



# **NASPO ValuePoint Master Agreement Terms and Conditions**

## **For Copiers and Managed Print Services**

**A Contract for the NASPO ValuePoint Cooperative Purchasing Program  
Acting by and through the State of Colorado (Lead State)**

**Department of Personnel & Administration  
State Purchasing & Contracts Office  
1525 Sherman Street, 3<sup>rd</sup> Floor  
Denver, Co 80203**

**And**

**Xerox Corporation  
201 Merritt 7  
Norwalk, CT 06851**

**Master Agreement Number: 140606**

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## 1. NASPO VALUEPOINT MASTER AGREEMENT OVERVIEW

### 1.1. Parties

This Master Agreement is entered into by and between the State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing & Contracts Office (hereinafter called the "Lead State"), and Xerox Corporation (hereinafter called "Contractor"), for the procurement of A3 MFD's, A4 MFD's, Production Equipment, Single-function Printers, Large/Wide Format Equipment, Software, Supplies, Managed Print Services, and other Products and Services as approved per this Master Agreement, for the benefit of Participating States, Entity's, and Purchasing Entities. The Contractor and the Lead State hereby agree to the following terms and conditions.

### 1.2. Effective Date

This Master Agreement shall not be effective or enforceable until the date on which it is approved and signed (hereinafter called the "Effective Date") by the Colorado State Controller or designee.

### 1.3. Master Agreement Order of Precedence

1.3.1. Any Order placed under this Master Agreement shall consist of the following documents:

- a) A Participating Entity's Participating Addendum ("PA");
- b) NASPO ValuePoint Master Agreement Terms & Conditions, including all Exhibits;
- c) An Order issued against this Master Agreement;
- d) The Solicitation, RFP-NP-18-001 Copiers and Managed Print Services;
- e) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
- f) Contractor Supplemental Documents, including all Attachments.

1.3.2. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and shall be incorporated into this Master Agreement.

### 1.4. Term of this Master Agreement

1.4.1. **Initial Term-Work Commencement.** The Parties' respective performances under this Master Agreement shall commence on the Effective Date or August 1, 2019, whichever occurs later. This Master Agreement shall terminate on December 31, 2021, unless terminated sooner, as specified in §6.10, **Defaults and Remedies**, or extended further as specified in §1.4.2 below.

1.4.2. **Extension of Agreement.** This Master Agreement may be extended beyond the original Contract period for up to three (3) consecutive one (1) year additional terms, upon the mutual agreement of the Lead State and Contractor, by written Amendment. The total duration of this Master Agreement, including any extensions, shall not exceed five (5) years.

1.4.3. **Amendments.** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State.

1.4.4. **Cancellation.** This Master Agreement may be canceled by either party upon sixty (60) days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of



payment for Products delivered and accepted, and rights attending any warranty or default in performance in association with any Order. Cancellation of this Master Agreement due to Contractor default may be immediate.

## 2. DEFINITIONS

The following terms shall be construed and interpreted as follows:

<b>Term</b>	<b>Description</b>
<b><i>A3 MFD</i></b>	A Multi-function Device which is designed to handle letter, legal, ledger and some smaller paper sizes, such as postcards and envelopes.
<b><i>A4 MFD</i></b>	A Multi-function Device which is designed to handle letter, legal and some smaller paper sizes, such as postcards and envelopes. Ledger size paper is NOT an option on this Device.
<b><i>Acceptance</i></b>	A written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which Acceptance Testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.
<b><i>Acceptance Testing</i></b>	The process set forth in this Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity.
<b><i>Accessory</i></b>	A compatible item that is added to the Base Unit to enhance its capabilities and functions.
<b><i>Authorized Dealer ("Dealer")</i></b>	The Contractor's authorized sales and Service center (also known as a Dealer, or Partner) that must be certified by the Contractor to sell the Contractor's Products, and perform machine installation and maintenance on Devices offered by the Contractor. A Purchasing Entity must be able to, at a minimum, visit the sales and Service center to view and test Equipment.
<b><i>Base Unit</i></b>	The copier, printer, Scanner, Large/Wide Format and Production Equipment that includes all standard Accessories and parts, and excludes optional Accessories and/or software.
<b><i>Blended Rate</i></b>	A rate that is derived by taking the b&w and color cost per click rates on one or more Devices and calculating one rate that a customer will be billed for all copies, regardless of Device type and b&w or color output. Allows for simplicity when billing copies run.
<b><i>Bronze Standard</i></b>	Devices which meet less than 50% of the 28 optional EPEAT criteria.
<b><i>Business Day</i></b>	Any day other than Saturday, Sunday or a legal holiday.
<b><i>Buyout to Keep</i></b>	The early termination option on an FMV or \$1 Buyout Lease that involves the acquisition of the Equipment by the Purchasing Entity, and consists of any current and past due amount, plus the remaining stream of Equipment Payments.
<b><i>Buyout to Return</i></b>	The early termination option on an FMV, \$1 Buyout or Straight Lease that involves the return of the Equipment by the Purchasing Entity to Contractor, in good working condition (ordinary wear and tear excepted), and consists of any current and past due amounts, plus the remaining stream of Equipment

	Payments.
<b><i>Cancellable Rental</i></b>	An agreement that is cancellable upon the Purchasing Entity providing the Contractor with a thirty (30) day written notice, and is subject to a maximum penalty of up to three (3) months of Total Monthly Payments. Equipment ownership is not an option.
<b><i>Ceiling Pricing</i></b>	Pricing that is established as a “not-to-exceed” amount; the maximum price Contractor may charge for Products, Services, and Supplies.
<b><i>Chief Procurement Officer</i></b>	The individual who has the authority to supervise and approve the procurement of all Products and Services needed by the Lead State or a Participating State.
<b><i>Contractor</i></b>	The person or entity delivering Products or performing Services under the terms and conditions set forth in this Master Agreement.
<b><i>Coterminous</i></b>	Two or more leases or rentals that end at the same time. The original lease or rental payment is modified to reflect the addition of a new piece of Equipment or Accessory. The original term of the lease or rental is not modified as a result of a Coterminous addition.
<b><i>Device</i></b>	Also referred to as “Equipment.” The Base Unit, either with or without optional Accessories and/or software.
<b><i>Direct Material</i></b>	Materials which are easily identified, measured, and charged to the cost of production; part of the finished Product. Examples include timber for furniture and leather for shoes.
<b><i>Electronic Product Environmental Assessment Tool (EPEAT)</i></b>	A tool which evaluates and selects Equipment according to a list of preferred environmental attributes. EPEAT registered means Devices meet the 1680.2 IEEE Standard for Environmental Assessment of Imaging Equipment, as amended.
<b><i>EULA</i></b>	End User License Agreement
<b><i>Embedded Software</i></b>	One or more software applications which permanently reside on a computing Device.
<b><i>Energy Star</i></b>	The U.S. Environmental Protection Agency’s standard for energy efficiency.
<b><i>Equipment</i></b>	Also referred to as “Device.” The Base Unit, either with or without optional Accessories and/or software.
<b><i>Equipment Downtime</i></b>	The period of time that a Device is waiting for Service to be completed.
<b><i>Equipment Payment</i></b>	The Equipment portion of the payment, less any Service, Supplies, and maintenance.
<b><i>Equipment Trade-In</i></b>	An agreed upon transaction between the Purchasing Entity and Contractor, in which Contractor takes ownership of Purchasing Entity’s owned Device, often for a discounted amount.
<b><i>Equipment Upgrade or Downgrade</i></b>	A replacement of the Purchasing Entity’s existing lease or rental Equipment, with a different piece of Equipment, of either greater or lesser value. A new lease or rental is then originated for the new piece of Equipment, with the remaining lease or rental payments on the old Equipment wrapped into it. The old lease or rental is closed out, and the Equipment is returned to Contractor.

<b><i>Free on Board (FOB) Destination</i></b>	Contractor is responsible for transportation and handling charges and the sale does not occur until the Products arrive at the Purchasing Entity's specified location.
<b><i>Group</i></b>	The Device classification for the different types of Equipment in this Master Agreement. Groups are determined by the Devices primary functions and/or capabilities.
<b><i>Independent Contractor</i></b>	A natural person, business, or corporation that provides Products or Services to another entity under the terms specified in a contract. An employer-employee relationship does not exist.
<b><i>Initial Lease or Rental Term</i></b>	The length of time (i.e. 12, 18, 24, 36, 48, or 60 months) that a Purchasing Entity enters into a lease or rental agreement.
<b><i>Intellectual Property</i></b>	Any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
<b><i>Large/Wide Format Equipment</i></b>	A Device that prints on a large paper via a variety of output options.
<b><i>Lead State</i></b>	The State that is centrally administering this Master Agreement.
<b><i>Lease</i></b>	<p>Per the Governmental Accounting Standards Board (GASB), a lease is defined as a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction.</p> <p>For the purposes of this Master Agreement, a Lease shall contain the following options:</p> <ol style="list-style-type: none"> <li>1. <b>Straight Lease:</b> A type of agreement in which ownership is not an option and the Total Monthly Payment amount remains firm throughout the Initial Term.</li> <li>2. <b>Fair Market Value Lease (FMV):</b> A lease in which the Purchasing Entity can either 1) Take title to the Equipment at the end of the Initial Lease Term by paying the residual value to Contractor, 2) Enter into a Renewal Term for the Equipment, or 3) Return the Equipment to Contractor at the end of the Initial Lease Term.</li> <li>3. <b>\$1 Buyout Lease:</b> A lease in which title to the Equipment will automatically pass from the Contractor to the Purchasing Entity at the end of the Initial Lease Term, and the Purchasing Entity will not be subject to additional payments in order to assume ownership.</li> </ol>
<b><i>Legacy Equipment</i></b>	Equipment that was purchased, leased, or rented under a prior NASPO ValuePoint or WSCA Master Agreement, another program, or via any other means.
<b><i>Maintenance Agreement</i></b>	An agreement in which the Contractor provides monthly Service, parts, Supplies, and Preventative Maintenance on purchased, leased or rented Devices.
<b><i>Managed Print Services (MPS)</i></b>	The management, Service, and support of the Purchasing Entity's entire enterprise and output infrastructure of printed materials, with the objective of creating a solution that improves the print process and reduces the expense of printed material.



<b><i>Manufacturer</i></b>	A company that, as its primary business function, designs, assembles, and owns the trademark/patent and markets a Product. Also referred to as Contractor.
<b><i>Manufacturer's Suggested Retail Price (MSRP)</i></b>	The list price or recommended retail price of a Product in which the Manufacturer recommends that the retailer sell the Product.
<b><i>Master Agreement</i></b>	Also referred to as "Contract"; the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
<b><i>Multi-function Device (MFD)</i></b>	A Device which incorporates the functionality of multiple Devices into one, such as print, fax, copy and scan. Each feature can work independently of the other.
<b><i>NASPO ValuePoint</i></b>	The NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is a 501(c)(3) limited liability company that is a subsidiary organization of the National Association of State Procurement Officials (NASPO). NASPO ValuePoint is identified in this Master Agreement as the recipient of reports and may perform Contract administration functions relating to collecting and receiving reports as well as other Contract administration functions as assigned by the Lead State.
<b><i>Newly Manufactured</i></b>	Devices that have not been Refurbished, Remanufactured, rented, leased, sold, or used in a demonstration, and are currently being marketed by the Manufacturer.
<b><i>Normal Business Hours</i></b>	8:00 a.m. to 5:00 p.m., Monday through Friday (state holidays excluded), regardless of time zone.
<b><i>Not Specifically Priced (NSP)</i></b>	NSP items are items that enhance or compliment the Contractor's Product, and may be acquired by a Purchasing Entity under Contractor's Master Agreement, but are not listed or priced in Contractor's NASPO ValuePoint Price List. NSP's may include Coin Op equipment, empowering software, etc. NSP items do not include Services.
<b><i>OEM</i></b>	Original Equipment Manufacturer.
<b><i>Order</i></b>	Any type of encumbrance document or commitment voucher, including, but not limited to, a purchase order, contract, MPS statement of work, Maintenance Agreement, lease agreement, rental agreement etc.)
<b><i>Participating Addendum</i></b>	A bilateral agreement executed by a Contractor and a Participating State or Entity incorporating this Master Agreement and any other additional Participating State or Entity specific language or other requirements (e.g. ordering procedures, other terms and conditions).
<b><i>Participating Entity</i></b>	A government entity within a state, or an eligible Non-Profit association, that is properly authorized to enter into a Participating Addendum.
<b><i>Participating State</i></b>	A state, which encompasses all government entities within that state, or the District of Columbia, or one of the territories of the United States, that enters into a Participating Addendum.
<b><i>Power Filter</i></b>	An electronic filter which is placed between an external power line and a Device for the purpose of removing frequencies or electromagnetic interference.



<b><i>Preventative Maintenance</i></b>	The servicing of a Device for the purpose of maintaining a satisfactory operating condition by providing systematic inspection, detection, and correction of failures either before they occur or before they develop into major defects.
<b><i>Private Label</i></b>	Products that are manufactured by one company and sold under a retailer's brand name.
<b><i>Product</i></b>	Devices, Accessories, parts, software, and/or Supplies provided or created by the Contractor pursuant to this Master Agreement.
<b><i>Production Equipment</i></b>	A high-speed, high-quality printing Device that typically has advanced finishing functionality.
<b><i>Public Record</i></b>	All books and Public Records of a governmental entity, the contents of which are not otherwise declared by law to be confidential must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and Public Records.
<b><i>Purchasing Entity</i></b>	A city, county, district, institution of higher education, and some non-profits who issue an Order against this Master Agreement via their Participating State or Entity's Participating Addendum.
<b><i>Refurbished</i></b>	A Product which has received extensive maintenance and/or minor repair, including the replacement of all standard parts subject to wear during the normal course of use. Refurbished Equipment shall not have more than 750,000 original copies on it. In addition, Refurbished Equipment must only contain OEM parts. Refurbished Equipment must be certified by the Manufacturer.
<b><i>Remanufactured</i></b>	The process of disassembling Devices known to be worn or defective that can be reused or brought up to OEM specification by cleaning, repairing or replacing it in a manufacturing environment and then reassembling and testing it, so that it will operate like a new Device. Remanufactured Equipment must be certified by the Manufacturer.
<b><i>Renewal Term</i></b>	A lease term that supersedes the Initial Lease Term, and which a Purchasing Entity may enter into upon thirty (30) days prior written notice to Contractor. Each Renewal Term shall not exceed 12 months, the residual value of the Equipment, or the Useful Life of the Equipment. \$1 Buyout Leases are excluded from going into renewal.
<b><i>Resell</i></b>	Any payment in exchange for transfer of tangible Products, or assignment of the right to Services.
<b><i>Response Time</i></b>	The time from when the original Service Call is placed with the Contractor or Authorized Dealer, to when the Service technician arrives at the Purchasing Entity's location.
<b><i>Segment</i></b>	The various speeds that Devices are categorized by.
<b><i>Service Base Location</i></b>	The place of business where the Contractor or Authorized Dealer stores parts and provides training for service technicians.
<b><i>Service Call</i></b>	An on-site Service technician visit due to Device error or malfunction.
<b><i>Services</i></b>	The labor required to be performed by Contractor pursuant to this Master Agreement or an Order.

<b>Single-function Printer</b>	An inkjet or laser Device that only prints and is not capable of other functions such as copying, faxing or scanning.
<b>Solicitation</b>	A written offer or attempt to purchase Products and/or Services through an official Proposal, Evaluation, and Award process.
<b>Supplemental Documents</b>	Documents include, but are not limited to, lease agreements, rental agreements, Maintenance Agreements, and software or click-wrap agreements that are pertinent to the Products being offered.
<b>Supplies</b>	<u>Consumable</u> items that gets used up or are discarded once used, such as ink cartridges.
<b>Third Party</b>	Someone who may be indirectly involved but is not a principal party to an arrangement, contract, deal, lawsuit or transaction.
<b>Total Monthly Payment</b>	The Equipment portion of the payment, as well as any Service, Supplies or maintenance, and less any applicable taxes.
<b>Useful Life</b>	Period during which a Device is expected to be usable for the purpose in which it was manufactured.

### 3. NASPO VALUEPOINT PROGRAM PROVISIONS

#### 3.1. Price and Rate Guarantee Period

- 3.1.1. The Price List(s) in Exhibit A (Price Lists) identifies a complete listing of all Products and Services the Contractor can provide under this Master Agreement, with the exception of NSP items.
- 3.1.2. MSRP/List Price discount percentages must be guaranteed throughout the term of this Master Agreement, including any renewal terms; however, Contractor may increase its discount percentage at any time. The Lead State must be notified of any such discount percentage increase, and provided with a copy of the new Group Price List(s).
- 3.1.3. MSRP/List Price shall remain firm during the first twelve (12) months of the Master Agreement. After this period, Awarded Vendors may update their MSRP/List Price on a quarterly basis, according to the following guidelines:
- a) All requested price increases must include documentation from Direct Material suppliers detailing cost escalations, and Awarded Vendors must describe how those escalations impact current Product offerings.
  - b) With the exception of Direct Material cost increases, no price increase requests will be allowed.
  - c) Updated Price Lists must be submitted to the Lead State by the 1st day of each quarter.
  - d) Pricing will not go into effect unless, or until, it is approved by the Lead State.
- 3.1.4. The Master Agreement pricing IS Ceiling Pricing. Contractor may offer lower pricing on a per Order basis to Purchasing Entity's; likewise, Purchasing Entity's may request lower pricing on a per Order basis from Contractor.
- 3.1.5. Contractor may offer state-wide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. Contractor must notify the Participating State or Entity Contract Administrator of special state-wide promotional discounts.
- 3.1.6. Any revisions to Product offerings (new Products, altered item or model numbers, etc.) must be pre-approved by the Lead State, and will be allowed once per month.

- 3.1.7. Product updates are required by the 1st of the month and shall go into effect upon approval by the Lead State.
- 3.1.8. Any Product additions must be updated with Buyer's Lab within ninety (90) days of submission to the Lead State. Failure to adhere to this requirement will result in the Product(s) being removed from the Master Agreement Price List(s) until such time as they can be verified on Buyer's Lab.
- 3.1.9. Updates to lease and rental rates must be submitted by the 1st day of each quarter.
- 3.1.10. Price Lists received after the 1st of the month may not be approved for up to thirty (30) days following submission. In addition, errors in the Contractor's Price Lists may delay the approval process further.
- 3.1.11. All approved Price Lists will be submitted by the Lead State to NASPO ValuePoint. Contractor shall then update all applicable websites with the new Price Lists after the NASPO ValuePoint website has been updated.
- 3.1.12. All-inclusive Cost Per Copy (CPC) programs may be offered upon request by the Participating State or Entity, but pricing must not exceed Master Agreement pricing. Contractor must provide the Participating State or Entity with their pricing breakdown which enables the Participating State or Entity to easily compare the pricing in the CPC structure against the pricing in this Master Agreement.
- 3.1.13. Pricing must include all standard shipping, delivery, and installation costs associated with the Products. Excess installation charges or expedited shipping however, may be billable. Refer to §4.9.5 for more information.

## **3.2. Participants and Scope**

- 3.2.1. Contractor may not deliver Products or perform Services under this Master Agreement until a Participating Addendum acceptable to the Participating State or Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating State or Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating State or Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. Order) used by the Purchasing Entity to place the Order.
- 3.2.2. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating States or Entities authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Officer.
- 3.2.3. Obligations under this Master Agreement are limited to those Participating States and Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating States and Entities are limited to the Orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Contractor shall email a fully



executed PDF copy of each Participating Addendum to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases.

- 3.2.4.** Participating States and Entities may, through a Participating Addendum, limit:
- a) Available financial vehicles;
  - b) Device Groups, Segments, Products, Services (including MPS); and
  - c) Any additional items as deemed necessary by the Participating State or Entity.
- 3.2.5.** A Participating State or Entity must sign a new Participating Addendum with Contractor, regardless of whether Contractor has signed Participating Addenda under a prior Master Agreement(s).
- 3.2.6.** NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to this Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO ValuePoint cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.
- 3.2.7.** Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor, and any such language shall be void and of no effect:
- a) Term of this Master Agreement;
  - b) Amendments;
  - c) Participants and Scope;
  - d) Administrative Fee;
  - e) NASPO ValuePoint Summary and Detailed Usage Reports;
  - f) NASPO ValuePoint Cooperative Program Marketing and Performance Review;
  - g) NASPO ValuePoint eMarket Center;
  - h) Right to Publish;
  - i) Price and Rate Guarantee Period; and
  - j) Individual customers.
- 3.2.8.** Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Officer of the state where the Participating Entity is located. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 3.2.9.** Purchasing Entities may not Resell Products. This limitation does not prohibit the following; however, any sale or transfer must be consistent with license rights granted for use of Intellectual Property:
- a) Payments by employees of a Purchasing Entity for Products;
  - b) Sales of Products to the general public as surplus property; and
  - c) Fees associated with inventory transactions with other governmental or non-profit entities, and consistent with a Purchasing Entity's laws and regulations.



### 3.3. Administrative Fees

- 3.3.1. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter.
- 3.3.2. The NASPO ValuePoint Administrative Fee is not negotiable.
- 3.3.3. The Contractor shall report on all actual Equipment sales, and on actual Service and Supply sales.
- 3.3.4. Contractor shall report as follows:
- a) **Purchased Equipment:** Contractor shall report the actual amount invoiced (less any taxes) for all Equipment sold under the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount identified as "Actual Service and Supplies" providing the customer elects to enter into a Maintenance Agreement. Thus, in the Contractor's Detailed Sales Report, for each item sold, there will be two-line items: one for the piece of Equipment, and one for the Actual Service and Supplies.
  - b) **Lease and Rental Equipment:** Contractor shall report sales according to the Purchased Equipment methodology described in §3.3.4(a) for the lease or rental during the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount identified as "Actual Service and Supplies." Thus, in the Contractor's Detailed Sales Report, for each item leased or rented, there will be two-line items: one for the invoice amount to the customer for the Equipment, and one for the Actual Service and Supplies.
- 3.3.5. Some Participating States may require a fee be paid directly to the Participating State on sales made by Purchasing Entities within that state. For all such requests, the fee level, payment method, and schedule for such reports and payments will be incorporated into the Participating Addendum. The Contractor may adjust this Master Agreement pricing accordingly for sales made by Purchasing Entities within the jurisdiction of the Participating State requesting the additional fee.

### 3.4. NASPO ValuePoint Summary and Detailed Usage Reports

The Contractor shall provide the following NASPO ValuePoint reports:

- 3.4.1. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the Contract shall be reported as cumulative totals by state, which are inclusive of all line items identified in the Detailed Sales Report. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- 3.4.2. **Detailed Sales Report.** Contractor shall also report detailed sales data by:
- a) State;
  - b) Customer Type (e.g. local government, higher education, K-12, non-profit);
  - c) Customer bill-to name and address;
  - d) Contractor or Authorized Dealer Order number;
  - e) Customer purchase order number;
  - f) Customer number;
  - g) Order type (e.g. sales Order, credit, return, upgrade);
  - h) Purchase order date;
  - i) Ship date;
  - j) Invoice date and number;

- k) Product number and description
- l) List Price/MSRP;
- m) Contract Price;
- n) Quantity;
- o) Total Price;
- p) NASPO ValuePoint Admin Fee amount; and
- q) Dealer.

- 3.4.3. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM or flash drive. Detailed sales reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is shown in **Exhibit E (NASPO ValuePoint Detailed Sales Reporting Template)**.
- 3.4.4. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report.
- 3.4.5. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with, and any PA roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- 3.4.6. Timely submission of these reports is a material requirement of this Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

### 3.5. **NASPO ValuePoint Cooperative Program Marketing and Performance Review**

- 3.5.1. Contractor agrees to work cooperatively with NASPO ValuePoint personnel to ensure that Contractor's personnel will be educated regarding the provisions of this Master Agreement, as well as the competitive nature of NASPO ValuePoint procurements, the Participating Addendum process, and the manner in which Participating Entities can utilize this Master Agreement.
- 3.5.2. Contractor agrees, as Participating Addenda are executed, and if requested by NASPO ValuePoint personnel, to provide plans to launch this Master Agreement program within the Participating State. Plans will include timeframes to implement this Master Agreement and Participating Addendum, as well as confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the Participating State.
- 3.5.3. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the Participating Addendum. Contractor shall ensure that their sales force is aware of this contracting option.



- 3.5.4. Contractor agrees to fairly, actively, and equally promote and advertise their NASPO ValuePoint Master Agreement at all trade shows and Dealer meetings whereby Contractor displays or makes reference to their government contract award offerings.
- 3.5.5. Contractor agrees, within 30 days of this Master Agreement effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement, or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.
- 3.5.6. Contractor agrees to participate in person at an annual performance review, which may include a discussion of marketing action plans, target strategies, marketing materials, reporting, and timeliness of administration fee payments. The location of the performance review shall be determined by the Lead State and NASPO ValuePoint.
- 3.5.7. Contractor agrees that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing materials until a logo-use agreement is executed with NASPO ValuePoint.
- 3.5.8. The Lead State shall evaluate the utilization of this Master Agreement at the annual performance review. The Lead State may, in its discretion, cancel this Master Agreement pursuant to §1.4, or not exercise an option to renew, when Contractor utilization does not warrant further administration of this Master Agreement. The Lead State may exercise its right to not renew this Master Agreement if Contractor fails to record or report revenue for three consecutive quarters, upon a 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of this Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel this Master Agreement pursuant to §1.4.4 or to terminate for default pursuant to §6.10.

### **3.6. NASPO ValuePoint eMarket Center**

- 3.6.1. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint customers to access a central online website to view and/or shop the Products and Services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.
- 3.6.2. The Contractor shall have visibility in the eMarket Center through one of the following no-cost options:
  - a) **Ordering Instructions**
    - i. The Contractor shall provide a link to their website, their Price list, their Dealer list, and any additional information they would like the customer to have in regards to placing Orders.
    - ii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have thirty (30) days to provide NASPO ValuePoint with the Ordering Instructions.
  - b) **Hosted Catalog**
    - i. The Contractor shall provide a list of its awarded Products and Services pricing via an electronic data file, in a format acceptable to JAGGAER.
    - ii. In order to maintain the most up-to-date version of its Product offerings, the Contractor must submit electronic data to the eMarket Center no more than four (4) times per calendar year.

- iii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have fifteen (15) days to set up an enablement schedule with NASPO ValuePoint and JAGGAER. The schedule shall include future calls and milestone timeframes related to testing and go-live dates.
  - iv. The Contractor shall have ninety (90) days from the receipt of written request, to provide the Hosted Catalog to NASPO ValuePoint.
  - v. The Hosted Catalog must be strictly limited to the awarded Products and Services, and must contain the most current approved pricing, including applicable quantity discounts.
  - vi. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
  - vii. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although Suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating State or Entities if for example, the Participating State or Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating State or Entity has determined that they will not allow all awarded Products and Services under their Participating Addendum. SciQuest will deliver the appropriate contract files to the user viewing the catalog.
- c) Punch-Out Catalog**
- i. The Contractor shall provide its own online catalog, which must be capable of being integrated with the eMarket Center via Commerce eXtensible Markup Language (cXML).
  - ii. The Contractor shall validate that its online catalog is current by providing a written update to the Lead State every four (4) months, verifying that they have audited the offered Products and Services pricing.
  - iii. The Contractor shall have ninety (90) days from the receipt of the written request, to deliver the Punch-Out Catalog to NASPO ValuePoint.
  - iv. The Punch-Out Catalog must be strictly limited to the awarded Products and Services, and must contain the most current approved pricing, including applicable quantity discounts.
  - v. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
  - vi. The site must also return detailed UNSPSC codes for each line item.
  - vii. Contractor shall provide e-Quote functionality to facilitate volume discounts.
  - viii. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. It is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating State or Entities if for example, the Participating State or Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating State or Entity has determined that they will not allow all awarded Products and Services under their Participating Addendum. JAGGAER will deliver the appropriate contract files to the user viewing the catalog.

### **3.6.3. Revising Pricing and Products**

- a) Any revisions to Product offerings (new Products, altered SKU's, etc.) must be pre-approved by the Lead State, and will be allowed once per month.



- b) Updated Product files are required by the 1<sup>st</sup> of the month and shall go into effect upon approval by the Lead State.
  - i. Files received after the 1st of the month may not be approved for up to thirty (30) days following submission.
  - ii. Errors in the Contractor's submitted files may delay the approval process.

**3.6.4. Supplier Network Requirements for Hosted and Punch-Out Catalogs**

- a) Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use the JAGGAER's Supplier Portal to import the Contractor's catalog and pricing files into the JAGGAER system.
- b) Contractor can receive Orders through electronic delivery (cXML) or through low-tech options such as fax.
- c) More information about the SQSN can be found at [www.sciquest.com](http://www.sciquest.com), or by contacting the JAGGAER Supplier Network Services team at 800-233-1121.

**3.6.5. Order Acceptance Requirements for Hosted and Punch-Out Catalogs**

- a) Contractor must be able to accept Orders via fax or cXML.
- b) The Contractor shall provide confirmation via phone or email within 24 hours of Order receipt.
- c) If the Order is received after 3pm (EST) on the day prior to a weekend or holiday, the Contractor must provide confirmation via phone or email on the next business day.

**3.6.6. UNSPSC Requirements**

- a) Contractor shall support use of the United National Standard Product and Services Code (UNSPSC). UNSPSC versions that Contractors must adhere to are provided by JAGGAER and upgraded each year.
- b) NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC, and Contractor shall be required to support the migration effort.
- c) All line items for Products and Services provided under this Master Agreement must be associated to a UNSPSC code.
- d) All line items must be identified at the most detailed UNSPSC level, indicated by segment, family, class, and commodity.

**3.6.7. Applicability.** Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center, and that NASPO ValuePoint may elect at any time to remove any Contractor offerings from the eMarket Center.

**3.6.8.** Several NASPO ValuePoint Participating States and Entities currently maintain separate JAGGAER eMarket Place accounts. In the event that one of these Participating States or Entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarket Center), but publish the information to their own eMarket Place, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint, and agrees to take commercially reasonable efforts to implement such separate JAGGAER catalogs.

### **3.7. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State, prior approval for the release of any information, including any written correspondence, which pertains to the potential work or activities covered by this Master Agreement. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the Products and Services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of this Master Agreement for cause.

### **3.8. Individual Customers**

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of this Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in this Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in this Master Agreement and applicable Participating Addendum. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **4. STATEMENT OF WORK**

### **4.1. Overview**

- 4.1.1.** Contractor guarantees a continuing supply and consistent quality of Equipment, Accessories, software, Supplies, and Services offered.
- 4.1.2.** Contractor may not provide Products that have not been approved by the Lead State, with the exception of NSP items, as referenced in §4.3.9.
- 4.1.3.** Contractor shall maintain compliance with all requirements of this Master Agreement throughout the duration of the Contract.
- 4.1.4.** A Purchasing Entity that purchases, leases or rents Equipment may issue an Order, pursuant to the terms and conditions that are incorporated into this Master Agreement, and according to the requirements listed in their states' Participating Addendum, including, but not limited to, the issuance of Contractor's Supplemental Documents, which are attached as **Attachment A through Attachment N**. Each Participating State or Entity shall be responsible for negotiating the terms and conditions of each of the aforementioned Attachments, as well as any additional EULA's the Contractor may provide under an Order.
- 4.1.5.** Per Section 508 of the United States Workforce Rehabilitation Act of 1973, Contractor provides Devices under all Groups and software, which are accessible to people with disabilities.
- 4.1.6. MPS:**
  - a)** Contractor may provide MPS on Group A, Group B, Group C, Group D, and Group E.
  - b)** Contractor may provide MPS on Group F, providing the Purchasing Entity owns the Equipment.
  - c)** Contractor may not provide MPS maintenance or repair Services on any Devices that are being leased or rented to a Purchasing Entity by another Manufacturer, unless they have a written agreement with the Manufacturer to do so.
  - d)** For purposes of an MPS offering, a MPS Statement of Work shall not be an Order, but rather, shall be part of an Order.

#### **4.1.7. Survivability:**

- a) Any Order placed under this Master Agreement shall survive the expiration of this Master Agreement unless otherwise specified in a Participating Addendum.
- b) Contractor is not permitted to increase pricing on any Order that was placed prior to the expiration of this Master Agreement.

**4.1.8.** Contractor shall notify the Lead State, Participating States, Participating Entities and all Purchasing Entities of any recall notices, warranty replacements, safety notices, or any applicable notice regarding the Products being sold. This notice must be received in writing (via postal mail or email) within thirty (30) calendar days of Contractor learning of such issues.

#### **4.2. Authorized Dealers**

**4.2.1.** Contractor may engage Authorized Dealers, who shall be Contractor's agent and Subcontractor for providing sales and support for the Products and/or Services purchased by the Purchasing Entity under this Master Agreement.

**4.2.2.** In the event Contractor elects to use Authorized Dealers in the performance of the specifications, Contractor shall serve as the primary Contractor, and shall be fully accountable to the Lead State for assuring that the Authorized Dealers comply with the terms and conditions of this Master Agreement, and shall be liable in the event that Authorized Dealers fail to comply with such terms and conditions.

**4.2.3.** Authorized Dealers shall be expected to stay current with Contractor's Products, pricing, Master Agreement, and Participating Addendum requirements.

**4.2.4.** Authorized Dealers shall have the ability to accept Orders from a Purchasing Entity; however, Contractor will invoice the Purchasing Entity directly.

**4.2.5.** Contractor must disclose to the Lead State, a list of all Authorized Dealers that provide Products and/or Services, utilizing **Exhibit C (Authorized Dealers by State)**.

**4.2.6.** Contractor shall send notice to the Lead State, utilizing **Exhibit D (Authorized Dealer Form)** and the Authorized Dealers by State, within three (3) calendar days of engaging or removing a Dealer.

**4.2.7.** The Lead State reserves the right to deny the addition of any Authorized Dealer and will provide notification to the Contractor with justification as to why the decision was reached. In addition, it will be at the discretion of each Participating State or Entity as to whether they will utilize the Authorized Dealers as approved by the Lead State.

**4.2.8.** If an Authorized Dealer is performing unsatisfactorily, or is not in compliance with this Master Agreement, then it shall be at the discretion of the Lead State, upon recommendation from the Participating State, to either remove the Dealer from the Contract, or in the case of multiple branch locations in one state, or multiple states, remove them as a Dealer from the location in which they are not in compliance. Alternatively, the Contractor may investigate and consult with the Participating State and/or the Purchasing Entity as appropriate, and use commercially reasonable efforts to resolve the dispute.

#### **4.3. Product Offerings**

**4.3.1. Group Segments.** Contractor shall offer Products under the following Groups:

<b>Group A – MFD, A3 B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>PPM</b>
2	20 – 30
3	31 – 40
4	41 – 50
5	51 – 60
6	61 – 70
7	71 – 90

<b>Group B – MFD, A4 B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>PPM</b>
1	Up to 20
2	21 – 30
3	31 – 40
4	41 – 50
5	51 – 60
6	61+

<b>Group C – Production Equipment B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>PPM</b>
1	65 – 79
2	80 – 89
3	90 – 110
4	111 – 130
5	131+

<b>Group D – Single-function Printers B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>PPM</b>
1	Up to 20
2	21 – 40
3	41 – 60
4	61+

<b>Group E – Large/Wide Format Equipment B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>A1 or D Size PPM*</b>
Low	1 – 3
Medium Low	4 – 8
Medium High	9 – 19
High	20+

\*Speeds denoted above are based on b&w output



- 4.3.2. Device Configurations.** Contractor's Devices shall be equipped, at a minimum, with the following Accessories/capabilities:
- a) Group A – MFD, A3**
    - i) New Power Filter;
    - ii) Duplex for Segment 3 and above;
    - iii) Standard paper drawer(s) equal to or greater than:
      - 1) One (1) paper supply for Segment 2;
      - 2) Two (2) paper drawers for Segments 3 and 4; and/or
      - 3) 2,000 sheet paper capacity for Segments 5 and above.
    - iv) Paper size capacity up to 11" x 17"; and
    - v) Bypass paper supply, if applicable for Segment.
  - b) Group B – MFD, A4**
    - i) New Power Filter;
    - ii) Bypass paper supply;
    - iii) Standard paper drawer(s) equal to or greater than:
      - 1) One (1) paper supply for Segments 1 and 2;
      - 2) Two (2) paper drawers for Segments 3 and 4; and/or
      - 3) 2,000 sheet paper capacity for Segments 5 and above.
    - iv) Paper size capacity up to 8 ½" x 14"; and
    - v) Envelope adjustment capability.
  - c) Group C – Production Equipment**
    - i) New Power Filter;
    - ii) Bypass paper supply;
    - iii) Standard paper drawer(s) equal to or greater than:
      - 1) One (1) paper supply for Segments 1 and 2;
      - 2) Two (2) paper drawers for Segments 3 and 4; and/or
      - 3) 2,000 sheet paper capacity for Segments 5 and above.
    - iv) Paper size capacity up to 8 ½" x 14"; and
    - v) Envelope adjustment capability.
  - d) Group D – Single-function Printers**
    - i) Must include an inkjet, light emitting diode (LED), or laser print engine;
    - ii) Standard paper drawer(s);
    - iii) Standard paper capacity; and
    - iv) Network connectivity.
  - e) Group E – Large/Wide Format Equipment**
    - i) Hard-Disk drive;
    - ii) Network connectivity;
    - iii) Touch screen control panel; and

- iv) Automatic Media Selection – a built-on sensor detects the size of the original and the proper media size is then selected.

**4.3.3. Device Standards.** Devices shall meet the following requirements:

- a) Group A and Group B Base Units are OEM only;
- b) Group A and Group B must be EPEAT registered to a minimum of Bronze Standard within one (1) year of being added to the Master Agreement Price List;
- c) Group D must be Energy Star compliant or EPEAT registered to a minimum of Bronze Standard within one (1) year of being added to the Master Agreement Price List;
- d) If Contractor's Devices fail to meet the EPEAT Bronze Standard, or be Energy Star compliant (applicable to Group D Devices only) within one (1) year, then they will be removed from the Price List;
- e) Must be Newly Manufactured, current, Remanufactured, or Refurbished, except as specified in a Participating Addendum;
- f) Devices, when installed, and if available, must be set-up to receive automatic software updates and patches. For new software versions or upgrades that carry an additional cost, updates will not be done automatically; rather, Contractor or their Authorized Dealer will inform the Purchasing Entity of the new version and assist them in their decision to upgrade based on needed functionality and compatibility with their existing Equipment.
- g) Specifications must be published on Contractor's website;
- h) MSRP must not exceed what is listed with Buyers Laboratory Inc., or List Price must not exceed what is published on the Manufacturer's website;
- i) Must maintain a PPM speed, according to Segment classification; and
- j) Must be compatible with using recycled paper, up to and including, 100% Post-Consumer Waste (PCW) paper. Contractor may not fault the use of recycled paper for Device failures, as long as the recycled paper in use meets the standard paper specifications (e.g., multi-purpose, copy, or laser paper).

**4.3.4. Device Exceptions**

- a) Group C, Group D, and Group E will not be restricted to OEM, and do not have to be Private Labeled;
- b) Group C and Group E are not required to be EPEAT registered or Energy Star compliant;
- c) 3D Printers may be offered by Contractor, and shall be priced based on a minimum discount of 4%;
- d) Digital Duplicators may be offered by Contractor, and shall be priced based on the minimum discount offered in the Segment to which they most closely relate (refer to the Group A Price List for Segment discounts);
- e) Inkjet and Digital Presses may be offered by Contractor, and shall be priced based on the minimum discount offered in the Segment to which they belong (refer to the Group C Price List for Segment discounts);

- f) Roll-Fed Wide Format Printers may be offered by Contractor, and shall be priced based on a minimum discount of 5%.
- g) Contractor may offer Large/Wide Format Equipment that accommodates all paper sizes, and shall be priced based on a minimum discount of 5%.

#### **4.3.5. Accessories**

- a) Contractor shall provide OEM and/or Third Party compatible Accessories that compliment or enhance the features of the Device.
- b) Contractor shall provide pricing on Accessories for Base Units that have been discontinued. The pricing must be based on the same discount offered, per the 'Discount from MSRP' tab, on the applicable Group Price List.
- c) Purchasing Entities may add Accessories to Devices that have been purchased, leased or rented under prior NASPO ValuePoint and/or WSCA Master Agreements, as well as via any other means.

#### **4.3.6. Software**

- a) Contractor shall provide software to enhance the capabilities of the Devices, or software may be provided as a standalone option on any pre-owned, purchased, leased or rented Device.
- b) Contractor shall provide OEM and/or Third Party Software.
- c) All software drivers shall be, at a minimum, Windows 7 compliant, and all Devices must have universal software drivers.
- d) Purchasing Entities that acquire software shall be subject to the license agreements distributed with such software, as referenced in Attachment O, unless otherwise stated in a Participating Addendum. However, the Master Agreement will supersede and control if there is conflicting language between it, and any software license agreement.

#### **4.3.7. Consumable Supplies**

- a) Contractor shall offer OEM or compatible Ink and Roll paper for Group E Devices. The Ink and/or paper may be purchased as standalone items, and will not be included as part of a Maintenance Agreement, nor will it be wrapped into the Total Monthly Payment on a lease or rental agreement.
- b) Contractor shall offer OEM or compatible consumable for Supplies for Groups A, B, C, and D. These Supplies may be purchased as standalone items or included as part of a Maintenance Agreement. Under no circumstances may the Supplies, regardless of quantity, be financed, unless they are start-up Supplies. The Supplies that may be offered are:
  - i) Toner;
  - ii) Staples;
  - iii) Ink;
  - iv) Print Cartridges;
  - v) Imaging Drums;
  - vi) Fuser Kits;
  - vii) Transfer Kits;
  - viii) Waste Toner Bottles;



- ix) Fuser Oil;
  - x) Ozone Filters;
  - xi) Ribbon;
  - xii) Developer;
  - xiii) Rollers and Pads;
  - xiv) Maintenance Kits;
  - xv) Tape; and
  - xvi) Binding materials;
- c) Toner must be free of carcinogenic, mutagenic, or teratogenic substances.
  - d) Contractor shall provide the Purchasing Entity with the following methods to return empty toner cartridges at no additional charge:
    - i) Xerox EcoBox or Pallet Return Process – this option reduces freight and processing requirements. Contractor shall fund all recycling/recovery costs and shipping costs on EcoBox and Pallet returns;
    - ii) Download a pre-paid single item return label. Contractor shall fund all recycling/recovery costs and shipping costs for those items on the Single Item Return Take Back List; or
    - iii) Purchasing Entity may recycle locally when item recovery is not beneficial. In addition, Group E cartridges may also be recycled at a local recycling facility.

#### **4.3.8. Remanufactured/Refurbished Equipment**

- a) Contractor may offer Remanufactured and/or Refurbished Equipment under Group A, B, C, D, and E.
- b) Remanufactured and Refurbished Equipment is not required to be EPEAT registered or Energy Star compliant.
- c) Equipment may be acquired via a purchase, lease or rental agreement.
- d) Contractor must notify the Purchasing Entity in writing, when Remanufactured or Refurbished Equipment is being offered.
- e) All Remanufactured or Refurbished Equipment must be clearly labeled as such, and must be certified by the Manufacturer.
- f) Remanufactured Equipment must be priced according to the minimum discount offered for similar Equipment in Groups A, B, C, D and E.
- g) Refurbished Equipment shall be offered at a minimum discount of 10% less than the lowest priced Device of the Group and Segment to which the Refurbished Equipment belongs.
- h) Service and Supplies for Remanufactured and Refurbished Equipment will receive the same pricing as the published price for the Group and Segment to which it belongs.

#### **4.3.9. Open Market Items**

- a) Contractor may offer Not Specifically Priced (NSP) items that compliment or enhance the Products and/or Services. NSP items will not include:
  - i) Interactive White boards;

- ii) Computers, monitors, or other related items;
  - iii) Fax machines;
  - iv) Overhead Projectors; and
  - v) Cameras.
- b) NSP items may only be acquired through the Contractor or their Authorized Dealers and must be reported quarterly with all other sales.
  - c) NSP items must be priced at a minimum discount of 15% from MSRP or List Price.
  - d) NSP items shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all NSP items in a single Order shall be determined by the Participating State or Entity.
  - e) It shall be at the discretion of the Participating State or Entity to allow Open Market Items in their Participating Addendum.

#### 4.3.10. Emerging Technologies

- a) Upon approval from the Lead State, Contractor may add new, related technology.
- b) Technology does not have to be restricted to OEM, nor does it have to be Private Labeled.
- c) Any new technology that a Contractor requests to add to their Price List must contain a full description of the Product, along with MSRP and pricing information, as well as an explanation/justification as to how the Product conforms to the requirements of this Master Agreement.
- d) Any new technology must be priced at a minimum discount of 4%.

#### 4.4. Service Offerings

##### 4.4.1. Managed Print Services

- a) Contractor shall provide the following:
  - i) **Free Initial Assessment** – which shall include the following:
    - 1) Document workflow
    - 2) Identification of Service, Supplies, and parts
    - 3) Current output
    - 4) Total Cost of Ownership (TCO)
    - 5) Employee to Device ratio
    - 6) Preliminary estimated cost savings
  - ii) **Implementation** – which shall consist of the following:
    - 1) Plan Development
      - Includes evaluation and coordination of the Equipment and Service installation at startup
    - 2) Hardware and Software Installation and Set-up
      - Integration with the Xerox Tools suite
    - 3) Technical Delivery Management

- 4) Logistical Coordination
- 5) Project Management
- iii) **Remote Device Monitoring** – which shall include the following:
  - 1) Job Accounting
    - Serial number based volume analysis
  - 2) Automated Meter Reads
  - 3) Automated Toner Replenishment
  - 4) Remote Monitoring and Resolution
  - 5) Tools Management and Maintenance
- iv) **End-user Support** – which shall include the following:
  - 1) Training
  - 2) Help Desk Services
- v) **Account Management** – which shall include the following:
  - 1) Reporting
  - 2) Invoicing
  - 3) Quarterly Customer Business Reviews
  - 4) Service Delivery Management
- b) Contractor may also provide the following:
  - i) **On-site Labor**
    - 1) On-site Equipment triage – (DocuCare)
    - 2) Document Imaging Services
    - 3) Production Support Services
  - ii) **Cost Based Assessment**
    - 1) Asset Mapping
    - 2) End-user Survey
    - 3) Detailed Recommendation/Future State Design
    - 4) Analysis and Plan Design
  - iii) **Change Management**
    - 1) Virtual Workshop
    - 2) Core Program Draft Documents
  - iv) **Professional Services**
    - 1) Transition Management
    - 2) Project Management
    - 3) Implementation Coordination
    - 4) Enterprise Content Management (ECM) Project Manager
    - 5) Enterprise Content Management (ECM) Solution Architect



- 6) Enterprise Content Management (ECM) Implementation Engineer
  - 7) Enterprise Content Management (ECM) Training Specialist
  - 8) Enterprise Content Management (ECM) Documentation Specialist
  - 9) ECM Solution Architect
  - 10) ECM Implementation Engineer
  - 11) ECM Training Specialist
  - 12) ECM Documentation Specialist
  - 13) Business Process and Workflow Analysis Consultant
  - 14) Office Solution Analyst Services
  - 15) Intelligent Workplace Services
  - 16) Translation Services
- v) **Intelligent Workplace Software/Cloud Solutions**
- 1) Enterprise Content Management Solutions
  - 2) Document Scanning Solutions
  - 3) Cost Control, Security and Authentication Solutions
  - 4) Digital Communication Solutions
  - 5) Translation Solutions
  - 6) GABI – Intelligent
  - 7) Sustainability Solutions
- c) All MPS engagements shall require the Contractor and Purchasing Entity to complete a detailed statement of work, as referenced in **Attachment H (Xerox MPS Statement of Work Template)**, and it must be approved by both parties prior to the initiation of any engagement.
- d) The free initial assessment shall not constitute a commitment on behalf of the Purchasing Entity. Upon request from a Purchasing Entity, Contractor must provide the assessment with the understanding that the Purchasing Entity is under no obligation to enter into an MPS engagement.
- e) MPS pricing and billing options shall be flexible, as long as pricing doesn't exceed Master Agreement pricing, and the Purchasing Entity will drive the complexity of the solution required with a staged approach to implementation.

#### 4.4.2. Maintenance Agreements

- a) **Pricing**
- i) Pricing shall include a zero base, cost per click rate for b&w and/or color for Groups A, B, C and D.
  - ii) Pricing for a monthly base charge, a set copy allowance and an overage rate for b&w and/or color shall also be provided.
  - iii) Pricing must be provided that includes all parts, labor, Preventative Maintenance, Service Calls, and Supplies for Groups A, B, C and D.
  - iv) A pricing option for ALL Groups shall include parts, labor, Preventative Maintenance (if applicable), and Service Calls, but **excludes** Supplies. This option shall only be applicable for purchased Equipment.

- v) Paper and ink for Group E Devices shall not be included as part of the Service and Supply pricing.
  - vi) Contractor may increase their Service and Supply pricing to include staples (if applicable to the Device).
  - vii) Contractor may charge flat rate fees for Services performed on any Accessories.
  - viii) Service Calls due to misuse, neglect or abuse shall not be covered by the Maintenance Agreement, and Contractor and Authorized Dealers may bill the Purchasing Entity at an hourly rate for Services rendered.
  - ix) **11"x17" impressions:**
    - 1) Shall be counted as two (2) clicks on Group A Devices; and
    - 2) May be counted as two (2) clicks on Group C Devices.
  - x) A two-sided document shall be counted as two (2) clicks.
  - xi) Contractor must not charge for scans on any MFD.
  - xii) **Initial Term:**
    - 1) Pricing shall remain firm for the initial term of the Maintenance Agreement.
    - 2) For lease and rental Equipment, the Maintenance Agreement term is equal to the term of the lease or rental (36, 48, and 60 months).
    - 3) For purchased Equipment, the initial term is whatever period of time the Purchasing Entity elects, as long as it does not exceed 60 months on Group A, Group B, Group D, and Group E Devices and 84 months on Group C Devices.
  - xiii) **Renewal Term:**
    - 1) If a Purchasing Entity wishes to renew a Maintenance Agreement for Equipment that was acquired under this Master Agreement, then the Contractor may negotiate new pricing. This pricing shall not exceed this Master Agreement pricing.
    - 2) If a Purchasing Entity wishes to renew a Maintenance Agreement for Equipment that was acquired under Master Agreement (3091), then §4.4.2(f) shall apply.
- b) Blended Rates**
- i) Contractor shall have the ability to blend the Service and Supply costs over a large Equipment fleet, and the Blended Rate must cover all units in the fleet.
  - ii) The Blended Rate must be divided between b&w and color.
  - iii) Contractor shall provide the Purchasing Entity with the Blended Rate calculation prior to Order placement.
  - iv) Utilizing a Blended Rate shall be at the discretion of the Participating State or Entity.
- c) Manual Meter Reads**
- i) Contractor may collect meter reads from a Purchasing Entity via electronic means.
  - ii) Meter reads may be submitted via the Contractor's online portal, or through e-mail, or facsimile.
  - iii) A Participating State or Entity may also elect, at their discretion, to submit meter reads through the Device.
- d) Customer Owned Equipment**
- i) Purchasing Entity's may elect to enter into a Maintenance Agreement for Equipment they already own, or Equipment they acquire through an up-front purchase.

- ii) The Maintenance Agreement may be priced on a flat rate fee, which shall include parts, labor, Preventative Maintenance (if applicable) and Service calls. Supplies may or may not be included.
  - iii) The Maintenance Agreement shall not be subject to automatic renewals.
- e) Lease or Rental Equipment**
- i) Contractor shall be required to provide a Maintenance Agreement on all Equipment that is leased or rented by a Purchasing Entity.
  - ii) The Maintenance Agreement shall be priced based on a cost per click rate, or a monthly base charge.
- f) Legacy Equipment**
- i) Upon request from the Purchasing Entity, Contractor may provide Maintenance Agreements on any Equipment that is owned or was leased or rented through Master Agreement (3091), or via any other means, providing the following conditions are met:
    - 1) The Device has not reached the end of its Useful Life;
    - 2) The maximum term of the Maintenance Agreement does not exceed the Useful Life of the Device, unless otherwise specified in a Participating Addendum; and
    - 3) The Maintenance Agreement adheres to the same requirements as outlined in §4.4.2(d) and §4.4.2(e).
  - ii) Devices that were previously serviced by another Dealer or Manufacturer must be inspected and repaired, if necessary. Upon mutual agreement, Contractor may charge Purchasing Entity for any parts and/or labor required to bring the Device up to acceptable maintenance levels.
  - iii) If the Device has been at the Purchasing Entity's location for less than five (5) years, then Maintenance Agreement pricing shall not exceed this Master Agreement pricing, until the Purchasing Entity reaches the five (5) year mark. Refer to §4.4.2(f)(iv) below for additional information.
  - iv) If the Device has been at the Purchasing Entity's location for more than five (5) years, then Maintenance Agreement pricing shall not exceed 107% of the Service and Supply pricing in this Master Agreement for years 5 through 7, and 110% for years 8 and beyond. The Service and Supply pricing that will be used for this calculation will be based on the following:
    - 1) The Group and Segment to which the Device is categorized; and
    - 2) The Service and Supply pricing for that Group and Segment, as listed under Newly Manufactured Equipment in this Master Agreement.

#### **4.4.3. Service Requirements**

- a) **Technicians.** All technicians shall be factory trained by the OEM and certified to Service the Devices.
- b) **Standard Service Levels.** Participating States and/or Entities shall negotiate their own Service Level Agreement (SLA) with the Contractor. The SLA, must, at a minimum, adhere to the following requirements:
  - i) **End-User Training**
    - 1) An initial, no charge, on-site, one-hour training session for each Device, must be offered by Contractor for all non-desktop Products placed at each Purchasing Entity's location. For drop-shipped or desktop Products, Contractor shall offer an initial, one-hour, no charge, web-based, or on-line training session.



- 2) Technical support training shall also be included in the initial, no charge training, and will include network connectivity and print driver installation. This training will be in addition to the one-hour of free training for Device operation.
  - 3) If Purchasing Entity elects to exercise the training option, then Contractor shall provide the training within ten (10) Business Days of Purchasing Entity's request.
  - 4) Contractor shall offer additional on-site, one-hour training sessions for a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity prior to Order placement.
  - 5) Contractor must provide on-site or off-site operational training to designated Purchasing Entity personnel, until the personnel are able to operate the Equipment independently. Pricing for operational training shall be based on a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity prior to Order placement.
  - 6) Contractor shall provide Product literature, user-manuals, and access to on-line resources, if available, at no charge to the Purchasing Entity.
  - 7) Contractor shall provide a toll-free end-user technical support number that Purchasing Entities can utilize for everyday minor troubleshooting. A Purchasing Entity must be able to obtain assistance during Normal Business Hours.
  - 8) Contractor shall provide phone/technical support within two (2) hours of Purchasing Entity's request for assistance.
- ii) **Preventative Maintenance.** Contractor shall perform all Preventative Maintenance Services at the Manufacturer's suggested intervals, or as specified in an Order. Preventative Maintenance shall not be a requirement on desktop Devices.
- iii) **Equipment Performance**
- 1) Equipment Downtime shall be calculated from the time a service call is placed with Contractor or with Dealer's dispatch department until the time the technician completes the repair. Actual Equipment Downtime represents the time the equipment is "down" and cannot make prints or copies.
  - 2) Equipment Downtime due to lack of consumable Supplies is not acceptable.
  - 3) Contractor shall guarantee that the fleet of Devices for each Purchasing Entity will be operational at least 96% of the time ("Uptime"), during Normal Business Hours for Groups A, B, and D, provided such 96% Uptime is based on a three-month rolling average for the Purchasing Entity's entire Xerox-branded equipment population.
  - 4) If any fleet of Devices fails to perform at the operation level specified in §4.4.3(b)(iii)(3) then §4.11.11 shall apply.
  - 5) Contractor must provide daily communication to the Purchasing Entity regarding inoperable Equipment, including updates regarding resolution timeframe, and any parts, Accessories, or Devices on back-order.
- iv) **Loaner Equipment.** If any Device is inoperable for two (2) Business Days, due to Equipment malfunction, as reasonably determined by Contractor, then Contractor shall provide the Purchasing Entity with:
- 1) A loaner Device of similar speed and capabilities until such time as the inoperable Device(s) are now operable;
  - 2) Provide the Purchasing Entity with off-site manned production capabilities to accomplish the work of the unit that is inoperable at the sole expense of the Contractor.

Such costs shall be limited to the cost of production (Service and Supplies), Equipment, labor, and transportation to and from the off-site production facility and the Purchasing Entity location; or

- 3) After attempting to repair the Device per the Maintenance Services provision hereto, and upon Purchasing Entity's request, and in Contractor's sole discretion, replace the Equipment without charge with identical Equipment or with other Equipment with comparable features and capabilities, per §4.11.12.

**v) Repair Parts**

- 1) Contractor shall guarantee the availability of repair parts for a minimum of five (5) years after the Purchasing Entity's Acceptance of any Device.
- 2) All Device components, spare parts, application software, and ancillary Equipment that is supplied under this Master Agreement, must conform to Manufacturer specifications.
- 3) Contractor shall be responsible for ensuring that any repair parts are operable and installed in accordance with Manufacturer specifications.
- 4) Repair parts may be new, reconditioned, reprocessed or recovered.

**vi) Replacement Equipment**

- 1) If Purchasing Entity is not satisfied with any Device, Contractor will, at Purchasing Entity's written request, replace it without charge with an equivalent unit or, upon mutual agreement with the Purchasing Entity, with a Device of comparable features and capabilities.
- 2) Prior to installing a substitute Device, Contractor will be allowed thirty (30) days to remedy any quality or reliability issues.

**vii) Service Zones**

- 1) Unless otherwise specified in a Participating Addendum, Contractor shall adhere to the following Service Call Response Times based on the distance that their Service Base Location is from the Purchasing Entity:

Service Zone	Definition	Response Time
Urban	Within 60 miles	4 - 6 Hours
Rural	60 – 120 miles	1 - 2 Business Days
Remote	120+ miles, or only accessible by plane or by boat	4 - 5 Business Days*

\*Or as otherwise negotiated with a Participating State or Entity

- 2) Repair or replacement of parts and/or Devices shall occur within four (4) Business Days of Contractor arriving at Purchasing Entity's location, with the following exception:
  - If Contractor is drop-shipping a new Device to replace a defective Device, then Purchasing Entity must receive the new Device within four (4) Business Days; contingent upon Product availability. If Product is not immediately available, then average delivery shall be within ten (10) Business Days.
- 3) Contractor may charge different rates according to each Service zone.

**viii) Service Logs**

- 1) Contractors shall maintain a Service log which describes the maintenance and repair Services provided for each Device.

- 2) A no-cost copy of Service logs/reports must be provided to the Purchasing Entity or Participating State or Entity, within five (5) Business Days of the request.

**ix) Equipment Relocation**

- 1) Equipment relocation Services include dismantling, packing, transporting, and re-installing Equipment.
- 2) Contractor may charge for this Service based on the following table:

Service Zone	Distance from original placement of Device	Charge
1	Within the same building	No Charge Allowed*
2	Up to 50 miles from building in which Device was originally placed	Flat Rate Fee, plus Per Mile or Hourly Fee
3	More than 50 miles from building in which Device was originally placed	Flat Rate Fee, plus Per Mile or Hourly Fee

\*Contractor may charge Purchasing Entities a mutually agreed upon price for special rigging in the event a Purchasing Entity's demographics require such rigging for Zone 1 relocation's. The price shall be agreed upon in writing by Contractor and Purchasing Entity prior to any Equipment relocation in Zone 1.

- 3) Contractor shall not charge for any fees incurred due to fuel or tolls.
- 4) Moves must be performed within thirty (30) calendar days of the Purchasing Entity request. Request may be verbal or written, but Contractor must confirm the request in writing and provide a date that the move will occur. Written confirmation must be sent to the Purchasing Entity within three (3) Business Days of request. In the event that there will be a delay in these Services, Contractor shall communicate with Purchasing Entity and agree on a mutually beneficial time-frame.

**c) Meter Read Invoicing**

- i) In order for Contractor to generate accurate invoices, Purchasing Entities shall provide meter reads as required by Contractor, within the Contractor's requested time-frame.
- ii) Invoices that are generated without receiving the proper meter read information from the Purchasing Entity will not be considered inaccurate.
- iii) The Purchasing Entity shall provide written notice of any such alleged invoicing issue and the Contractor will be allowed a thirty (30) day cure period to address any such issue. During the thirty (30) day cure period, the Purchasing Entity will not be assessed any late fees for failure to submit payment by the invoice due date.
- iv) Failure on the Contractor's part to maintain accurate invoicing shall result in a \$25.00 per instance credit on the following month's invoice.

**d) Service Level Calculations**

- i) At the discretion of the Participating State or Entity, Contractor shall produce reports that can be measured against the required SLA components. Refer to §4.4.3(e) for reporting requirements.
- ii) The Participating State or Entity shall determine how the reports will be utilized and whether liquidated damages will be assessed for failure to meet the SLA requirements. Any liquidated damages or penalty structure shall be defined in the Participating State or Entity's Participating Addendum.



- e) **Reporting.** Contractor shall provide periodic reporting to all Purchasing Entities upon request. The reports shall be provided on a quarterly basis, or at the discretion of the Participating State or Entity.
  - i) The report shall include the following:
    - 1) Up-time percentage (%) per fleet of Devices;
    - 2) Number of Service Calls placed;
    - 3) Response Time per Device;
    - 4) Dates that Preventative Maintenance was performed, if applicable; and
    - 5) Hours of end-user training performed.
  - ii) The report may include, but not be limited to, the following:
    - 1) Location of Devices;
    - 2) Click usage per Device; and
    - 3) EPEAT certification level of each Device.

**4.4.4. Software Subscriptions**

- a) Software pricing shall be inclusive of available software patches and any updates.
- b) Purchasing Entities shall have the option to finance software subscriptions according to the lease and rental rates listed in Groups A, B, C, D, and E of the Master Agreement.
- c) Any new releases of software versions (upgrades) shall be chargeable to the Purchasing Entity; however, Contractor may not charge for the installation of the software upgrade.
- d) License fees and support fees shall remain firm throughout the term of the agreement.
- e) Software subscriptions shall not be subject to automatic renewals. Should there be any conflicting language between the software EULA and the Master Agreement, the Master Agreement shall govern and control.
- f) Contractor shall be responsible for communicating all updates, patches, and new releases/versions to Purchasing Entities.
- g) Contractor shall provide a web-based or toll-free hotline during Normal Business Hours for Purchasing Entities to report software problems or answer software related questions.

**4.5. Purchase, Lease, and Rental Programs**

**4.5.1.** Contractor shall offer the following acquisition methods:

<b>Financial Vehicle*</b>	<b>Standard Terms Offered</b>
Purchase	N/A
Fair Market Value Lease	36, 48 and 60 months
\$1 Buyout Lease	
Straight Lease	
Cancellable Rental	24 and 36 months

\*Contractor is not authorized to provide Short-Term Leases

**4.5.2.** All Products on Contractor's Price List may be purchased, leased or rented, either as a packaged-deal, or stand-alone item.

**4.5.3.** Contractor shall also offer 72 and 84-month lease rates for Group C Devices only.

#### **4.5.4. Equipment Trade-In**

- a) A Purchasing Entity shall have the option, at the Contractor's sole discretion, and based upon Participating State or Entity regulations and laws, and Purchasing Entity policies, to do an Equipment Trade-In, when placing a purchase, lease or rental Order.
- b) The value for the Equipment Trade-In shall be negotiated by the Purchasing Entity and the Contractor, and shall not include any disposal or shipping fees. Non-Xerox branded Equipment must be owned by the Purchasing Entity before it can be removed by Contractor.

#### **4.5.5. Lease and Rental Rates**

- a) The rate for any lease or rental shall remain fixed throughout the Initial Lease or Rental Term.
- b) Equipment Payments for Renewal Terms shall never exceed Master Agreement pricing.
- c) If a Purchasing Entity enters into a Renewal Term, then the Equipment Payment will be subject to the lease and rental rates listed in the most recent Price List(s) posted on the NASPO ValuePoint website.
- d) Contractor may update lease and rental rates on a quarterly basis to allow for changes in the financial market. The rates must be indexed against the US Daily Treasury Yield Curve Rates, or something similar, and must be the rate in effect at the end of each calendar quarter. Refer to <https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield> for additional information.
- e) Contractor shall offer Coterminal lease and rental rates to any Purchasing Entity wishing to add Products to an existing lease or rental agreement.

#### **4.5.6. Leasing and Rental Overview**

- a) All lease and rental programs must remain with the Contractor or Authorized Dealers through an in-house leasing program, or through the financial branch or subsidiary of the Contractor. In addition, Contractor and their Authorized Dealers may use Third Party leasing companies, but all billing must be invoiced in the name of the Contractor or their Authorized Dealer, and all contractual obligations shall remain with the Contractor.
- b) A Purchasing Entity may lease or rent Equipment pursuant to the terms and conditions identified herein.
- c) Lease and rental agreements shall not be subject to automatic renewals.
- d) In the event that the term of a lease or rental agreement extends beyond the term of the Participating Addendum, the terms and conditions of this Master Agreement and Participating Addendum shall continue to apply.
- e) A lease or rental agreement issued prior to the termination of this Master Agreement and Participating Addendum, shall survive the termination of this Master Agreement and the Participating Addendum.
- f) With the exception of a \$1 Buyout Lease arrangement, or unless exercising the purchase option on an FMV Lease, a Purchasing Entity shall return the Equipment at the end of the Initial Lease or Rental Term, or at the end of the Renewal Lease or Rental Term, or the Contractor may pick the Equipment up, without any further financial obligations to the Purchasing Entity.
- g) Equipment pickups must be performed within thirty (30) calendar days of the end of the Initial or Renewal Term.



- h) Equipment returns must be performed within thirty (30) calendar days after the Contractor or Authorized Dealer provides return shipping instructions to the Purchasing Entity.
- i) Contractor shall be responsible for all Product pickup and return costs.
- j) The maximum term on any Initial Lease Term shall be 60 months, with the exception of Group C Devices, which shall have a maximum term of 84 months.
- k) The length of a Renewal Term shall be at the discretion of the Participating State or Entity, but at no time shall the Renewal Term exceed the Useful Life of the Equipment.
- l) All Renewal Terms shall be billed on a monthly basis.

#### **4.5.7. Leasing and Rental Options**

##### **a) FMV Lease**

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 36, 48 or 60 months for Group A, Group B, Group C, Group D, and Group E, at the discretion of the Participating State or Entity. In addition, a Participating State or Entity may elect to enter into a 72-month term for Group C only.
- ii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
  - 1) Exercise their purchase option;
  - 2) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
  - 3) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

##### **b) \$1 Buyout Lease**

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 36, 48 or 60 months for Group A, Group B, Group C, Group D and Group E, at the discretion of the Participating State or Entity. In addition, a Participating State or Entity may elect to enter into 72 and 84-month terms for Group C only.
- ii) Upon the expiration of the Initial Lease Term, the Contractor shall provide title to the Equipment to the Purchasing Entity, or as otherwise determined in a Participating Addendum, and the Purchasing Entity shall not be subject to any additional expense in order to assume possession of the Equipment.

##### **c) Straight Lease**

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 36, 48 or 60 months for Group A, Group B, Group C, Group D, Group E, and Group F, at the discretion of the Participating State or Entity. In addition, a Participating State or Entity may elect to enter into a 72-month term for Group C only.
- ii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
  - 1) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
  - 2) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

**d) Cancellable Rental**

- i) A Purchasing Entity shall have the option to enter into an Initial Rental Term of 24 or 36 months, at the discretion of the Participating State or Entity.
- ii) A Purchasing Entity shall have the option to cancel the rental at any time throughout the term of the agreement, by providing the Contractor with a thirty (30) day prior written notice.
- iii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
  - 1) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
  - 2) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

**4.5.8. Leasing and Rental Terms and Conditions**

**a) Possession and Return of Lease and Rental Equipment**

- i) Purchasing Entity is responsible for risk of loss to the Products while the Products are in the Purchasing Entity's possession. Purchasing Entity shall be relieved of all risks of loss or damage to the Products during periods of transportation and de-installation.
  - ii) Contractor or Authorized Dealer must notify a Purchasing Entity, in writing, of their End of Term (EOT) options at least sixty (60) to ninety (90) days prior to the end of any Initial Lease or Rental Term. Such notification may include, but not be limited to, the following:
    - 1) Any acquisition or return options, based on the type of lease or rental agreement;
    - 2) Any renewal options, if applicable; and/or
    - 3) Hard drive removal and surrender cost, if applicable.
  - iii) If a Purchasing Entity desires to exercise a purchase, renewal, or return of the Equipment, it shall give Contractor at least thirty (30) days written notice prior to the expiration of such lease or rental term. Notwithstanding anything to the contrary, if Purchasing Entity fails to notify Contractor of its intent with respect to the exercise of a purchase, renewal, or return of the Equipment, the Initial Lease or Rental Term shall be terminated on the date as stated in the Order and removal of the Product will be mutually arranged, unless otherwise specified in a Participating State or Entity's Participating Addendum.
  - iv) If Purchasing Entity does not exercise the purchase or renewal option, it will immediately make the Product available to Contractor in as good of condition as when Purchasing Entity received it, except for ordinary wear and tear.
- b) Payment.** The first scheduled payment (as specified in the applicable Order), will be due following the Acceptance of the Products, or such later date as Contractor may designate. The remaining payments will be due on the same day each month with each subsequent payment due within thirty (30) days, unless otherwise specified in the applicable Order.
- c) Buyout to Keep Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Keep option on an FMV or \$1 Buyout Lease.
- d) Buyout to Return Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Return option on an FMV, \$1 Buyout or Straight Lease, and return the Equipment to the Contractor in good working condition (ordinary wear and tear excepted).



- e) **Equipment Upgrade or Downgrade.** A Purchasing Entity may do an Equipment Upgrade or Downgrade on a lease or rental at any time throughout the term of the lease or rental agreement. The Purchasing Entity and the Contractor shall negotiate the price of the Equipment Upgrade or Downgrade, but at no time shall the total cost of the Equipment Upgrade or Downgrade be less than the remaining stream of Equipment Payments.
- f) **Non-appropriation of Funds.** The continuation of any lease or rental agreement will be subject to, and contingent upon, sufficient funds being made available by the Purchasing Entity local source, State Legislature and/or federal sources. The Purchasing Entity may terminate any such lease or rental agreement, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Purchasing Entity's funding sources are not available.
- g) **Assignment**
  - i) Purchasing Entity has no right to sell, transfer, encumber, sublet or assign the Product or any lease or rental agreement without Contractor's prior written consent (which consent shall not be unreasonably withheld).
  - ii) Purchasing Entity agrees that Contractor may not sell or assign any portion of Contractor's interests in the Product and/or these Lease or Rental Terms or any Order for leases or rentals, without notice to Purchasing Entity even if less than all the payments have been assigned. In the event of a permitted assignment, the assignee (the "Assignee") will have such rights as Contractor assigns to them, but none of Contractor's obligations (Contractor will keep those obligations) and the rights of the Assignee will not be subject to any claims, defenses or set offs that Purchasing Entity may have against Contractor.
  - iii) No assignment to an Assignee will release Contractor from any obligations Contractor may have to Purchasing Entity.
- h) **Early Termination Charges**
  - i) Except in the case of Non-appropriation of funds, FMV, \$1 Buyout, and Straight Leases shall be subject to an early termination charge, and shall involve the return of the Equipment (in good working condition; ordinary wear and tear excepted) by the Purchasing Entity to the Contractor. With respect to the Equipment, the termination charge shall not exceed the balance of remaining Equipment Payments (including any current and past due amounts), and with respect to Service or maintenance obligations, the termination charge shall not exceed four (4) months of the Service and Supply base charge or twenty-five percent (25%) of the remaining Maintenance Agreement term, whichever is less.
  - ii) Cancellable Rentals shall not exceed a termination charge of three (3) months of Total Monthly Payments, or as otherwise agreed to by the Participating State or Entity.
- i) **Default.** Each of the following is a "default" under these lease and rental terms:
  - i) Purchasing Entity fails to pay any payment or any other amount within forty-five (45) days (or as otherwise agreed to in a Participating Addendum) of its due date;
  - ii) Any representation or warranty made by Purchasing Entity in these lease or rental terms is false or incorrect and Purchasing Entity does not perform any of its obligations under these lease or rental terms, and this failure continues for forty-five (45) days (or as otherwise agreed to in a Participating Addendum) after Contractor has notified Purchasing Entity;
  - iii) Purchasing Entity or any guarantor makes an assignment for the benefit of creditors;
  - iv) Any guarantor dies, stops doing business as a going concern, or transfers all or substantially all of such guarantor's assets; and

- v) Purchasing Entity stops doing business as a going concern or transfers all or substantially all of Purchasing Entity's assets.
- j) **Remedies.** If a Purchasing Entity defaults on a rental or lease agreement, then Contractor, in addition to, or in lieu of, the remedies set forth in this Master Agreement, and Participating Addendum, may do one or more of the following:
  - i) Cancel or terminate any or all Orders, and/or any or all other agreements that Contractor has entered into with Purchasing Entity;
  - ii) Require Purchasing Entity to immediately pay to Contractor, as compensation for loss of Contractor's bargain and not as a penalty, a sum equal to:
    - 1) All past due payments and all other amounts payable under the lease or rental agreement;
    - 2) All unpaid payments for the remainder of the lease or rental term, discounted at a rate equal to three percent (3%) per year to the date of default; and
    - 3) Require Purchasing Entity to deliver the Product to Contractor per mutual arrangements.

#### 4.6. Security Requirements

##### 4.6.1. Network and Data Security

- a) Devices may be configured to include a variety of data security features. The set-up of such features shall be at the discretion of the Purchasing Entity, and all costs associated with their implementation must be conveyed by Contractor prior to Order placement.
- b) Contractor will not be permitted to download, transfer, or access print data stored on the Device in either hard drive or chip memory. Only system management accessibility will be allowed.
- c) Contractor shall ensure that delivery and performance of all Services shall adhere to the requirements and standards as outlined in each Participating State or Entity's Participating Addendum.

**4.6.2. Sensitive Information.** Sensitive information that is contained in any Legacy Equipment or applications shall be encrypted if practical. In addition, sensitive data will be encrypted in all newly developed applications. Since sensitive information is subjective, it shall be defined by each Participating State or Entity in their Participating Addendum.

**4.6.3. Data Breach.** Contractor shall have an incident response process that follows National Institute of Standards and Technology (NIST) standards as referenced in Special Publication 800-61, Revision 2 (available at <http://dx.doi.org/10.6028/NIST.SP.800-61r2>) and includes, at a minimum, breach detection, breach notification, and breach response.

##### 4.6.4. Authentication and Access

- a) Any network connected Device must offer authentication for all features via LDAP and/or Windows AD, as well as the ability to disable authentication for any or all features.
- b) Any network connected Device must have the ability to connect via Dynamic Host Configuration Protocol (DHCP) or Static IP address.
- c) The credential information for any remote authentication method may not be maintained within the Device's memory.

- d) Access to the Device's administrative functions must be password protected per the Participating State or Entity requirements, and the default settings must be changed at the time of Equipment installation.

#### **4.6.5. Hard Drive Removal and Surrender**

- a) Contractor shall ensure that all hard drive data is cleansed and purged (if capable) from the Device at the end of its Useful Life, or when any hard drive leaves the Purchasing Entity's possession; or
- b) At the Participating State or Entity's discretion, Contractor shall remove the hard drive from the applicable Device and provide the Purchasing Entity with custody of the hard drive before the Device is removed from the Purchasing Entity's location, moved to another location, or any other disposition of the Device. The Purchasing Entity shall then be responsible for securely erasing or destroying the hard drive.
- c) If Contractor takes possession of any Device at the Purchasing Entity's location, then they shall also remove any ink, toner, and associated Supplies (drum, fuser, etc.) and dispose of them in accordance with applicable law, as well as environmental, and health considerations, or as otherwise specified in a Participating Addendum.
- d) Hard drive sanitation shall be at no expense to the Purchasing Entity; however, Contractor may charge the Purchasing Entity a fee if the Purchasing Entity elects to keep the hard drive in their possession. Contractor must disclose the price for removal and surrender of the hard drive, prior to Order placement.
- e) If the hard drive is not removable, or the Device does not contain a hard drive, then Contractor must convey this to the Purchasing Entity at the time of Order placement. In the case of a non-removable hard drive, §4.6.5(a) shall apply.
- f) If a Contractor is removing another Manufacturer's Equipment, they are not permitted to remove the hard drive. Only the Manufacturer or their Authorized Dealer shall remove hard drives in their own Devices. Contractor shall work with the Manufacturer to ensure the requirements pursuant to this Subsection are met to the best of their abilities.

#### **4.7. Equipment Demonstration Requirements**

- 4.7.1. Contractor must offer trial or demonstration Equipment for Group A, Group B, and if requested by the Purchasing Entity, Group C, Group D, and Group E.
- 4.7.2. Trial or demonstration Equipment may be new or used; however, no used, Remanufactured, or Refurbished Devices shall be converted to a purchase, lease, or rental.
- 4.7.3. At the discretion of the Participating State or Entity, and upon request by a Purchasing Entity, showroom Equipment for Groups A, B, and C may be converted to a purchase, lease, or rental providing the following conditions are met:
  - a) The meter count on Group A and Group B Devices does not exceed 10,000 copies total (i.e. b&w and color combined);
  - b) The meter count on Group C Devices not exceed 50,000 copies total (i.e. b&w and color combined);
  - c) The Device must be discounted by at least 5% off of this Master Agreement pricing for that same Device; and



- d) The Purchasing Entity and the Contractor indicate on the Order that the Device is a showroom model.

4.7.4. Any trial or demonstration period shall not exceed thirty (30) calendar days.

#### 4.8. Shipping and Delivery Requirements

- 4.8.1. All Orders, regardless of quantity, shall be delivered to the Purchasing Entity within thirty (30) calendar days after Contractor receipt of Order, unless otherwise specified by a Purchasing Entity.
- 4.8.2. Software related to the Device must be installed within five (5) Business Days of the Device installation, or as otherwise stated in an Order.
- 4.8.3. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. The minimum shipment amount, if any, will be found in the special terms and conditions. Any Order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.
- 4.8.4. Responsibility and liability for loss or damage shall transfer to the Purchasing Entity upon delivery of the Products, except as to material defects, fraud and Contractor's warranty obligations, which shall remain with the Contractor.
- 4.8.5. All deliveries shall be made during Normal Business Hours, which may vary for each Purchasing Entity of each Participating State.
- 4.8.6. It shall be the responsibility of the Contractor to be aware of the delivery days and receiving hours for each Purchasing Entity.
- 4.8.7. The Purchasing Entity shall not be responsible for any additional charges, should the Contractor fail to observe specific delivery days and receiving hours.
- 4.8.8. The delivery days and delivery hours shall be established by the Purchasing Entity at the time of Order placement.
- 4.8.9. All deliveries, with the exception of drop-shipped or desktop Products, shall be made to the interior location specified by the Purchasing Entity. Specific delivery instructions will be noted on the Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.
- 4.8.10. Products shall be packaged and labeled so as to satisfy all legal and commercial requirements applicable for use by any Purchasing Entity, and shall include, without limitation and if applicable, OSHA material safety data sheets, and shall conform to all statements made on the label.
- 4.8.11. Packages that cannot be clearly identified may be refused and/or returned at no cost to the Purchasing Entity.
- 4.8.12. **Laws and Regulations.** Any and all Products and Services offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

#### 4.9. Equipment Installation Requirements

- 4.9.1. Prior to Order acceptance, Contractor must advise Purchasing Entity of any specialized installation and site requirements for the delivery and installation of Device. This information should include, but is not limited to, the following:



- a) Air conditioning;
- b) Electrical;
- c) Special grounding;
- d) Cabling;
- e) Space;
- f) Humidity and temperature limits; and
- g) Other considerations critical to the installation.

- 4.9.2. The Purchasing Entity shall be responsible for furnishing and installing any special wiring or dedicated lines.
- 4.9.3. Network installation shall include configuration of the Device for the proper network protocols, and installation of the appropriate print drivers on up to five (5) computers per Device, or as otherwise specified in a Participating Addendum.
- 4.9.4. If applicable, all Devices must be set-up with Preventative Maintenance notifications turned on, and with the most environmentally responsible defaults enabled, including Energy Star saving settings.
- 4.9.5. Contractor may charge for excessive installation requirements, including rigging, access alterations, and access to non-ground floors via stairs. Any such excessive installation charges must be quoted to the Purchasing Entity prior to the signature of any Order, and shall be based on the actual expenditures of Contractor or Authorized Dealer. In addition, Contractor may charge for expedited shipping.
- 4.9.6. Contractor or Authorized Dealers shall affix a label or a decal to the Device at the time of installation which shows the name, address, and telephone number of Contractor or Authorized Dealer responsible for warranty Service of the Equipment.
- 4.9.7. Contractor shall clean-up and remove all debris and rubbish resulting from their work as required by the Purchasing Entity. Upon completion of the work, the premises shall be left in good repair and in an orderly, neat, clean, and unobstructed condition.

#### **4.10. Inspection and Acceptance**

- 4.10.1. All Products are subject to inspection at reasonable times and places before Acceptance.
- 4.10.2. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option:
  - a) Declare Contractor to be in breach and terminate the Order;
  - b) Demand replacement Product from Contractor at no additional cost to Purchasing Entity; or,
  - c) Continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met.
- 4.10.3. Purchasing Entity shall confirm delivery, installation and Acceptance of all Products covered by each purchase, lease, or rental Order, by signing a Delivery and Acceptance Certificate (D&A), as

referenced in **Exhibit B (Sample D&A Certificate)**, which shows Acceptance of the Product(s) and allows Contractor to invoice for the Products(s).

- 4.10.4.** Purchasing Entity agrees to sign and return the D&A to Contractor (which, at mutual agreement, may be done electronically) within five (5) Business Days after any Product is installed, or as otherwise stated in a Participating Addendum.
- 4.10.5.** Failure to sign the D&A or reject the Product(s) within the foregoing five (5) day period shall be deemed as Acceptance by the Purchasing Entity; however, it does not relieve the Contractor of liability for material (nonconformity that substantially impairs value) defects subsequently revealed when Products are put to use. Acceptance of such Products may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor shall be liable for any resulting expense incurred by the Purchasing Entity in relation to the preparation and shipping of Product(s) rejected and returned, or for which Acceptance is revoked.

**4.10.6. Transfer of Title**

- a) Contractor shall have exclusive title to the Products being delivered and the Products shall be free and clear of all liens, encumbrances, and security interests. Title to the Device shall only pass to the Purchasing Entity upon:
- i) Purchasing Entity up-front purchase of the Device;
  - ii) Purchasing Entity exercising the purchase option at the end of a Fair Market Value Lease;
  - iii) Upon expiration of a Purchasing Entity's \$1 Buyout Lease; or
  - iv) Purchasing Entity has secured Third Party financing and payment is being made directly to the Contractor by the Purchasing Entity.
- b) Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

- 4.10.7.** If any Services do not conform to Contract requirements, the Purchasing Entity may require the Contractor to perform the Services again in conformity with Contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and reduce the Contract price to reflect the reduced value of Services performed.

**4.11. Warranty Requirements**

- 4.11.1.** The Warranty period shall begin upon Acceptance of the Products, and shall be for a minimum of ninety (90) days for purchase, lease and rental Equipment.
- 4.11.2.** Devices that are sold under this Master Agreement will come with the standard features as published on the Manufacturers website, and will not deviate from the stated specifications.
- 4.11.3.** Products shall be in good working order, free from any defects in material and workmanship, and fit for the ordinary purposes they are intended to serve.
- 4.11.4.** If defects are identified, per mutual agreement of Contractor and the Purchasing Entity, Contractors obligations shall be limited solely to the repair or replacement of Products proven to be defective upon inspection. Contractor shall also offer a "Guarantee Period" as referenced in §4.11.12 below.

- 4.11.5.** Replacement of Products shall be on a like-for-like basis and shall be at no cost to the Purchasing Entity.
- 4.11.6.** Repair of defective parts and/or Devices shall be at no cost to the Purchasing Entity.
- 4.11.7.** Upon significant failure of a Product, the warranty period shall commence again for the same amount of time as specified in §4.11.1. Significant failure shall be determined by the Participating State.
- 4.11.8.** Contractor warranty obligations shall not apply if:
- a) Product is installed, wired, modified, altered, or serviced by anyone other than Contractor and/or their Authorized Dealer;
  - b) If a defective or non-Contractor authorized Accessory, Supply, software, or part is attached to, or used in the Device; and
  - c) The Device is relocated to any place where Contractor Services are not available.
  - d) Equipment has not been:
    - i) Continuously maintained by Contractor per a Maintenance Agreement with Xerox; and
    - ii) Operated at all times in accordance with the CED or Documentation
- 4.11.9.** Contractor agrees to perform its Services in a professional manner, consistent with applicable industry standards.
- 4.11.10.** It will be at the discretion of each Participating State or Entity to negotiate additional warranty requirements with the Contractor.
- 4.11.11. Lemon Clause**
- a) This clause shall apply to all Devices that are purchased, leased, or rented under this Master Agreement.
  - b) This clause shall not apply if Supplies are used in the Devices that were not manufactured, provided, or authorized by the Contractor.
  - c) The application period is thirty-six (36) months from the date of Acceptance.
  - d) This clause shall take precedence over any other warranty or Services clauses associated with this Master Agreement, or as specified by a Participating State or Entity in their Participating Addendum.
  - e) A Purchasing Entity must maintain an uninterrupted Maintenance Agreement on all purchased Devices in order for this clause to apply past the initial ninety (90) day warranty.
  - f) Any Device that fails (except due to operator error) to function in accordance with the Manufacturer's published performance specifications, four (4) times in any four (4) week period and/or is subject to recurring related problems, shall be replaced with a like-for-like Device that meets or exceeds the requirements of the original Device, at no cost to the Purchasing Entity.
- 4.11.12. Contractor's Guarantee Period**
- a) "Guarantee Period" means the period commencing ninety (90) days after installation of the Equipment to 18 months after installation of the Equipment. For the Guarantee Period, if the Equipment is not performing substantially consistent with the performance expectations outlined in the Customer Expectations Document ("CED") or such other documentation provided with the



Equipment if a CED does not accompany the Equipment such as user guides, or other information on how the devices run and are maintained (the "Documentation"), Contractor will, after attempting to repair the device per the Maintenance Services provision hereto and upon Participating Entity's request but in Contractor's sole discretion, replace such Equipment without charge with identical Equipment or with other Equipment with comparable features and capabilities (the "Equipment Guarantee").

- b) The Equipment Guarantee does not apply to certain Equipment which models shall be identified in applicable Order-related documents. Except as otherwise stated in an Order-related document, this Equipment Guarantee replaces and supersedes any other guarantee from Contractor, whether made orally or in writing, styled a "Total Satisfaction Guarantee", "Satisfaction Guarantee" or otherwise covering the subject matter set forth above.

#### **4.12. Customer Service**

- 4.12.1. **Key Personnel.** Contractor shall ensure that staff has been allocated appropriately to ensure compliance with this Master Agreement and subsequent Participating State or Entity requirements and that the individuals occupying the Key Personnel positions have adequate experience and knowledge with successful implementation and management of a national cooperative contract. Contractor shall ensure that there is always a single point of contact for the following positions:
  - a) **Master Agreement Contract Administrator** - the Lead State's primary contact in regards to Contract negotiations, amendments, Product and Price List updates, and any other information or documentation relating to this Master Agreement;
  - b) **NASPO ValuePoint Reporting Contact** - Responsible for submitting quarterly reports and the quarterly Administrative Fee to the appropriate personnel;
  - c) **Master Agreement Marketing Manager** - Responsible for marketing this Master Agreement, as well as creating Participating State websites, and ensuring that all uploaded data and content is current; and
  - d) **National Service Manager** - Responsible for overseeing the Regional Service Managers, Field Service Technicians, training, and inside Service operations. This position works with the Lead State Contract Administrator to ensure contractual obligations are met, while providing leadership for the Contractor's operations, as well as strategic planning of the Service department.
- 4.12.2. Contractor shall provide a single point of contact for each Participating State, who will handle any questions regarding the Products provided, as well as pricing, delivery, billing, status of Orders, customer complaints and escalated issues.
- 4.12.3. Contractor shall provide full Service and support for Products during Normal Business Hours.
- 4.12.4. Contractor shall have a designated customer service team who will be available by phone (via local or toll free number), fax, or email during Normal Business Hours.
- 4.12.5. Customer service representatives shall have online access to account information and will respond to inquiries concerning the status of Orders (shipped or pending), delivery, back-orders, pricing, Product availability, Product information, and account and billing questions.

### **5. ADMINISTRATION OF ORDERS**

#### **5.1. Ordering and Invoicing Specifications**

- 5.1.1. Master Agreement Order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.



- 5.1.2. Contractor shall accept procurement credit cards as a form of payment from Purchasing Entity, with no additional charge or fee assessed.
- 5.1.3. Contractor shall provide a centralized billing option, upon request, and at the discretion of a Participating State or Entity.
- 5.1.4. Authorized Dealers may not invoice the Purchasing Entity directly.
- 5.1.5. Contractor and/or Authorized Dealers may charge the Purchasing Entity a re-stocking fee for any Products that are not accepted. The amount of the fee shall be the lesser of 10% of the purchase price, or \$200.00, unless otherwise specified in a Participating Addendum.
- 5.1.6. Contractor may bill property tax separately or as otherwise indicated in a Participating Addendum or an Order.
- 5.1.7. Contractor and/or Authorized Dealers may estimate meter reads if a Purchasing Entity fails to submit the required information within the specified time-frame.
- 5.1.8. This Master Agreement permits Purchasing Entities to define project-specific requirements and informally compete the requirement among other contractors having a NASPO ValuePoint Master Agreement, on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to Purchasing Entity rules and policies. The Purchasing Entity may, in its sole discretion, determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- 5.1.9. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of Products, and/or Services contemplated by this Master Agreement.
- 5.1.10. Contractor shall not begin work without a valid purchase order or other appropriate commitment document compliant with the law of the Purchasing Entity.
- 5.1.11. Orders must be placed consistent with the terms of this Master Agreement, and only during the term of this Master Agreement.
- 5.1.12. All Orders pursuant to this Master Agreement, at a minimum, shall include:
  - a) Name of Purchasing Entity;
  - b) The name, phone number, and address of the Purchasing Entity representative;
  - c) Order date;
  - d) Description of the Product and/or Service ordered;
  - e) Model number;
  - f) Serial number;
  - g) Price;
  - h) This Master Agreement number; and
  - i) Any additional information required by the Participating Entity.

- 5.1.13.** All software Orders must reference the Manufacturer's most recent release or version of the Product, unless the Purchasing Entity specifically requests a different version.
- 5.1.14.** All communications concerning administration of Orders placed shall be furnished solely to the authorized individual within the Purchasing Entity's location, or to such other individual identified in writing in the Order.
- 5.1.15.** Contractor shall not issue an invoice until the Purchasing Entity has confirmed Acceptance, per §4.10.3.
- 5.1.16.** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 5.1.17. Internet-based Portal and Electronic Catalogs.** If Contractor provides the ability to place an Order through an internet-based portal or electronic catalog, then Contractor shall maintain all necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog. In addition, Contractor shall adhere to the following requirements:
- a) The internet-based portal or electronic catalog shall clearly designate that the Products are part of this NASPO ValuePoint Master Agreement, and shall link to the Participating State or Entity's designated web location;
  - b) All Environmentally Preferable Products (EPP) shall be clearly listed;
  - c) If the Contractor's electronic catalog will either be hosted on or accessed through the Participating State's eCommerce system, then Contractor shall comply with all policies, procedures and directions from the Participating State or Entity in relation to hosting its catalog on or making its catalog accessible through that system;
  - d) All information made available through the Participating State or Entity's eCommerce system is accurate and complies with this Master Agreement and the Participating Addendum; and
  - e) Paper catalogs or catalogs on other digital media must be supplied to the Participating State or Entity upon request.
- 5.1.18.** Substitutions are not allowed. If an ordered Product is out-of-stock, Contractor shall notify the Purchasing Entity and request approval before substituting for the out-of-stock item. Contractor's request to substitute shall explain how the substituted Product compares with the out-of-stock item. Any substitute Product offered must be on this Master Agreement Price List.
- 5.1.19.** Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery Order arrangement priced against this Master Agreement, may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery Order agreement.
- 5.1.20.** Contractor's process for resolving disputed invoices, issuing refunds and/or credit, and addressing over-payments is as follows:
- a) Purchasing Entity shall contact the Contractor via written notice, describing the item(s) and reason(s) for the dispute.

- b) Contractor shall review the dispute and work with the Purchasing Entity on a resolution, which shall include an adjusted invoice, if applicable.
- c) Purchasing Entity shall still be responsible for remitting payment of all undisputed amounts, including any minimum monthly payment amounts, which are not subject to dispute.

In all instances of dispute resolution, the Purchasing Entity may contact the Participating State Contract Administrator, or the Lead State for assistance in resolving the dispute.

## 5.2. Payment

Payment for completion of a Contract Order is normally made within thirty (30) days following the date the entire Order is delivered or the date a correct invoice is received, whichever is later. After forty-five (45) days, the Contractor may assess overdue account charges up to a maximum rate of one (1) percent per month on the outstanding balance.

## 6. GENERAL PROVISIONS

### 6.1. Insurance

- 6.1.1. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option; result in termination of its Participating Addendum.
- 6.1.2. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, and Contractor shall be solely responsible for any deductibles:
  - a) Commercial General Liability covering premises operations, Independent Contractors, Products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence, \$2 million general aggregate, \$2 million Products and completed operations aggregate and \$50,000 and any one fire. If any aggregate limit is reduced below \$2,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Participating Entity, a certificate or other document satisfactory to the Participating Entity, showing compliance with this provision.
  - b) Cyber Liability covering claims and losses with respect to network, internet (Cloud) or other data disclosure risks (such as data breaches, releases of Confidential Information, unauthorized access/use of information, and identity theft) with minimum limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate.
  - c) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
  - d) Automobile Liability covering any auto (including owned, hired and non-owned), with a minimum limit of \$1,000,000 each accident combined single limit.
- 6.1.3. Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.
- 6.1.4. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that:
  - a) Names the Participating States identified in the Request for Proposal as additional insured's, and;



- b) Provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

**6.1.5.** Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within seven (7) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); policy period, policy number, limits of liability, endorsements; and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within fifteen (15) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

**6.1.6.** Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Order.

## **6.2. Records Administration and Audit**

**6.2.1.** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or Orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any Order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

**6.2.2.** Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of this Master Agreement or Orders, or underpayment of fees found as a result of the examination of the Contractor's records.

**6.2.3.** The rights and obligations herein right exist in addition to any quality assurance obligation in this Master Agreement requiring the Contractor to self-audit Contract obligations and that permits the Lead State to review compliance with those obligations.

## **6.3. Confidentiality, Non-Disclosure, and Injunctive Relief**

**6.3.1. Confidentiality.** Contractor acknowledges that it and its employees or Authorized Dealers may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity's or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or Authorized Dealers in the performance of this Master Agreement, including, but not necessarily limited to:

- a) Any Purchasing Entity's records;



- b) Personnel records;
- c) Information concerning individuals is Confidential Information of Purchasing Entity. Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that:
  - i) Is or becomes (other than by disclosure by Contractor) publicly known;
  - ii) Is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement;
  - iii) Is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement;
  - iv) Is obtained from a source other than Purchasing Entity without the obligation of confidentiality;
  - v) Is disclosed with the written consent of Purchasing Entity; or
  - vi) Is independently developed by employees, Dealers or Subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**6.3.2. Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and Authorized Dealers of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

**6.3.3. Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

**6.3.4. Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

**6.3.5.** The rights granted to Purchasing Entities, and the Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to §6.2 (Records Administration and Audit). To the extent permitted by law, Contractor shall notify the Lead State of any entity seeking access to the Confidential Information described in this subsection.

**6.4. License of Pre-Existing Intellectual Property**

Contractor grants to the Purchasing Entity a non-exclusive, perpetual, irrevocable, unlimited license to use, modify, or dispose of the Intellectual Property and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Purchasing Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

**6.5. Public Information**

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

**6.6. Assignment/Subcontracts**

**6.6.1.** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

**6.6.2.** The Lead State reserves the right to assign any rights or duties, including written assignment of Contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

**6.7. Changes in Contractor Representation**

The Contractor must notify the Lead State of changes in the Contractor's Key Personnel, in writing within ten (10) calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed in the Contractor's proposal.

**6.8. Independent Contractor**

**6.8.1.** Contractor shall perform duties as an Independent Contractor, and not as an employee. Neither the Contractor nor any employee or Authorized Dealer of the Contractor, shall be or deemed to be an employee of the Lead State, NASPO ValuePoint, and/or any Participating State or Entity.

**6.8.2.** Contractor acknowledges that its employees are not entitled to unemployment insurance benefits unless the Contractor or a Third Party provides such coverage, and that the Lead State, NASPO ValuePoint and any Participating State or Entity does not pay for or otherwise provide such coverage.

**6.8.3.** Contractor shall have no authority to bind the Lead State, NASPO ValuePoint and any Participating State or Entity to any agreements, liability, or understanding except as may be expressly set forth in this Master Agreement, Participating Addendum or an Order.

**6.9. Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this Master

Agreement after determining such delay or default will reasonably prevent successful performance of this Master Agreement.

## **6.10. Defaults and Remedies**

**6.10.1.** The occurrence of any of the following events shall be an event of default under this Master Agreement:

- a) Nonperformance of contractual requirements; or
- b) A material breach of any term or condition of this Master Agreement; or
- c) Any certification, representation or warranty by Contractor in this Master Agreement that proves to be untrue or materially misleading; or
- d) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- e) Any default specified in another section of this Master Agreement.

**6.10.2.** Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of thirty (30) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part, if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis.

**6.10.3.** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:

- a) Exercise any remedy provided by law;
- b) Terminate this Master Agreement and any related Contracts or portions thereof;
- c) Impose liquidated damages as provided in this Master Agreement;
- d) Suspend Contractor from being able to respond to future Solicitations;
- e) Suspend Contractor's performance; and
- f) Withhold payment until the default is remedied.

**6.10.4.** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in this Master Agreement, in addition to those set forth in its Participating Addendum.

**6.10.5.** Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

## **6.11. Waiver of Breach**

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead



State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or an Order.

#### **6.12. Debarment**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

#### **6.13. Indemnification**

**6.13.1.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property to the extent arising from act(s), error(s), or omission(s) of the Contractor, its employees or Subcontractors or volunteers, at any tier, relating to the performance under this Master Agreement.

**6.13.2. Indemnification – Intellectual Property.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim").

**6.13.3.** The Contractor's obligations under this section shall not extend to any combination of the Product with any other Product, system or method, unless the Product, system or method is:

- a) Provided by the Contractor or the Contractor's subsidiaries or affiliates;
- b) Specified by the Contractor to work with the Product;
- c) Reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available Product, system or method capable of performing the same function; or
- d) It would be reasonably expected to use the Product in combination with such Product, system or method.

**6.13.4.** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, and continues to fail after thirty (30) days written notice from the Indemnified Party, the Indemnified Party may assume the defense or settlement of it and the

Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**6.14. No Waiver of Sovereign Immunity**

**6.14.1.** In no event shall this Master Agreement, any Participating Addendum or any Contract or any Purchase Order issued thereunder, or any act of a Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

**6.14.2.** This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**6.15. Governing Law and Venue**

**6.15.1.** The construction and effect of this Master Agreement shall be governed by the laws of the Lead State. Venue for any administrative or judicial action relating to this Master Agreement shall be in the City and County of Denver, Colorado.

**6.15.2.** The construction and effect of any Participating Addendum or Order against this Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

**6.15.3.** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): The Lead State for claims relating to the procurement, evaluation, award, or Contract performance or administration if the Lead State is a party; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

**6.16. Assignment of Antitrust Rights**



Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any Goods or Services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**6.17. Contract Provisions for Orders Utilizing Federal Funds**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

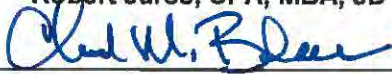
**THE PARTIES HERETO HAVE EXECUTED THIS MASTER AGREEMENT**

\* Individual signing for Contractor hereby swears and affirms that they are authorized to act on Contractor's behalf and acknowledge that the Lead State is relying on their representations to that effect.

<p style="text-align: center;"><b>CONTRACTOR</b> Xerox Corporation</p> <p>By: <u>John Howe</u> Title: <u>VP Finance</u></p> <p>By: <u></u> *Signature</p> <p>Date: <u>8/1/2019</u></p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Personnel &amp; Administration State Purchasing &amp; Contracts Office Kara Veitch, Executive Director</p> <p>By: <u></u> John Chapman, State Purchasing Manager</p> <p>Date: <u>Aug 6, 2019</u></p>
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Master Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.

<p><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By: <u></u></p> <p>Date: <u>8/7/19</u></p>
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