month/Year <b>May-23</b>	Date Report Submitted	Source Water Type(s) <input type="checkbox"/> Surface <input type="checkbox"/> Ground <input type="checkbox"/> Purchase with subsequent chlorination <input type="checkbox"/> Purchase w/out subsequent chlorination
Public Water Supply ID# <b>4500170</b>	County <b>Saratoga</b>	Town, Village, or City <b>Village of South Glens Falls</b>	
Treatment Plant(s) Identification #1 <b>Beach Road WTP</b>			

Date	Treated water volume (1,000 gallons/day)	Chlorination										PH	Water Temp.	Phosphat e
		Gas Cl <sub>2</sub>		Free Chlorine Residual at Entry Point (mg/l)										
		Cylinder weight remaining (lbs.) 1	Chlorine used per day (lbs.)	0000	0400	0800	1200	1600	2000	Max.				
1	492.2	67.0	151.0		1.07	1.19	1.28	1.19	1.12	1.19	1.28	7.08	9.1	0.65
2	484.8	61.0	150.8	6.1	1.11	1.23	1.22	1.24	1.13	1.19	1.24	7.11	9.3	0.54
3	473.9	55.8	150.8	5.2	1.11	1.10	1.11	1.18	1.27	1.01	1.27	7.11	9.1	0.64
4	514.4	50.4	150.6	5.6	1.03	1.03	1.12	1.11	1.05	1.14	1.14	7.14	9	0.7
5	494.3	44.2	150.6	6.2	1.14	1.17	1.29	1.15	1.17	1.13	1.29	7.13	8.9	0.65
6	553.6	37.8	150.8	6.4	1.16	1.10	1.27	1.14	1.16	1.10	1.27	7.13	8.9	0.72
7	652.2	31.2	151.2	6.6	1.13	1.11	1.25	1.11	1.08	1.07	1.25	7.14	9.1	0.66
8	554.5	24.4	150.8	7.2	1.06	1.19	1.24	1.16	1.12	1.14	1.24	7.09	9.1	0.62
9	616.1	17.0	150.8	7.4	1.13	1.11	1.19	1.14	1.12	1.18	1.19	7.07	9.1	0.65
10	665.0	9.5	151.0	7.5	1.14	1.10	1.19	1.14	1.12	1.12	1.19	7.08	9.1	0.58
11	673.5	5.2	149.2	6.0	1.11	1.18	1.15	1.12	1.12	1.08	1.18	7.07	9.1	0.7
12	678.9	151.2	142.6	6.6	1.06	1.08	1.10	0.94	1.00	1.06	1.10	7.1	9.2	0.65
13	698.0	151.4	135.2	7.4	1.11	1.13	1.16	1.11	1.07	1.08	1.16	7.07	9.2	0.63
14	758.7	151.0	126.4	9.2	1.05	1.05	1.00	0.83	1.11	1.27	1.27	7.14	9.4	0.65
15	702.1	151.0	119.0	7.4	1.25	1.15	1.17	0.95	1.17	1.26	1.26	7.16	9.4	0.68
16	683.9	151.0	112.4	6.7	1.19	1.15	1.18	1.05	1.14	1.10	1.19	7.12	9.5	0.61
17	706.8	150.6	104.6	8.2	1.15	1.11	1.21	1.07	1.16	1.20	1.21	7.07	9.3	0.57
18	711.7	150.4	97.4	7.5	1.23	1.23	1.27	1.20	1.16	1.14	1.27	7.12	9.1	0.52
19	679.2	151.0	90.4	7.0	1.03	1.13	1.17	0.99	1.12	1.20	1.20	7.15	9	0.81
20	715.9	151.4	83.0	7.4	1.23	1.20	1.25	1.05	1.14	1.20	1.25	7.12	9.2	0.66
21	786.5	151.6	75.2	7.8	1.22	1.22	1.25	1.09	1.21	1.26	1.26	7.13	9.4	0.81
22	806.2	151.4	66.6	8.8	1.19	1.29	1.16	0.97	1.19	1.32	1.32	7.13	9.3	0.56
23	810.3	151.6	58.4	8.2	1.24	1.36	1.16	0.97	1.15	1.35	1.36	7.15	9.3	0.5
24	721.4	151.4	50.4	8.1	1.11	1.18	1.14	1.00	1.23	1.26	1.26	7.12	9.4	0.45
25	701.0	150.8	42.6	8.4	1.25	1.32	1.29	1.13	1.14	1.13	1.32	7.11	9	0.72
26	760.7	150.6	34.2	8.6	1.11	1.22	1.27	1.08	1.19	1.07	1.27	7.12	9.1	0.78
27	900.8	151.0	25.0	9.2	1.13	1.16	1.22	1.11	1.13	1.15	1.22	7.1	9.1	0.65
28	903.2	151.6	15.6	9.4	1.09	1.22	1.27	1.14	1.15	1.17	1.27	7.08	9.3	0.67
29	985.2	144.6	13.8	8.8	1.08	1.26	1.32	1.11	1.20	1.42	1.42	7.07	9.4	0.6
30	977.7	134.0	150.6	10.6	1.49	1.63	1.51	1.36	1.36	1.42	1.63	7.12	9.4	0.49
31	1068.2	123.4	150.8	10.6	1.47	1.65	1.50	1.34	1.38	1.25	1.65	7.12	9.5	0.49
Total	21,931			230.174035								220.45	285.3	19.79
AVG.	707			7.672467833								7.11129	9.20323	0.63839
MAX	1,068			10.6087								7.16	9.5	0.86
MIN.	474			5.23274								7.07	8.9	0.45

Reported by: Alan Dubois Jr Title: Operator in Charge NYS DOH Operator Number: NY0041732

Signature: [Signature] Date: 6/1/23 Operator Grade Lev: IIA, IIB, C, D

# South Glens Falls Sewer Totals 2023

<b>Monday, May 01, 2023</b>	<b>AD</b>	<b>480</b>	<b>X 1000 Gallons</b>
<b>Tuesday, May 02, 2023</b>	<b>AD</b>	<b>450</b>	<b>X 1000 Gallons</b>
<b>Wednesday, May 03, 2023</b>	<b>JR</b>	<b>600</b>	<b>X 1000 Gallons</b>
<b>Thursday, May 04, 2023</b>	<b>JR</b>	<b>500</b>	<b>X 1000 Gallons</b>
<b>Friday, May 05, 2023</b>	<b>JR</b>	<b>610</b>	<b>X 1000 Gallons</b>
<b>Saturday, May 06, 2023</b>	<b>JR</b>	<b>490</b>	<b>X 1000 Gallons</b>
<b>Sunday, May 07, 2023</b>	<b>AD</b>	<b>400</b>	<b>X 1000 Gallons</b>
<b>Monday, May 08, 2023</b>	<b>AD</b>	<b>450</b>	<b>X 1000 Gallons</b>
<b>Tuesday, May 09, 2023</b>	<b>AD</b>	<b>400</b>	<b>X 1000 Gallons</b>
<b>Wednesday, May 10, 2023</b>	<b>JR</b>	<b>400</b>	<b>X 1000 Gallons</b>
<b>Thursday, May 11, 2023</b>	<b>JR</b>	<b>400</b>	<b>X 1000 Gallons</b>
<b>Friday, May 12, 2023</b>	<b>JR</b>	<b>380</b>	<b>X 1000 Gallons</b>
<b>Saturday, May 13, 2023</b>	<b>JR</b>	<b>370</b>	<b>X 1000 Gallons</b>
<b>Sunday, May 14, 2023</b>	<b>AD</b>	<b>340</b>	<b>X 1000 Gallons</b>
<b>Monday, May 15, 2023</b>	<b>AD</b>	<b>340</b>	<b>X 1000 Gallons</b>
<b>Tuesday, May 16, 2023</b>	<b>AD</b>	<b>340</b>	<b>X 1000 Gallons</b>
<b>Wednesday, May 17, 2023</b>	<b>JR</b>	<b>330</b>	<b>X 1000 Gallons</b>
<b>Thursday, May 18, 2023</b>	<b>JR</b>	<b>370</b>	<b>X 1000 Gallons</b>
<b>Friday, May 19, 2023</b>	<b>JR</b>	<b>330</b>	<b>X 1000 Gallons</b>
<b>Saturday, May 20, 2023</b>	<b>JR</b>	<b>650</b>	<b>X 1000 Gallons</b>
<b>Sunday, May 21, 2023</b>	<b>AD</b>	<b>280</b>	<b>X 1000 Gallons</b>
<b>Monday, May 22, 2023</b>	<b>AD</b>	<b>320</b>	<b>X 1000 Gallons</b>
<b>Tuesday, May 23, 2023</b>	<b>AD</b>	<b>300</b>	<b>X 1000 Gallons</b>
<b>Wednesday, May 24, 2023</b>	<b>JR</b>	<b>380</b>	<b>X 1000 Gallons</b>
<b>Thursday, May 25, 2023</b>	<b>JR</b>	<b>290</b>	<b>X 1000 Gallons</b>
<b>Friday, May 26, 2023</b>	<b>JR</b>	<b>310</b>	<b>X 1000 Gallons</b>
<b>Saturday, May 27, 2023</b>	<b>JR</b>	<b>290</b>	<b>X 1000 Gallons</b>
<b>Sunday, May 28, 2023</b>	<b>JR</b>	<b>260</b>	<b>X 1000 Gallons</b>
<b>Monday, May 29, 2023</b>	<b>JR</b>	<b>320</b>	<b>X 1000 Gallons</b>
<b>Tuesday, May 30, 2023</b>	<b>JR</b>	<b>300</b>	<b>X 1000 Gallons</b>
<b>Wednesday, May 31, 2023</b>	<b>AD</b>	<b>310</b>	<b>X 1000 Gallons</b>
			<b>X 1000 Gallons</b>
	<b>TOTAL:</b>	<b>11990</b>	<b>X 1000 Gallons</b>
	<b>TOTAL:</b>	<b>11990000</b>	
	<b>AVERAGE:</b>	<b>386.7741935</b>	
	<b>MIN:</b>	<b>260</b>	
	<b>MAX:</b>	<b>650</b>	

	Operator	Hours	Gallons	Hypo
Monday, May 01, 2023	AD	1586.8		41
Tuesday, May 02, 2023	AD	1586.8		41
Wednesday, May 03, 2023	JR	1586.8		41
Thursday, May 04, 2023	JR	1586.8		41
Friday, May 05, 2023	JR	1586.8		41
Saturday, May 06, 2023	JR	1586.8		41
Sunday, May 07, 2023	AD	1586.8		41
Monday, May 08, 2023	AD	1586.8		41
Tuesday, May 09, 2023	AD	1586.8		41
Wednesday, May 10, 2023	JR	1586.8		41
Thursday, May 11, 2023	JR	1590	24,000	15
Friday, May 12, 2023	JR	1592.2	16,500	15
Saturday, May 13, 2023	JR	1601.9	72,750	15
Sunday, May 14, 2023	AD	1607.8	44,250	15
Monday, May 15, 2023	AD	1612.8	37,500	10
Tuesday, May 16, 2023	AD	1616.5	27,750	10
Wednesday, May 17, 2023	JR	1621	33,750	10
Thursday, May 18, 2023	JR	1625.9	36,750	5
Friday, May 19, 2023	JR	1631.8	44,250	15
Saturday, May 20, 2023	JR	1637	39,000	10
Sunday, May 21, 2023	AD	1645.9	66,750	10
Monday, May 22, 2023	AD	1661.2	114,750	25
Tuesday, May 23, 2023	AD	1667	43,500	10
Wednesday, May 24, 2023	JR	1667	0	
Thursday, May 25, 2023	JR	1667	0	
Friday, May 26, 2023	JR	1667	0	
Saturday, May 27, 2023	JR	1669.7	20,250	5
Sunday, May 28, 2023	JR	1673.8	30,750	5
Monday, May 29, 2023	JR	1684.6	81,000	15
Tuesday, May 30, 2023	JR	1695	78,000	15
Wednesday, May 31, 2023	AD	1710.1	113,250	15
		123.3	924,750	220



Department of Public Safety  
Division of Police  
5 West Marion Avenue  
South Glens Falls, NY 12803  
Phone: (518) 792-6336 (518) 792-4173  
Fax: (518) 792-6481  
David J. Gifford, Chief of Police

## MONTHLY POLICE REPORT FOR MAY 2023

Calls/Services Total	329	
Investigations	0	
Alarms	6	
Funeral Escorts	0	
Personal Injury Accidents	2	
Property Damage Accidents	7	
Open Doors/Windows	0	
Business/House Checks	9	
Assist Other Agencies (Police/Fire/EMS)	19	
Traffic Tickets	18	
Parking Tickets	1	
DWI Arrests	0	
Penal Law Arrests		Violation 3
		Misdemeanor 5
		Felony 1
Warrant Arrests	1	
Traffic Details	5	
Larcenies Reported	6	
Criminal Mischiefs Reported	0	
Burglaries Reported	0	
Mileage 7G275 (old)	27	
Mileage 7G275 (new)	1330	
Mileage 7G276	1284	
Total	2641	

Respectfully Submitted,

  
David J. Gifford  
Chief of Police

Cc: Mayor, Trustees and Village Clerk



# Purchase Agreement

North Country Xerographics Inc  
PO Box 2165  
Glens Falls, NY 12801

**Billing Address:**

Village of South Glens Falls  
5 West Marion Ave  
South Glens Falls, NY 12803

**Shipping Address:**

Village of South Glens Falls  
5 West Marion Ave  
South Glens Falls, NY 12803

**Products**

Qty	Part Number	Description
1	C7125/ENG52	Xerox VersaLink B7125 Multifunction Printer
1	497K17750	Fax Kit

**Lease Details**

See separate Lease Agreement

**Contract Type**

Contract includes parts, labor and consumables

**Contract Details**

Description	Price
Monthly Base Charge	\$15.00
BW Allowance – pages included	1,000
BW Meter Charge – price per page	.0129
Color Allowance – pages included	0
Color Meter Charge – Price per page	0

The undersigned does hereby agree to all of the Terms and Conditions in this Agreement

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

## Terms Conditions

**GENERAL TERMS:** The following terms apply to all transactions .

1. **NAME.** Throughout this Agreement, the term "NCXI" will refer to North Country Xerographics, Inc.
2. **PRODUCTS.** "Products" refers to all equipment ("Equipment"), as well as software and supplies ordered under this Agreement. You represent that the Products are being purchased for your own use (rather than resale).
3. **PAYMENT AND TAXES.**
  - A. Payment is due within (20) days of the invoice date or on the due date listed on the invoice, whichever is earlier. In addition to any charges set out on the front page of this Agreement, you will be responsible for any non-typical delivery or removal expenses incurred.
  - B. You shall be responsible for any and all applicable Taxes, which will be included in our invoice unless you provide proof of your tax-exempt status. "Taxes" shall mean any tax, assessment or charge imposed or collected by any governmental entity or any political sub-division thereof, however designated or levied, imposed on this agreement or the amounts payable to NCXI by you for the billing of Products, Print Charges, services and maintenance of any kind; Taxes include, but are not limited to, sales and use, rental, excise, gross receipts and occupational or privilege taxes, plus any interest and/or penalty thereon, but excluding any personal property taxes and taxes on NCXI's net income. If a taxing authority determines that NCXI did not collect all applicable Taxes, you shall remain liable to NCXI for such additional Taxes.
4. **LIMITATION OF LIABILITY.** NCXI 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.
5. **ASSIGNMENT.** Neither party may assign any rights or obligations under this agreement without the other party's prior written consent. Notwithstanding the foregoing, you may assign this Agreement or any of the rights hereunder to an affiliated entity.

**PURCHASE AGREEMENT TERMS:** The following terms apply to all sale transactions

1. **TITLE AND RISK.** For Equipment purchased outright, title will pass to you upon payment in full and risk of loss will pass to you upon shipment from NCXI's location.
2. **WARRANTY.** Any warranty to which you are entitled shall commence upon installation.
3. **CREDIT HISTORY.** As part of this transaction, NCXI may investigate your credit history. Unless you have already paid in full, and even if the product has been delivered, NCXI may, within 60 days following its acceptance of this Agreement, revoke the Agreement if your credit approval is denied.
4. **NON-CANCELABLE AGREEMENT, FAILURE TO PAY**
  - A. THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN.
  - B. If you fail to make any payment within (10) days of the date payment is due, or breach any other obligation under this agreement, NCXI may suspend of Basic Services and/or supplies shipments, and/or assess late charges up to 2% of the outstanding balance.
5. **CUSTOMER EDUCATION/ANALYST SERVICES.** NCXI will provide Customer Education and Analyst Services listed on this Agreement. Additional services or services provided at a later date, will be billed at current labor rates.

**MAINTENANCE TERMS:** The following terms apply to all transactions that include maintenance:

1. **BASIC SERVICES.** NCXI will provide the following Basic Services if an express warranty or maintenance agreement is in place.
  - A. **HOURS AND EXCLUSIONS.** Unless otherwise stated, Basic Services will be provided between the hours of 8:30am and 5:00pm, Monday through Friday. No service will be provided on recognized holidays. 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 NCXI determines to relate to or be affected by the use of options, accessories or other connected products not serviced by NCXI as well as any non-NCXI alterations, relocation, service, supplies or consumables).
  - B. **INSTALLATION SITE AND METER READINGS.** The equipment installation site must conform to NCXI's requirements throughout the term of this Agreement. If applicable, you must provide meter readings in a manner prescribed by NCXI. If you fail to provide timely readings, NCXI may estimate your bill accordingly.
2. **REMEDY.** If NCXI is unable to maintain the Equipment as described above, NCXI will as your exclusive remedy for NCXI's providing Basic Services, replace the Equipment with a similar unit, or refund monies paid to NCXI in accordance with this agreement.
3. **CONTRACT TERM.** All maintenance agreements will begin on the date of installation, and will run for a 12 month period, unless otherwise noted.
4. **RENEWAL.** This Agreement will automatically renew at the end of the term, unless either party notifies the other of their intention not to renew, in writing, 60 days in advance. The cost of the Agreement may increase annually at a rate no greater than 5%.
5. **BILLING.** Base charges will be billed monthly in advance. Meter charges will be billed monthly in arrears.
6. **COVERAGE.** This Agreement may cover Labor and/or Parts and/or Consumables as stated on the front page of this document. Items not covered must be purchased by you for an additional cost. If NCXI agrees to provide parts or consumables to you at no charge, these may be new, reprocessed or recovered. All replaced parts/materials will become NCXI's property.
7. **AUTO REPLENISHMENT.** If the Automatic Replenishment option is selected, you also agree to allow printer monitoring software to be installed on your computer. NCXI will provide the software to you at no charge. When NCXI is notified that any of the consumables are at 20% remaining or below, NCXI will ship 1 carton of the consumable to your location. You will be billed for the item at the price shown on this agreement, unless your coverage includes consumables.
8. **INSPECTION.** For equipment that was not purchased new from us, NCXI will require an inspection of the equipment before issuing a Maintenance Agreement. You will be billed for any parts needed to repair the equipment at that time.

# Lease Agreement



Agreement Number: 260348

"Supplier" Name & Address: North Country Xerographics Inc

## CUSTOMER

Full Legal Name: South Glens Falls, Village of

Phone:

Billing Address: 5 West Marion Ave

Contact Name:

City: South Glens Falls

State: NY

Zip Code: 12803

Contact Email:

## EQUIPMENT

Quantity	Model and Description	Quantity	Model and Description
1	VersaLink B7125		
1	Fax kit		

Equipment Location; (if different from Billing Address):

TERM (in months)	LEASE PAYMENT (plus applicable taxes)	PURCHASE OPTION - ('FMV' unless otherwise noted)
Initial Term: 60	96.50	<input checked="" type="checkbox"/> Fair Market Value ("FMV")
	Frequency: (Monthly if none selected): <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Other	<input type="checkbox"/> \$1 Purchase Option

## CUSTOMER ACCEPTANCE

## OWNER ACCEPTANCE

BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT YOU ARE ENTERING INTO A NON-CANCELLABLE AGREEMENT AND THAT YOU HAVE READ AND AGREED TO ALL APPLICABLE TERMS AND CONDITIONS SET FORTH ON PAGES 1 AND 2 HEREOF.

Xerox Financial Services LLC

Authorized Signer X:

Federal Tax ID # (Required):

Accepted By

Print Name/Title:

Date:

Date:

## TERMS & CONDITIONS

**1. Definitions.** The words "you" and "your" mean the legal entity identified in "Customer Information" above, and "XFS," "we," "us," "Owner" and "our" mean Xerox Financial Services LLC. "Party" means you or XFS, and "Parties" means both you and XFS. "Acceptance Date" is the date you irrevocably determine Equipment has been delivered, installed and operating satisfactorily. "Agreement" means this Lease Agreement, including any attached Equipment schedule. "Commencement Date" will be a date after the Acceptance Date, as set forth in our first invoice, for the purpose of facilitating an orderly transition and to provide a uniform billing cycle. "Discount Rate" means 3% per annum. "Equipment" means the items identified in "Equipment" above and in any attached Equipment schedule, plus any Software (as defined in Section 3 hereof), attachments, accessories, replacements, replacement parts, substitutions, additions and repairs thereto. "Interim Period" means the period, if any, between the Acceptance Date and the Commencement Date. "Interim Payment" means one thirtieth of the Lease Payment multiplied by the number of days in the Interim Period. "Payment" means the Lease Payment specified above, Taxes and other charges you, Supplier and XFS agree will be invoiced by XFS. "Maintenance Agreement" means a separate agreement between you and Supplier for maintenance and support purposes. "Origination Fee" means a one-time fee of \$125 billed on your first invoice, which you agree to pay, covering origination, documentation, processing and other initial costs. "Term" means the Interim Period, if any, together with the Initial Term plus any subsequent renewal or extension terms. "UCC" means the Uniform Commercial Code of the State(s) where XFS must file UCC-1 financing statements to perfect its security interest in the Equipment.

**2. Agreement, Payments and Late Payments.** You agree and represent that the Equipment was selected, configured and negotiated by you based on your judgment and supplied by Supplier. At your request, XFS will acquire same from Supplier to lease to you hereunder and you agree to lease same from XFS. The Initial Term commences on the Acceptance Date. You agree to remit to XFS each Payment as invoiced by us according to the frequency set forth above. You agree to pay us all sums due under each invoice via check, Automated Clearing House debit, Electronic Funds Transfer or direct debit from your bank account by the due date. If any Payment is not paid in full within 5 days after its due date, you will pay a late charge of the greater of 10% of the amount due or \$25, not to exceed the maximum amount permitted by law. For each dishonored or returned Payment, you will be assessed the applicable fee, not to exceed \$35. Restrictive covenants on any method of payment will be ineffective.

**3. Equipment and Software.** To the extent that Equipment includes intangible property or associated services such as software licenses, such intangible property shall be referred to as "Software." You acknowledge and agree that XFS is not the licensor of such Software, and therefore has no right, title or interest in it, and you will comply throughout the Term with any license and/or other agreement ("Software License") with the supplier of the Software ("Software Supplier"). You are responsible for determining with the Supplier whether any Software Licenses are required, and entering into them with Software Supplier(s) no later than 30 days after the Acceptance Date. YOU AGREE THE EQUIPMENT IS FOR YOUR LAWFUL BUSINESS USE IN THE UNITED STATES, WILL NOT BE USED FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES, AND IS NOT BEING ACQUIRED FOR RESALE. You will not attach the Equipment as a fixture to real estate or make any permanent alterations to it.

**4. Non-Cancellable Agreement.** THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED BY YOU PRIOR TO THE END OF THE INITIAL TERM. YOUR OBLIGATION TO MAKE ALL PAYMENTS IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF THE PERFORMANCE OF THE EQUIPMENT, SUPPLIER, ANY THIRD PARTY OR XFS. Any pursued claim by you against XFS for alleged breach of our obligations hereunder shall be asserted solely in a separate action; provided, however, that your obligations hereunder shall continue unabated.

**5. End of Agreement Options.** If a \$1 Purchase Option is designated, you will be deemed to have exercised your option to purchase the Equipment as of the Acceptance Date. If an FMV purchase option is designated, if you are not in default and if you provide no greater than 150 days and no less than 60 days' prior written notice to XFS, you may, at the end of the Initial Term or any renewal term ("End Date"), either (a) purchase all, but not less than all, of the Equipment by paying its fair market value, as determined by XFS in its sole but reasonable discretion ("Determined FMV"), plus Taxes, or (b) return the Equipment within 30 days of the End Date, at your expense, fully insured, to a continental US location XFS shall specify. You cannot return Equipment more than 30 days prior to the End Date without our consent. If we consent, we may charge you, in addition to all undiscounted amounts due hereunder, an early termination fee. If you have not elected one of the above options, this Agreement shall renew for successive 3-month terms. Either party may terminate the Agreement as of the end of any 3-month renewal term on 30 days' prior written notice and by taking one of the actions identified in (a) or (b) in the preceding sentence of this section. Any FMV purchase option shall be exercised with respect to each item of Equipment on the day immediately following the date of expiration of the Term of such item, and by the delivery at such time by you to XFS of payment, in form acceptable to XFS, of the amount of the applicable purchase price. Upon payment of the applicable amount, XFS shall transfer our interest in the Equipment to you on an "AS IS, WHERE IS," "WITH ALL FAULTS" basis, without representation or warranty of any kind.

**6. Equipment Delivery and Maintenance.** You should arrange with Supplier to have the Equipment delivered to you at the location(s) specified herein, and you agree to execute a Delivery & Acceptance Certificate at XFS's request (and confirm same via telephone and/or electronically) confirming when you have received, inspected and irrevocably accepted the Equipment, and authorize XFS to fund the Supplier for the Equipment. If you fail to accept the Equipment, you shall no longer have any obligations hereunder; however, you remain liable for any Equipment purchase order or other contract issued on your behalf directly with Supplier. Equipment may not be moved to another physical address without XFS's prior written consent, which shall not be unreasonably withheld or delayed. You agree that you will not take the Equipment out of service during the Term. You shall permit XFS or its agent to inspect Equipment and any maintenance records relating thereto during your normal business hours upon reasonable notice. You represent you have entered into a Maintenance Agreement to maintain the Equipment in good working order in accordance with the manufacturer's maintenance guidelines and to provide you with Equipment supplies. You acknowledge that XFS is acting solely as an administrator for Supplier with respect to the billing and collecting of the charges under any Maintenance Agreement. XFS IS NOT LIABLE FOR ANY BREACH BY SUPPLIER OF ANY OF ITS OBLIGATIONS TO YOU, NOR WILL ANY OF YOUR OBLIGATIONS HEREUNDER BE MODIFIED, RELEASED OR EXCUSED BY ANY ALLEGED BREACH BY SUPPLIER.

**7. Equipment Ownership, Labeling and UCC Filing.** If and to the extent a court deems this Agreement to be a security agreement under the UCC, and otherwise for precautionary purposes only, you grant XFS a first priority security interest in your interest in the Equipment as defined above in order to secure your performance hereunder. Unless a \$1 Purchase Option is applicable, XFS is and shall remain the sole owner of the Equipment, except the Software. You authorize XFS to file a UCC financing statement to show, and to do all other acts to protect, our interest in the Equipment. You agree to pay any filing fees and administrative costs for the filing of such financing statements. You agree to keep the Equipment free from any liens or encumbrances and to promptly notify XFS if there is any change in your organization such that a refiling or amendment to XFS's financing statement against you becomes necessary.

**8. Equipment Return.** If the Equipment is returned to XFS, it shall be in the same condition as when delivered to you, except for "ordinary wear and tear" and, if not in such condition, you will be liable for all expenses XFS incurs to return the Equipment to such condition. IT IS SOLELY YOUR RESPONSIBILITY TO SECURE ANY SENSITIVE DATA AND PERMANENTLY DELETE SUCH DATA FROM THE INTERNAL MEDIA STORAGE PRIOR TO RETURNING THE EQUIPMENT TO XFS. YOU SHALL HOLD XFS HARMLESS FROM YOUR FAILURE TO SECURE AND PERMANENTLY DELETE ALL SUCH CUSTOMER DATA AS OUTLINED IN THIS SECTION.

**9. Assignment.** YOU MAY NOT ASSIGN, SELL, PLEDGE, TRANSFER, SUBLEASE OR PART WITH POSSESSION OF THE EQUIPMENT, THIS AGREEMENT OR ANY OF YOUR RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT (COLLECTIVELY "ASSIGNMENT") WITHOUT XFS'S PRIOR WRITTEN CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD, BUT SUBJECT TO THE SOLE EXERCISE OF XFS'S REASONABLE CREDIT DISCRETION AND EXECUTION OF ANY NECESSARY ASSIGNMENT DOCUMENTATION. If XFS agrees to an Assignment, you agree to pay the applicable assignment fee and reimburse XFS for any costs we incur in connection with that Assignment, which in the aggregate shall not exceed \$250. XFS may sell, assign or transfer all or any part of the Equipment, this Agreement and/or any of our rights (but none of our obligations except for invoicing and tax administration) hereunder. XFS's assignee will have the same rights that we have to the extent assigned: YOU AGREE NOT TO ASSERT AGAINST SUCH ASSIGNEE ANY CLAIMS, DEFENSES, COUNTERCLAIMS, RECOURSEMENTS, OR SET-OFFS THAT YOU MAY HAVE AGAINST XFS, and you agree to remit Payments to such Assignee if so designated: XFS agrees and acknowledges that any Assignment by us will not materially change your obligations hereunder.

**10. Taxes.** You will be responsible for, indemnify and hold XFS harmless from, all applicable taxes, fees or charges (including sales, use, personal property and transfer taxes (other than net income taxes), plus interest and penalties) assessed by any governmental entity on you, the Equipment, this Agreement, or the amounts payable hereunder (collectively, "Taxes"), which will be included in XFS's invoices to you unless you timely provide continuing proof of your tax exempt status. Regardless of your tax-exempt status, XFS reserves the right to pass through, and you agree to pay, any such Taxes that are actually assessed by the applicable State on XFS as lessor of the Equipment. For jurisdictions where certain taxes are calculated and paid at the time of agreement initiation, you authorize XFS to finance and adjust your Payment to include such Taxes over the Term. Unless and until XFS notifies you in writing to the contrary, the following shall apply to personal property taxes and returns. If an FMV purchase option is applicable, XFS will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and collect from your account all personal property taxes on the Equipment. If a \$1 purchase option is applicable, you will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and provide us proof thereof upon our request. XFS MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE TAX OR ACCOUNTING TREATMENT OF THIS AGREEMENT.

**11. Equipment Warranty Information and Disclaimers.** XFS HAS NO INVOLVEMENT IN THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, USE OR MAINTENANCE OF THE EQUIPMENT. THEREFORE, XFS DISCLAIMS, AND YOU WAIVE SOLELY AGAINST XFS, ALL EQUIPMENT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE, AND XFS MAKES NO REPRESENTATIONS WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE EQUIPMENT'S SUITABILITY, FUNCTIONALITY, DURABILITY OR CONDITION. Since you have selected the Equipment and Supplier, you acknowledge that you are aware of rights you may have under the Equipment supply contract, sales order, or otherwise. Provided you are not in default hereunder, XFS hereby assigns to you any Equipment warranty rights we may have against Supplier or manufacturer. If the Equipment is returned to XFS or you are in default, such rights are deemed reassigned by you to XFS. IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, DOES NOT OPERATE AS WARRANTED, BECOMES OBSOLETE, OR IS UNSATISFACTORY FOR ANY REASON WHATSOEVER, YOU SHALL MAKE ALL RELATED CLAIMS SOLELY AGAINST MANUFACTURER OR SUPPLIER AND NOT AGAINST XFS, AND YOU SHALL NEVERTHELESS CONTINUE TO PAY ALL PAYMENTS AND OTHER SUMS PAYABLE UNDER THIS AGREEMENT.

**12. Liability and Indemnification.** XFS IS NOT RESPONSIBLE FOR ANY LOSSES, DAMAGES, EXPENSES OR INJURIES OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (COLLECTIVELY, "CLAIMS") TO YOU OR ANY THIRD PARTY CAUSED BY THE EQUIPMENT OR ITS USE. You assume the risk of liability for, and hereby agree to indemnify and hold safe and harmless, and covenant to defend, XFS, its employees, officers and agents from and against: (a) any and all Claims (including legal expenses of every kind and nature) arising out of the acceptance or rejection, ownership, leasing, possession, operation, use, return or other disposition of the Equipment; and (b) any and all loss or damage of or to the Equipment. Neither sentence in this Section shall apply to Claims arising directly and proximately from XFS's gross negligence or willful misconduct.

**13. Default and Remedies.** You will be in default hereunder if we do not receive Payment within 10 days after its due date, or you breach any other material obligation hereunder or any other agreement with us. If you default, and such default continues for 10 days after we provide notice to you, we may, in addition to other remedies (including disabling or repossessing Equipment and/or requesting Supplier to cease performing under the Maintenance Agreement), immediately require you to do one or more of the following: (a) as liquidated damages for loss of bargain and not as a penalty, pay the sum of (i) all amounts then due, plus interest from the due date until paid at the rate of 1.5% per month; (ii) Payments remaining in the Term (including the fixed maintenance component thereof, if permitted under the Maintenance Agreement), discounted to date of default at the Discount Rate, (iii) the Equipment's booked residual, and (iv) Taxes; and (b) require you to return the Equipment as provided herein. You agree to pay all reasonable costs, including attorneys' fees and disbursements, incurred by us to enforce this Agreement.

**14. Risk of Loss and Insurance.** You assume and agree to bear the entire risk of loss, theft, destruction or other impairment of the Equipment upon delivery. You, at your own expense, (i) shall keep Equipment insured against loss or damage at a minimum of full replacement value thereof, and (ii) shall carry liability insurance against bodily injury, including death, and against property damage in the amount of at least \$2 million (collectively, "Required Insurance"). All such Equipment loss/damage insurance shall be with lender's loss payable to "XFS, its successors and/or assigns, as their interests may appear," and shall be with companies reasonably acceptable to XFS. XFS shall be named as an additional insured on all liability insurance policies. The Required Insurance shall provide for 30 days' prior notice to XFS of cancellation. YOU MUST PROVIDE XFS OR OUR DESIGNEES WITH SATISFACTORY WRITTEN EVIDENCE OF REQUIRED INSURANCE WITHIN 30 DAYS OF THE ACCEPTANCE DATE AND ANY SUBSEQUENT WRITTEN REQUEST BY XFS OR OUR DESIGNEES. IF YOU DO NOT DO SO, THEN IN LIEU OF OTHER REMEDIES FOR DEFAULT, SUCH FORMS AND AMOUNTS AS XFS DEEMS REASONABLE TO PROTECT XFS'S INTERESTS (COLLECTIVELY "EQUIPMENT INSURANCE"). EQUIPMENT INSURANCE WILL COVER THE EQUIPMENT AND XFS; IT WILL NOT NAME YOU AS AN INSURED AND MAY NOT COVER ALL OF YOUR INTEREST IN THE EQUIPMENT AND WILL BE SUBJECT TO CANCELLATION AT ANY TIME. YOU AGREE TO PAY XFS PERIODIC CHARGES FOR EQUIPMENT INSURANCE (COLLECTIVELY "INSURANCE CHARGES") THAT INCLUDE: AN INSURANCE PREMIUM THAT MAY BE HIGHER THAN IF YOU MAINTAINED THE REQUIRED INSURANCE SEPARATELY; A FINANCE CHARGE OF UP TO 1.5% PER MONTH ON ANY ADVANCES MADE BY XFS OR OUR AGENTS; AND COMMISSIONS, BILLING AND PROCESSING FEES; ANY OR ALL OF WHICH MAY GENERATE A PROFIT TO XFS OR OUR AGENTS. XFS MAY ADD INSURANCE CHARGES TO EACH PAYMENT. XFS shall discontinue billing or debiting Insurance Charges for Equipment Insurance upon receipt and review of satisfactory evidence of Required Insurance. You must promptly notify XFS of any loss or damage to Equipment which makes any item of Equipment unfit for continued or repairable use. You hereby irrevocably appoint XFS as your attorney-in-fact to execute and endorse all checks or drafts in your name to collect under any such Required Insurance. Insurance proceeds from Required Insurance or Equipment Insurance received shall be applied, at XFS's option, to (x) restore the Equipment so that it is in the same condition as when delivered to you (normal wear and tear excepted), or (y) if the Equipment is not restorable, to replace it with like-kind condition Equipment from the same manufacturer, or (z) pay to XFS the greater of (i) the total unpaid Payments for the entire Term hereof (discounted to present value at the Discount Rate) plus, if an FMV purchase option is designated on the first page hereof, XFS's residual interest in such Equipment (herein agreed to be 20% of the Equipment's original cost to XFS) plus any other amounts due to XFS hereunder, or (ii) the Determined FMV immediately prior to the loss or damage. NO LOSS OR DAMAGE TO EQUIPMENT, OR XFS'S RECEIPT AND APPLICATION OF INSURANCE PROCEEDS, SHALL RELIEVE YOU OF ANY OF YOUR REMAINING OBLIGATIONS UNDER THIS AGREEMENT. Notwithstanding procurement of Equipment Insurance or Required Insurance, you remain primarily liable for performance under this Section in the event the applicable insurance carrier fails or refuses to pay any claim. YOU AGREE (I) AT XFS'S SOLE ELECTION TO ARBITRATE ANY DISPUTE WITH XFS, OUR AGENTS OR ASSIGNS REGARDING THE EQUIPMENT INSURANCE UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN FAIRFIELD COUNTY, CT, (II) THAT IF XFS MAKES THE FOREGOING ELECTION ARBITRATION (NOT A COURT) SHALL BE THE EXCLUSIVE REMEDY FOR SUCH DISPUTES; AND (III) THAT CLASS ARBITRATION IS NOT PERMITTED. This arbitration option does not apply to any other provision of this Agreement.

**15. Authorization of Signer and Credit Review.** You represent that you may lawfully enter into, and perform, this Agreement, that the individual signing this Agreement on your behalf has all necessary authority to do so, and that all financial information you provide accurately represents your financial condition. You agree to furnish financial information that XFS may request now, including your Federal Tax ID, and you authorize XFS to obtain credit reports on you in the future should you default or fail to make prompt payments hereunder.

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

**17. Original and Sole Controlling Document. No Modifications Unless in Writing.** This Agreement constitutes the entire agreement between the Parties as to the subjects addressed herein, and representations or statements not included herein are not part of this Agreement and are not binding on the Parties. You agree that an executed copy of this Agreement that is signed by your authorized representative and by XFS's authorized representative (an original manual signature or such signature reproduced by means of a reliable electronic form, such as electronic transmission of a facsimile or electronic signature) shall be marked "original" by XFS and shall constitute the only original document for all purposes. To the extent this Agreement constitutes UCC chattel paper, no security interest in this Agreement may be created except by the possession or transfer of the copy marked "original" by XFS. IF A PURCHASE ORDER OR OTHER DOCUMENT IS ISSUED BY YOU, NONE OF ITS TERMS AND CONDITIONS SHALL BE BINDING ON XFS, AS THE TERMS AND CONDITIONS OF THIS AGREEMENT EXCLUSIVELY GOVERN THE TRANSACTION DOCUMENTED HEREIN. SUPPLIER AND ITS REPRESENTATIVES ARE NOT OUR AGENTS AND ARE NOT AUTHORIZED TO MODIFY OR NEGOTIATE THE TERMS OF THIS AGREEMENT. THIS AGREEMENT MAY NOT BE AMENDED OR SUPPLEMENTED EXCEPT IN A WRITTEN AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES AND NO PROVISIONS CAN BE WAIVED EXCEPT IN A WRITING SIGNED BY XFS. You authorize XFS to insert or correct missing information on this Agreement, including but not limited to your proper legal name, agreement/numbers, serial numbers and other Equipment information, so long as there is no material impact to your financial obligations.

**18. Governing Law, Jurisdiction, Venue and JURY TRIAL WAIVER.** THIS AGREEMENT IS GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CONNECTICUT. THE JURISDICTION AND VENUE OF ANY ACTION TO ENFORCE THIS AGREEMENT, OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL BE IN A FEDERAL OR STATE COURT IN FAIRFIELD COUNTY, CONNECTICUT OR, EXCLUSIVELY AT XFS'S OPTION, IN ANY OTHER FEDERAL OR STATE COURT WHERE THE EQUIPMENT IS LOCATED OR WHERE XFS'S OR YOUR PRINCIPAL PLACES OF BUSINESS ARE LOCATED, AND YOU HEREBY WAIVE ANY RIGHT TO TRANSFER VENUE. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATED TO OR ARISING OUT OF THIS AGREEMENT.

**19. Miscellaneous.** Your obligations under the "Taxes" and "Liability" Sections commence upon execution, and survive the expiration or earlier termination, of this Agreement. Notices hereunder must be in writing. Notices to you will be sent to the "Billing Address" provided on the first page hereof, and notices to XFS shall be sent to our address provided on the first page hereof. Notices will be deemed given 5 days after mailing by first class mail or 2 days after sending by nationally recognized overnight courier. Invoices are not considered notices and are not governed by the notice terms hereof. You authorize XFS to communicate with you by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address you provide to us. If a court finds any term of this Agreement unenforceable, the remaining terms will remain in effect. The failure by either Party to exercise any right or remedy will not constitute a waiver of such right or remedy. If more than one party has signed this Agreement as Customer, each such party agrees that its liability is joint and several. The following four sentences control over every other part of this Agreement: Both Parties will comply with applicable laws. XFS will not charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement that would, but for the last four sentences of this Section, be read under any circumstances to allow for a charge higher than that allowed under any applicable legal limit, is modified by this Section to limit the amounts chargeable hereunder to the maximum amount allowed under the legal limit. If, in any circumstances, any amount in excess of that allowed by law is charged or received, any such charge will be deemed limited by the amount legally allowed and any amount received by XFS in excess of that legally allowed will be applied by us to the payment of amounts legally owed hereunder or refunded to you.