SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS
Capital Business Machines, Inc. v. State of Washington, et al.
Thurston County Superior Court, Cause No. 13-2-01209-7

This Settlement Agreement and Release of Claims ("Agreement") is entered into by and among (1) the State of Washington, Department of Enterprise Services ("DES"), Department of Employment Security ("ESD"), and the Department of Natural Resources ("DNR"), (collectively "the State"); (2) Xerox Corporation ("Xerox"); and (3) Capital Business Machines, Inc. ("CBM") (referred to jointly as "the Parties" or "Party" as context requires) for the purpose of resolving all claims or potential claims arising out of or relating to: executed contracts or statements of work entered into by any state agency or political subdivision, to date, under Managed Print Services Master Contracts, Contract No. 05310 and Contract No. 02012 (as further defined and set forth below), or *Capital Business Machines, Inc. v. State of Washington, et al.*, Thurston County Superior Court, Cause No. 13-2-01209-7 (as further defined and set forth below).

RECITALS

1. On or about October 7, 2010, DES awarded Managed Print Services Master Contract No. 05310, a two-tier contract of qualified Managed Print Vendors, including CBM and Xerox, with an initial term of October 7, 2010 through October 6, 2012, and a maximum term of six (6) years or October 7, 2010 through October 6, 2016 ("Contract No. 05310") to multiple vendors.

2. On or about November 8, 2012, DES, on behalf of ESD, issued Request for Proposals, No. 05310-003, under Contract No. 05310, for Managed Print Services. DES awarded Contract No. 05310-003 to Xerox and on or about November 21, 2013, Xerox and ESD executed the ESD Managed Print Services Statement of Work, under Contract No. 05310 ("Contract No. 05310-003").

3. On or about November 26, 2012, DES issued, on behalf of DNR, a Request for Proposals, No. 05310-004, under Contract No. 05310, for Managed Print Services. DES awarded Contract No. 05310-004 to Xerox and on or about October 7, 2013, Xerox and DNR executed DNR Managed Print Services Statement of Work, under Contract No. 05310 ("Contract No. 05310-004").

4. Contract No. 05310 expired on April 6, 2013 and DES signed a Participating Addendum, ("Contract No. 02012") to join the Western States Contracting Alliance's ("WSCA") Managed Print Services Master Agreement, ("Master Agreement"), effective on April 7, 2013. Contract No. 02012 has an initial term of April 7, 2013 through August 31, 2014 and a maximum term through August 31, 2018. Participating Addendums were executed with all six awarded vendors under Contract No. 02012: Toshiba, Lexmark, Xerox, Ricoh, HP and Canon.

5. On or about June 3, 2013, CBM filed a complaint, *Capital Business Machines, Inc. v. State of Washington, et al.*, in Thurston County Superior Court, Cause

No. 13-2-01209-7 for injunctive and declaratory relief against the State ("the Lawsuit"). Xerox intervened in the Lawsuit.

6. The State, Xerox, and CBM, for the purpose of avoiding the uncertainties, inconveniences, and expenses of litigation, wish to fully resolve, compromise, and settle, pursuant to the terms of this Agreement, any and all claims of any nature between them arising out of or relating to executed contracts or statements of work entered into by any state agency or political subdivision, as of the date this agreement is fully executed, under Managed Print Services Master Contracts, specifically and solely Contract No. 05310 and Contract No. 02012 or the Lawsuit.

AGREEMENT

1. Replacement of Existing Managed Print Services Contract. As consideration for the mutual promises contained herein, including without limitation the above Recitals, which are incorporated by reference herein, the State agrees:

> DES will use good faith efforts to replace Contract No. 02012. DES will either (1) recommend and advocate to the WSCA Managed Print Services sourcing team and to the WSCA-National Association of State Procurement Officials ("NASPO" and jointly "WSCA-NASPO") directors for a re-bid of the WSCA Managed Print Services Master Agreement Contract No. 20-00000-0040 ("Master Agreement"); or (2) DES will broker replacement managed print services contract(s) for Washington State. Within 3 business days of full execution of this Agreement, DES will communicate to state agencies that DES is exploring options for replacing Contract No. 02012 in an effort to address vendor and customer concerns. It is anticipated that the replacement contract(s) will include improvements to the ordering process and clarification as to the services available under managed print services. Within 3 business days of the WSCA-NASPO directors reaching a decision on whether to re-bid Contract No. 02012, DES will inform state agencies of that decision and what options DES intends to pursue in replacing Contract No. 02012. Further, DES will not make statements discouraging state agencies from doing business with CBM.
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> When either the WSCA-NASPO directors approve the recommendation to re-bid the Master Agreement, or DES decides to broker replacement managed print services contract(s) for Washington State, DES will provide clarification to state agencies that they have the option to either use the current Contract No. 02012 or wait until a replacement contract is available. DES will not tell agencies to use one contract or the other. Agencies will make their own decision. DES will clarify to agencies required to comply with RCW 43.19.733 that they may use the WSCA Copiers (multifunction) & Related Software Contract No. 07912 ("Contract No. 07912"), but only as necessary to replace existing equipment while preparing to transition to a managed print services contract. DES will advise agencies not required to comply with RCW 43.19.733 that they may choose to use either a managed print services contract or Contract No. 07912.

2. Dismissal. As consideration for the mutual promises contained herein, CBM agrees to dismissal with prejudice of all claims against the State, DES, DNR, ESD, and Xerox contained in the Lawsuit with no award of attorney fees or costs to any party and CBM shall prepare and file the agreed Order for Dismissal With Prejudice consistent with this Agreement upon DES making a recommendation to WSCA-NASPO Directors to re-bid the Master Agreement. This dismissal is conditioned only on DES making this recommendation to the WSCA-NASPO Directors and is not conditioned on the WSCA-NASPO Directors' ultimate decision.

3. Release of the State's and Xerox's Claims. Upon dismissal of all claims contained in the Lawsuit, the State and Xerox shall be deemed to have released CBM, and its respective present and former directors, officers, managers, members, employees, attorneys, agents, predecessors, successors, respective subsidiaries, affiliated or related entities, principals, shareholders, owners, and insurers from any and all claims, demands, rights, actions or causes of action, and from damages of every kind and nature, whether known or unknown, anticipated or unanticipated, arising from or related in any way to executed contracts or statements of work entered into by any state agency or political subdivision, to date, under Contract No. 05310 and/or Contract No. 02012, and the facts or legal arguments alleged or that could have been alleged in the Lawsuit. The released claims include all past, present, and future claims and demands, including but not limited to any and all expenses, costs, and attorney fees, and from damages and injuries of every kind, nature or basis, known as well as unknown, anticipated or unanticipated, including but not limited to economic and noneconomic damages, personal injury or death, arising from or relating in any way to executed contracts or statements of work entered into by any state agency or political subdivision, to date, under Contract No. 05310 and Contract No. 02012 or the Lawsuit. In the event Contract No. 02012 is re-bid pursuant to Section 1 of this Agreement, this Agreement shall not apply to any claims, demands, rights, actions, causes of action, or damages arising from or relating in any way to the re-bid of Contract No. 02012 or any executed contracts or statements of work entered into by any state agency or political subdivision under the re-bid Managed Print Services Master Contract.

4. Release of CBM's Claims. Upon execution of this Agreement, CBM shall be deemed to have released the State of Washington, the Departments of Enterprise Services, Natural Resources, and Employment Security, and Xerox and each of their respective present and former elected officials, boards, directors, officers, managers, members, employees, attorneys, agents, predecessors, successors, respective subsidiaries, affiliated or related entities, principals, shareholders, owners, and insurers from any and all claims, demands, rights, actions or causes of action, and from damages of every kind and nature, whether known or unknown, anticipated or unanticipated, arising from or related in any way to executed contracts or statements of work entered into by any state agency or political subdivision, to date, under Contract No. 05310 and Contract No. 02012 and the facts or legal arguments alleged or that could have been alleged in the Lawsuit. The released claims include all past, present, and future claims and demands, including but not limited to any and all expenses, costs, and attorney fees, and from

damages and injuries of every kind, nature or basis, known as well as unknown, anticipated or unanticipated, including but not limited to economic and noneconomic damages, personal injury or death, arising from or relating in any way to executed contracts or statements of work entered into by any state agency or political subdivision, to date, under Contract No. 05310 and Contract No. 02012 or the Lawsuit. In the event Contract No. 02012 is re-bid pursuant to Section 1 of this Agreement, this Agreement shall not apply to any claims, demands, rights, actions, causes of action, or damages arising from or relating in any way to the re-bid of Contract No. 02012 or any executed contracts or statements of work entered into by any state agency or political subdivision under the re-bid Managed Print Services Master Contract.

5. No Effect. The Parties agree that this Agreement does not in any way prohibit, impede or impair the performance of existing or pending Managed Print Services contracts under Contract No. 05310 or Contract No. 02012, including but not limited to Contract No. 05310-003 and Contract No. 05310-004. This Agreement contemplates and is fully consistent with the full execution of Contract No. 05310-003 and Contract No. 05310-004. The Parties agree that this Agreement does not affect any Party's ability, or grant additional rights, to pursue claims arising after the date of this Agreement and not released herein, including, but not limited to, errors or irregularities in future statements of work, bidding processes or contract execution that arise from managed print services contracts (a) other than existing or pending managed print services contracts under Contract No. 05310 or Contract No. 02012 and (b) as alleged in the Lawsuit and challenges to the rulemaking process under the Administrative Procedures Act, Chapter 34.05 RCW.

6. Authority. The Parties represent and warrant they have all authority necessary to execute this Agreement, and upon execution, this Agreement will be fully binding and enforceable in accordance with its terms, and that they have not assigned or transferred or purported to assign or transfer any claims released hereunder to any third party.

7. Assumption of the Risk. Each Party accepts and assumes all risk and agrees that this Agreement shall be and remain in all respects effective and not subject to termination or rescission by virtue of any mistake, change, or difference in facts.

8. No Admission. Nothing herein is intended to constitute an admission of liability by any Party with respect to any or all of the claims released, waived, and discharged hereunder. It is expressly understood and agreed that the compromise and settlement of these claims is not an admission of liability, breach of contract or negligence, and that this Agreement shall in no way be construed as an admission of liability at any time or in any manner whatsoever.

9. Joint Effort. This Agreement has been drafted jointly by the Parties hereto following negotiations between them. It shall be construed according to its terms and not for or against any Party.

10. Free and Voluntary Agreement. Each Party hereto acknowledges and warrants that it has been represented by independent legal counsel throughout all negotiations which preceded the execution of this Agreement. Each Party has read or had read to it all of this Agreement, or had it explained to it by its attorney, and each Party fully understands all of the terms used and their significance. Each Party, having been fully advised as to the legal effect of this Agreement, has executed this instrument freely and voluntarily for the purpose of making a full and final compromise and settlement of any and all claims which were alleged or could have been alleged arising out of or relating to contracts entered into by any state agency or political subdivision, to date, under Contract No. 05310, Contract No. 05310-003, Contract No. 05310-004 and Contract No. 02012 or that arise from the facts or legal arguments alleged or that could have been alleged in the Lawsuit.

11. Entire Agreement. The Parties intend this Agreement to be a full, final, and complete settlement of any and all claims among them relating to contracts entered into by any state agency or political subdivision, to date, under Contract No. 05310 and Contract No. 02012, or the facts or legal arguments alleged or that could have been alleged in the Lawsuit. This instrument contains the entire agreement and understanding concerning the subject matter hereof between the Parties and supersedes and replaces all prior negotiations, proposed agreements and agreements, written or oral. Each of the Parties hereto acknowledges that no Party hereto nor any agent or attorney of any other Party whatsoever has made any promise, representation or warranty, express or implied, not contained herein, concerning the subject matter hereof to induce it to execute this Agreement. Each of the Parties further acknowledges that it is not executing this Agreement in reliance on any promise, representation or warranty not contained herein. This Agreement may not be supplemented, modified, or amended in any manner, except by written agreement between the Parties.

12. Governing Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the state of Washington. In the event that any Party hereto shall institute proceedings related to this Agreement, the prevailing Party shall be entitled to be reimbursed for its reasonable costs, expenses and attorneys' fees, incurred.

13. Severability. If any provision of this Agreement is deemed unlawful and/or unenforceable, such provision(s) shall be fully severable, and the remainder of this Agreement shall remain in full force and effect.

14. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to constitute an original, and all of which shall constitute one Agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all counterparts.

Capital Business Machines

Dated: _____

By: _____

Printed Name: _____

Title: _____

Department of Enterprise Services

Dated: _____

By: _____

Printed Name: Farrell Presnell

Title: Assistant Director

Department of Employment Security

Dated: _____

By: _____

Printed Name: Ron Marshall

Title: Assistant Commissioner

Department of Natural Resources

Dated: _____

By: _____

Printed Name: Steve Young

Title: IT Division Manager

Xerox Corporation

Dated: _____

By: _____

Printed Name: _____

Title: _____