



SOFTWARE SERVICES AGREEMENT

ACS GOVERNMENT SYSTEMS, INC.

1733 Harrodsburg Road
Lexington, KY 40504-3617

and

CITY OF DURHAM, NORTH CAROLINA

Technology Solutions Dept.
101 City Hall Plaza
Durham, NC 27701

THIS AGREEMENT is made between ACS Government Systems, Inc. (“Xerox”), a Delaware corporation, and the City of Durham, North Carolina, a municipal corporation (“Client”), made the ___ day of _____, 2012 (the “Commencement Date”).

Xerox and the Client have entered into a certain License Agreement (as that term is hereinafter defined) under which Xerox granted the Client a right of use for the Licensed Software (as that term is hereinafter defined), all on the terms and conditions of such License Agreement. Xerox and the Client desire to enter into this Agreement pursuant to which Xerox will provide Client with services in connection with the Licensed Software, all in accordance with the terms and conditions of this Agreement as the same may be amended from time to time. Accordingly, the parties, intending to be legally bound, hereby agree as follows:

1. Definitions. Each of the following terms will have the meaning ascribed to such term herein below when used in this Agreement. Further, certain other terms may be defined in a Scope of Services (including without limitation in Exhibit A), and each such term has the meaning ascribed to it therein when used therein.

“**Commencement Date**” means the date identified above.

“**Customization**” means any Xerox-developed changes to and/or creations of source code and/or object code in compliance with a Customization Specification therefor, but without any other change whatsoever.

“**Customization Defect**” means, in each instance, a material deviation between a Customization and its Customization Specification, for which Customization Defect Xerox has confirmed that Client has given

Xerox enough information for Xerox to replicate the deviation on a computer configuration which is both comparable to the computer configuration for which Xerox created the Customization and which computer configuration is under Xerox’s control.

“**Customization Delivery Date**” means, for each Customization, the date Client first receives that Customization at the Delivery Address.

“**Customization Specification**” means that detailed specification that Client and Xerox will agree upon in each instance for a Customization, and from which Customization Specification Xerox will generate the source code and object code for such Customization.

“**Exhibit A**” means the Scope of Services that is attached to this Agreement and marked as Exhibit A.

“**Fee**” means the remuneration that Client is to pay to Xerox for Services in any instance.

“**License Agreement**” means that certain Contract for Workflow Automation System City of Durham and **ACS Government Systems, Inc., entered into as of the 13th day of February, 2004**, pursuant to which Client obtained the right to use Licensed Software.

“**Licensed Software**” means the NovaLIS Land Development Office system licensed to Client pursuant to the License Agreement.

“**Premises**” means Client’s data processing facility(ies) located at such address or addresses as Client may designate from time to time.

“**Project Plan**” means, in each instance, a detailed plan describing the specific Services to be performed by Xerox and the associated activities to be handled by Client in connection therewith. Upon its creation and approval by both parties, the Project Plan will be deemed incorporated into this Agreement by reference, without further action by either party.

“**Scope of Services**” means, in each instance, the written description of Services to be rendered by Xerox, and each which Scope of Services must be expressly incorporated by reference into this Agreement in each instance.

“**Services**” means, in each instance, the implementation, training, Customization and/or consulting services that Xerox is to provide to Client pursuant to a Scope of Services and for the remuneration otherwise provided for in such Scope of Services or a correlating amendment to this Agreement.

“**Software**” means the source code and object code for application software products, operating systems, database systems, computer language facilities, development tools; and the related specification(s) therefor.

“**Product Support & Enhancement Agreement**” means that certain Product Support & Enhancement Agreement made between Xerox and **the Client on February 1, 2005**, under which Product Support & Enhancement Agreement Xerox provides Licensee with Improvements (as that term is defined in the Product Support & Enhancement Agreement) for the Licensed Software, all on the terms and conditions of and for the fees provided for in the Product Support & Enhancement Agreement.

3. Services. In consideration of Client’s payment of the Fee specified in Exhibit A, Xerox agrees to furnish the Client with the Services specified in Exhibit A. Absent the parties’ execution of an amendment to this Agreement that provides to the contrary, this Agreement specifically excludes any responsibility on the part of Xerox for providing any services other than the Services specified in Exhibit A. Xerox can provide Client with additional Services under the terms of this Agreement. In any such instance, the parties will amend this Agreement to define such additional Services, to specify the Fee for such additional Services, and to set forth the payment terms for the Fee for such additional Services.

In each instance in which Xerox is to provide Services, the parties will develop a Project Plan that details the Services to be provided, identifies each party’s responsibilities for such Services and sets for a schedule for the provision of such Services.

4. Client Obligations.

4.1 Access. Client agrees to permit Xerox’s authorized personnel, and third parties as may be authorized by Xerox, access to the Premises and other Client facilities, information, data, data communication services, and communication lines, at such times and for such purposes as reasonably necessary or appropriate to permit Xerox to perform its obligations under this Agreement.

4.2 Availability of Client Personnel. Upon Xerox’s reasonable request, Client will make its personnel, including appropriate

professional personnel, administrative personnel and other employees, reasonably available for consultation to the extent reasonably necessary in order to facilitate Xerox's performance of the Services its obligations.

5. Personnel.

5.1 **Assignment of Xerox Personnel and Replacement of Xerox Premises-Based Personnel.** Client will have the right to request that Xerox remove and replace any Xerox personnel providing Services at the Premises if, in the reasonable opinion of Client, such Xerox personnel do not possess the skills and experience necessary to render the Services for which Xerox has provided such personnel. Promptly after receipt of Client's request therefor (which right of request Client will not unreasonably exercise), Xerox will replace such personnel, at no additional cost to Client therefor.

5.2 **Xerox Project Manager.** Xerox will designate a Xerox Project Manager who will be responsible for coordinating Xerox's efforts and for communicating with the Client Project Director regarding the Services.

5.3 **Client Project Director.** Client will designate a Client Project Director who will be responsible for communicating with Xerox Project Manager with regard to the proper execution of this Agreement and the obligations and duties under this Agreement.

6. **Term.** Subject to the events of termination otherwise provided for in this Agreement, this Agreement will remain in full force and effect for a **period of two years** after the Commencement Date. The term during which Xerox will provide Client with Services under any particular Scope of Services will be specified in the applicable Scope of Services.

Upon any termination, Client shall pay Xerox for all Services rendered up to effective date of termination.

7. Fees and Payment.

7.1. **Fee Payment.** Client will pay Xerox for the Services on a time and materials basis at the rate set forth in Exhibit A.

7.2 **Reimbursement of Expenses Additional.** Except as may be otherwise specified in any particular Scope of Services, Client will additionally reimburse Xerox for actual travel and living expenses that Xerox incurs in providing Client with the Services, with reimbursement to be on an as-incurred basis. Xerox will use reasonable efforts to limit travel and living expenses by using coach air fare, booked in advance when available, staying at hotels identified in advance by Client as offering Client's contractors a discounted rate, sharing rental cars, using the telephone when reasonable to obviate the need for travel, and remotely accessing the Equipment.

7.3 **Payment of Xerox Invoices. Client will pay each Xerox invoice by no later than thirty (30) days after date of invoice.** Late payments are subject to a late charge equal to the lesser of: (i) the prime lending rate established from time to time by Mellon Bank, N.A., Philadelphia, Pennsylvania plus three percent (3%); and (ii) the highest rate permitted by applicable law.

8. Source Code and Software License For Customizations; Work Product Ownership.

8.1 **License To Use Customizations.** Any Customization delivered by Xerox in connection with this Agreement shall be subject to the terms and conditions set forth in the License Agreement executed by Client. Client acknowledges and agrees that Customization constitutes a "derivative work" of underlying copyrighted Software within the meaning of the definition set forth in Section 101 of the U.S Copyright Act. Client's right to use such derivative Customization will, in each instance, be governed by the License Agreement governing Client's right to use the underlying copyrighted Software from which such Customization is derived. Any rights not expressly granted in the License Agreement or this Agreement are expressly reserved.

(a) Right To Reproduce Customization Specifications. Client can make copies of the Customization Specification for each Customization only as needed for its internal business use in accordance with the terms of this Agreement.

(b) Survival. Subject to the payment terms provided for in this Agreement, the provisions of this Subsection 8.1, including the license granted under the License Agreement and all related rights and obligations, will survive the term or termination of this Agreement for any reason; provided, however, that Client understands and agrees that in the event of termination of the license to the Licensed Software granted to Client pursuant to the License Agreement, Client's rights to utilize the Licensed Software would terminate, and accordingly, Client's right to use any Customizations that are derivative works of the Licensed Software, in whole or in part, will terminate.

8.2 Ownership of Work Product. Without limitation or prejudice to: (a) Client's rights under this Agreement; and (b) Xerox's rights, including without limitation Xerox's exclusive ownership right in and to derivative works of the Licensed Software, and except to the extent that any of the same constitute derivative works incorporating property of any other third party, Xerox, for itself and others as it deems appropriate, will have all ownership rights in all Customizations, whether completed or partially completed, and all documents and other work product developed under or pursuant to the provision of the Services, whether completed or partially completed, including without limitation the right to receive source code and the right to use, duplicate, and disclose Customizations and Customization data, in whole or in part, in any manner and for any purpose, and Client will not have the right to sell, license, or use the Customizations.

9. Intellectual Property Indemnity By Xerox.

Xerox will defend, indemnify and hold Client harmless from and against any loss, cost and expense that Client incurs because of a claim that use of any Customization infringes any United States copyright of others. Xerox's obligations under this indemnification are expressly conditioned on the following: (i) Client must promptly notify Xerox of any such claim; (ii) Client must in writing grant Xerox sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if Client chooses to represent its own interests in any such action, Client may do so at its own expense, but such representation must not prejudice Xerox's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Client must cooperate with Xerox to facilitate the settlement or defense of the claim; (iv) the claim must not arise from modifications to a Customization or from the use or combination of the Customization with items provided by Client or others. If a Customization is, or in Xerox's opinion is likely to become, the subject of a United States copyright infringement claim, then Xerox, at its sole option and expense, will either: (A) obtain for Client the right to continue using the Customization under the terms of this Agreement; or (B) replace the Customization with products that are substantially equivalent in function, or modify the Customization so that it becomes non-infringing and substantially equivalent in function; or (C) refund to Client the portion of the Fee paid to Xerox for the Customization(s) giving rise to the infringement claim, less a charge for use by Client based on straight line depreciation assuming a useful life of five (5) years. **THE FOREGOING IS XEROX'S EXCLUSIVE OBLIGATION WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

10. Limited Warranties; Disclaimer of Warranties; Certain Maintenance.

10.1 **Limited Warranty of Workmanlike Skills And Remedy For Breach.** Xerox will render all Services in a professional and workmanlike manner, using personnel generally deemed acceptable in the information technology industry to perform the

Services that such Xerox personnel have been assigned to perform. Xerox will promptly replace any Xerox personnel that are rendering Services on-site at the Premises if Client reasonably determines that such personnel do not so possess the requisite skills and provides Xerox with notice to that effect, provided that such replacement does not violate any law or governmental regulation applicable to such personnel replacement.

10.2 Limited Software Warranty by Xerox and Remedy For Breach. For each Customization, Xerox warrants to Client that, for a period of ninety (90) days after the Customization Delivery Date, the Customization, as used by Client for its own, non-commercial computing operations on the computer configuration for which Xerox created such Customization, will operate without Customization Defects. For each Customization Defect, Xerox, as soon as reasonably practicable and at its own expense, will provide Client with an avoidance procedure for or a correction of the Customization Defect. If, despite its reasonable efforts, Xerox is unable to provide Client with an avoidance procedure for or a correction of a Customization Defect, then, subject to the limitations set forth in Section 11 of this Agreement, Xerox, in agreement with Client, shall either (1) equitably adjust the fees due to Xerox as specified in Exhibit A, or (2) if the fees specified in Exhibit A have already been paid to Xerox, equitably reimburse the Client all or part of such fees. These remedies for breach of this limited warranty are exclusive and are in lieu of all other remedies for breach of this limited warranty, and Xerox's sole obligations for breach of this limited warranty are contained in this Section 10.2.

10.3. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, XEROX DISCLAIMS ALL WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY EXPRESS WARRANTIES NOT INCORPORATED INTO THIS AGREEMENT AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR

A PARTICULAR PURPOSE IMPOSED BY LAW OR WHICH COULD OTHERWISE ARISE IN CONNECTION WITH XEROX' PERFORMANCE UNDER THIS AGREEMENT.

10.4 Abrogation of Limited Software Warranty. The limited warranty in Section 10.2 will be null and void if: (i) anyone (including Client) other than Xerox modifies the Customization, or otherwise attempts to reverse engineer, disassemble or decompile the Licensed Software; (ii) the Customization has been damaged through the negligence or misconduct of parties other than Xerox, or as a result of Client's failure to operate the Licensed Software in accordance with the operating instructions of Xerox; (iii) a force majeure event occurs, or if the software is exposed to unusual physical or electrical stress; or (iv) Customer does not implement changes that Xerox provides to correct or improve the Customization. If despite any modification of the Customization, Xerox can replicate the reported problem in the Customization as if the problem were a Documented Defect, then Xerox will nonetheless provide Client with an avoidance procedure for or a correction of that reported problem for use in the Customization as though the reported problem were a Documented Defect.

11. LIMITATION OF LIABILITY/ REMEDIES.

XEROX AND CLIENT ACKNOWLEDGE AND AGREE THAT IN NO EVENT WILL XEROX'S LIABILITY TO CLIENT, IF ANY, FOR ANY CLAIMS WHATSOEVER OR FOR ANY REASON WHATSOEVER RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT EXCEED THE SERVICES FEES THAT CLIENT ACTUALLY PAID TO XEROX FOR THE SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL XEROX BE LIABLE TO CLIENT FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES,

WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT XEROX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER CAUSES OF ACTION BASED ON SIMILAR LEGAL THEORIES. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 10 AND 11 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

12. No Hire Clause. During the period of this Agreement and any resulting Subcontract, neither party hereto shall solicit for hire any employee of the other associated with performance under this Agreement or any resulting subcontract; nor shall they hire such employee without prior written consent of the party which employs that individual. Individuals previously employed by either party may be solicited for hire and hired, without such written approval, one (1) year after termination of their employment with the party which employs the individual.

13. Applicable Laws.

(a) Choice of Law and Forum; Service of Process. (i) This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. "Agent for

Service of Process" means every person now or hereafter appointed by Xerox to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, Xerox agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. Xerox will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to Xerox. This does not apply while Xerox maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the Client shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the Client from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

(f) Compliance with Law. In performing all of the Work, Xerox shall comply with all applicable law.

(g) Notice of Client Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Agreement Xerox agrees as follows: (1) Xerox shall not discriminate against any employee or applicant for employment

because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Xerox shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Xerox shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) Xerox shall in all solicitations or advertisement for employees placed by or on behalf of Xerox, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) Xerox shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of Xerox's noncompliance with these EEO provisions, the Client may cancel, terminate, or suspend this Agreement, in whole or in part, and the Client may declare Xerox ineligible for further Client contracts. (5) Unless exempted by the City Council of the City of Durham, Xerox shall include these EEO provisions in every purchase order for goods to be used in performing this Agreement and in every subcontract related to this Agreement so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) No Third Party Rights Created. This Agreement is intended for the benefit of the Client and Xerox and not any other person.

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2)

References to a "Section" or "section" shall mean a section of this Agreement. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this Agreement will not apply to the extent the context requires otherwise.

(k) Modifications. Entire Agreement. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the Client unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a Client department director. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

(l) City's Manager's Authority. To the extent, if any, the Client has the power to suspend or terminate this Agreement or Xerox's services under this Agreement, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

14. Termination for Convenience ("TFC").

(a) *Procedure.* Without limiting any party's right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor 90 days written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of

this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

15. Notice. (a) All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows.

To the Client:

CIO/ Customer Service Manager
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329

To Xerox:

ACS Government Systems, Inc.
c/o Debbie Spencer-Bond, PMP
237 Brownlow Avenue, Suite 100
Dartmouth, NS B3B 2C6

With a copy to:
ACS Government Systems, Inc.
8260 Willow Oaks Corporate Drive
Fairfax, VA 22031
Attn: ALG Contracts

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given and sent at the time of actual delivery, if it is personally delivered. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

16. Entire Agreement. This Agreement and the License Agreement contain the entire understanding of the parties with respect to their respective subject matter, and supersede and extinguish all prior oral and written communications between the parties about their respective subject matter. Any purchase order or similar document which may be issued by Client in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement.

THE PARTIES have executed this Agreement through the signatures of their respective authorized representatives.

ACS GOVERNMENT SYSTEMS, INC.

CITY OF DURHAM, NORTH CAROLINA

By: _____

By: _____

(Printed Name and Title of Signatory)

(Printed Name and Title of Signatory)

Date: _____

Date: _____

EXHIBIT A

STATEMENT OF WORK/PAYMENT SCHEDULE

Xerox will provide the Client with Customizations, which are not covered by the Product Support and Enhancement Agreement, at a rate of \$150.00 per hour up to a maximum of 560 hours (\$84,000.00 total) for this Agreement. The rate for any additional hours will be negotiated by the parties. These services shall be invoiced monthly as performed.

The Customizations provided under this Agreement are design, modifications, configurations, customizations, enhancements, training services, or system upgrades. These hours may be used for any system enhancements as requested by the Client. The execution of the Services provided under this Agreement will be driven by requests from the Client for custom programming services. As each request from the Client is received, it will be estimated by Xerox and a Change Request estimating the number of hours required for this work will be presented to the Client for consideration. Upon approval of the Change Request, Xerox will perform the necessary custom programming services and the Client will be billed for the hours actually used for that Change Request each month up to the maximum amount specified in the Change Request. Xerox will not perform or bill Client for any hours in excess of the estimate set forth in the Change Request without the prior written consent of the Client. The usage of hours under this Agreement will be tracked by Xerox and the Client can receive a copy of the tracking spreadsheet upon request.