

## **PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

**For**

### **WSCA/NASPO PC Contracts 2009-2014 COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES MASTER PRICE AGREEMENT NUMBER B27178**

Between

Xerox Corporation

[hereinafter "Contractor"]

and

The State of Washington Department of Information Services

[hereinafter "Participating State" or "DIS"]

DIS Contract Number T10-MST-315

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#### **1. Scope**

This Addendum covers the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts.

Through execution of this Addendum, DIS adopts the Master Price Agreement #B27178 as a Master Contract for the State of Washington.

The Request for Proposals (RFP) that resulted in the award of this Agreement was posted on the web site of the Minnesota Department of Administration, with a notice and link posted on the Washington State TechMall under "Current Procurement Notices" and was advertised in the Seattle Daily Journal of Commerce on September 30, 2008 and on October 1, 2008.

#### **2. Participation**

Use of specific WSCA/NASPO cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts is subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

This Agreement may be used by any Washington State agency with properly delegated authority to purchase the Products and Services that are the subject of this Agreement, and any local government or political subdivision (including public schools, colleges and universities) of the state of Washington or eligible non-profit organizations with authority to purchase such Products and Services who have a properly executed Customer Service Agreement (Interlocal) with DIS. This Agreement is not for personal use.

#### **3. Changes:**

Contractor and DIS agree to the following modifications and additions to the Master Price Agreement for the State of Washington:

##### **3.1 Limitations and Exclusions**

- a. Products offered as "Storage Solution/Auxiliary Storage" under Band 4 of the Master Price Agreement shall not exceed a per-unit, individual configuration price of \$100,000 each.
- b. Multifunction network print/fax/scan devices that print more than fifty pages per

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minute (50 ppm) (under Band 3 – Printers of the RFP) shall be expressly excluded from sale by Contractor for purchase under this Addendum by State Agencies.

- c. All "Personal Services," as defined in the Revised Code of Washington (RCW) at 39.29.006(7), shall be expressly excluded from sale by Contractor for purchase under this Addendum by State Agencies. "Personal services" include professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement.
- d. Disaster recovery planning and support services and pre-implementation planning and design services shall be expressly excluded from sale by Contractor for purchase under this Addendum by State Agencies.

### 3.2 Article 1 Definitions

- a. The definition of "**State Procurement Official**" is modified to read as follows: "State Procurement Official" means the Director of the Washington State Department of Information Services
- b. The definition of "**Travel**" is deleted as no travel expenses shall be reimbursed under this Addendum.
- c. A definition for "**Confidential Information**" shall be added as follows: "**Confidential Information**" shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either Chapter 42.56 of the Revised Code of Washington (RCW) or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, Purchasing Entity source code or object code, or Purchasing Entity or Washington State security information or information identifiable to an individual that relates to any of these types of information.
- d. A definition for "**Proprietary Information**" shall be added as follows: "**Proprietary Information**" shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark or trade secret laws.
- e. A definition for "**State Agency**" shall be added for the purposes of this

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Addendum as follows: "**State Agency**" shall mean any Washington State office or activity of the executive and judicial branches of Washington State government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.

**3.3 Article 3 Title Passage** shall be modified so that each instance of the language "the State" shall be replaced with "the Purchasing Entity."

**3.4 Article 6 Payment Provisions**

a. **Article 6.B Payment of Invoices** is modified to add the following language:

No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Agreement, except that maintenance on Washington State owned equipment may be paid up to one year in advance.

b. **Article 6.C Payment of Taxes** is modified to add the following language:

Purchasing Entity will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Purchasing Entity, as an agency of Washington State government, is exempt from property tax.

Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

**3.5 Article 8.A. Termination for Convenience** is modified to add the following language after the first sentence: "DIS may terminate this Addendum, in whole or in part, by giving the Contractor thirty (30) days written notice."

**3.6 In Article 12 Patent, Copyright, Trademark and Trade Secret Indemnification**, the text of subparagraph A.2. shall be deleted and replaced with the following: "Use its best efforts to encourage the Office of the Attorney General of Washington to

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grant Contractor sole control of the defense and all related settlement negotiations;  
and"

**3.7 Article 20 *Records and Audit*** is deleted and replaced with the following language:

Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to protection and use of Purchasing Entity's Confidential Information, and accounting procedures and practices, for six (6) years after the expiration or termination of this Addendum. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchasing Entity's Contract Administrator and/or the Office of the State Auditor for the State of Washington and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State of Washington. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

**3.8 Article 34 *Data Practices*** is deleted and replaced in its entirety with the following language:

- A. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Addendum or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchasing Entity's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchasing Entity. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- B. Immediately upon expiration or termination of this Addendum or the pertinent transaction with Purchasing Entity, Contractor shall, at Purchasing Entity's option: (i) certify to Purchasing Entity that Contractor has destroyed all

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Confidential Information; or (ii) return all Confidential Information to Purchasing Entity; or (iii) take whatever other steps Purchasing Entity requires of Contractor to protect Purchasing Entity's Confidential Information.

- C. Violation of this section by Contractor or its Subcontractors may result in termination of this Addendum and demand for return of all Confidential Information, monetary damages, or penalties.
- D. Contractor acknowledges that DIS and Purchasing Entities are subject to chapter 42.56 RCW and that this Agreement shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information, must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, DIS and Purchasing Entities shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchasing Entity will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchasing Entity will release the requested information on the date specified.

**3.9 Article 44.B Participating Entity Reports and Fees** is modified to add the following language:

Contractor agrees to provide monthly reports to the Participating State contact listed in Section 6 below for the State of Washington. The monthly report shall include the gross Washington sales for the month just ended, excluding sales tax, subtotaled by Purchasing Entity name within Washington and shall include the Contractor's customer number for each Purchasing Entity. The report shall be accompanied with a check payable to the Department of Information Services for an amount equal to one and one-half percent (1.5% or .015) of the gross Washington sales, excluding sales tax, for the month. The monthly report and fee shall be submitted by the last business day of the month following the month in which Contractor invoiced the Purchasing Entity. Monthly reports are required even if no activity occurred.

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**3.10 Article 46 Audits** is modified to add the following language:

As a part of its Participating State function, DIS will from time to time perform audits of Purchasing Entity invoices to ensure that the invoices and that the Products and Services listed and the prices charged for the Products and Services are accurate and in accordance with the Agreement. DIS will perform these audits by selecting Purchasing Entities from an Activity Report and asking Contractor to send the invoices for those Purchasing Entities for that report period. The DIS request will be in writing, and will list the Contractor's customer numbers for the Purchasing Entities. Such requests will not exceed six (6) per year. Contractor shall ensure that DIS receives the requested invoices within thirty (30) days of Contractor's receipt of DIS' request. Contractor will be responsible for any audit exceptions or disallowed costs.

DIS will also conduct periodic spot check audits of the Prices, Products and Services listed on the website that Contractor maintains for state of Washington Purchasing Entities. DIS will communicate any discrepancies to Contractor and Contractor agrees to correct any deficiencies within three (3) Business Days, or as otherwise agreed.

**3.11 Article 49 Ownership** is modified so that each instance of the language "the State" shall be replaced with "the Purchasing Entity."

**3.12 Article 51 Antitrust** is modified so that the first instance of the language "the State" shall be replaced with the language "the Purchasing Entity" and the second instance of the language "the State" shall be replaced with "the State of the Purchasing Entity."

**3.13 Article 52 Right to Publish** is modified to add the following language:

Contractor agrees to submit to DIS all advertising, sales promotion, and other publicity materials relating to this Agreement or any Product furnished by Contractor wherein DIS' or Purchasing Entity's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchasing Entity's name with Contractor's Products or Services may, in DIS' or Purchasing Entity's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter

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developed without the express written consent of DIS or Purchasing Entity prior to such use.

**4. Continuation of Authorization for Participation from WSCA/NASPO PC Contracts 2004-2009:**

The authorization to participate in the WSCA/NASPO PC Contracts 2004-2009 is sufficient to permit participation in the WSCA/NASPO PC Contracts 2009-2014, unless specifically denied by the appropriate chief state procurements official.

**5. Lease Agreements**

Leasing by the Contractor to State Agencies is **NOT** authorized under this Addendum. Eligible non-state agency Purchasing Entities that have the legal authority to enter into a lease to finance their purchase(s), may elect to establish a separate lease agreement with Contractor.

**6. Primary Contacts**

The primary government contact individuals for this Addendum are as follows (or their named successors):

Lead State

Name: Bernadette Kopischke  
Address: 112 Admin Bldg, St Paul, MN 55155  
Telephone: (651) 201-2450  
Fax: (651) 297-3996  
E-mail: [bernie.kopischke@state.mn.us](mailto:bernie.kopischke@state.mn.us)

Contractor

Name: Alison Petralia  
Address: 26600 SW Parkway Ave, M/S 7060-633, Wilsonville, OR 97070  
Telephone: (503) 685-2614  
Fax: (503) 582-6099  
E-mail: [Alison.petralia@xerox.com](mailto:Alison.petralia@xerox.com)

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Participating State

Name: Master Contract Administrator  
 Address: If by US Postal Service  
 PO Box 42445, Olympia, WA 98504-2445  
If by Overnight Courier  
 1110 Jefferson Street SE, Olympia, WA 98504  
 Telephone: (360) 902-3551  
 Fax: (360) 586-1414  
 E-mail: MCAAdmin@dis.wa.gov

**7. Servicing Subcontractors:**

Only those Xerox Business Partners authorized by Xerox are eligible to support the Xerox WSCA/NASPO Master Price Agreement. Xerox Business Partners are only authorized to quote to the Participating Entity the products and pricing specified by Xerox for the WSCA/NASPO Master Price Agreement.

All Participating Entity orders and payments are to be directly with Xerox and each Purchase Order at time of order placement must include the quoting Business Partner's name and address and identify the WSCA/NASPO Master Price Agreement number. Inclusion of the Business Partner on the Purchase Order will result in a fee payment to the Business Partner from Xerox. Such fee payment will not affect the pricing specified in the WSCA/NASPO Master Price Agreement. Xerox may add or delete eligible Business Partner authorizations, including withdrawal of all such authorizations, upon 30 days' written notice.

All orders are to be issued directly to: Xerox Direct  
 1654 Solutions Center  
 Chicago, IL 60677

Electronic: [sales@xeroxdirect.com](mailto:sales@xeroxdirect.com)  
 Fax: 480-776-8665

And all payments are to be issued to: Xerox Direct  
 1654 Solutions Center  
 Chicago, IL. 60677

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**All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: T10-MST-315; and the Master Price Agreement Number: B27178.**

**8. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"):** If or when contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to the ordering entity with the invoice presented to the ordering entity for payment. The contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.





**WESTERN STATES CONTRACTING ALLIANCE  
MASTER PRICE AGREEMENT  
for  
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES**

Number B27178

This Agreement is made and entered into by Xerox Corporation, 26600 Southwest Parkway Ave, Wilsonville, OR 97070 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities.

**RECITALS**

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,

**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

**INTENT AND PURPOSE**

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. Delivery, support, warranty, and maintenance may be provided by the Contractor using subcontractors. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished under this Agreement. The Contractor is responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by individual Participating Entities, who have the sole discretion to determine if they will accept services from a subcontractor.

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process, and if the Contractor submitted copies of its lease agreements with its response to the RFP. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. The agreements are located in Exhibit C, Value-Added Services.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage (SANs, etc.) should not exceed \$300,000 each. Desktop per unit/configuration costs should not exceed \$100,000. Printers of all types and monitors per unit/configuration costs should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

## 1. Definitions

**“Announced Promotional Price”** are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

**“Consumables”** those items that are required for the operation of the Equipment offered or supplied which are consumed over time with the purchaser’s use of the equipment are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**“Configuration”** in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

**“Contract”** means a binding agreement for the procurement of items of tangible personal property or services. Contract, Agreement, and Master Price Agreement are used interchangeably in this document.

**“Contractor”** means the successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof. For the purposes of this Contract, the term Contractor and Contract Vendor are synonymous.

**“CPV Member”** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota’s Cooperative Purchasing Venture (CPV) program.

**“CPV Program.”** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the commissioner of

Administration to “enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1.” Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the “State contract price.”

**“Cumulative Volume Discount”** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of the Master Price Agreement.

**“Documentation”** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor’s web site.

**“E-Rate”** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**“Educational Discount Price”** means the price offered in a nationally announced promotion, which is limited to educational customers only.

**“Equipment”** means workstations, desktop, laptop (includes Tablet PC’s), handheld (PDA) devices, projectors, servers, printers, monitors, computing hardware, including upgrade components such as memory, storage drives, and spare parts. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in this RFP or subsequent contracts. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item.

**“FCC”** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**“General Price Reduction Price”** means the price offered to consumer, business or governmental purchasers at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

**“Lead State”** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this Master Price Agreement, the Lead State is Minnesota.

**“Mandatory”** The terms “must” and “shall” identify a mandatory item or factor.

**“Manufacturer”** means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC’s) computers, handheld (PDA) devices, servers, printers, and storage

solutions/auxiliary storage devices. The manufacturer must provide direct un-infringed unlimited USA OEM warranties on the products. The manufacturer's name(s) shall appear on the computer equipment. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**“Master Price Agreement”** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of the Contractor's products and/or services by Purchasing Entities. The “Master Price Agreement” is a permissive price agreement. In order for a Purchase Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

**“Materials Management Division” or “MMD”** means the procurement official for the State of Minnesota or a designated representative.

**“NASPO”** means the National Association of State Procurement Officials

**“Participating Addendum” or “Participating Addenda”** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions, including but not limited to payment terms, may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One digitally formatted, executed copy of the Participating Addendum must be submitted to the WSCA/NASPO Contract Administrator PRIOR to any orders being processed.

**“Participating State” or “Participating Entity”** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement.

**“PDA”** means a Personal Digital Assistant and refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which is later entered into a larger computer. NOTE: For this procurement, all Tablet PC's are NOT considered PDA's. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**“Peripherals”** means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to

storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software, as defined in the RFP, is not considered a peripheral. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the WSCA/NASPO Contract Administrator. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in the contract. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**“Permissive Price Agreement”** means that placement of orders through the Price Agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the Price Agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the Price Agreement as long as applicable procurement statutes and rules are followed.

**“Per Transaction Multiple Unit Discount”** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

**“Political Subdivision”** means local public governmental subdivisions of a state, as defined by that state’s statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**“Price Agreement/Master Price Agreement”** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**“Procurement Manager”** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**“Product(s)”** means personal computer equipment, peripherals, LAN hardware, pre-loaded Software, and Network Storage devices, but not unrelated services. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**“Products and Services Schedule Prices”** or **“PSS”** refers to a complete list, grouped by major product and/or service categories, of the Products and services provided by the contractor that consists of an item number, item description and the Purchasing Entity’s price for each Product or Service. All such Products and services shall be approved by the WSCA/NASPO Contract Administrator prior to being listed on a Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty service and maintenance for all equipment listed on the PSS on a Master Price Agreement as well as a Takeback Program.

**“Purchase Order”** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**“Purchasing Entity”** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**“Refurbished Products”** are products that may have been powered on or used by another customer that have been fully retested, defective parts replaced, and repackaged to meet original factory specifications.

**“Services”** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**“Servicing Subcontractor/Subcontractor/Reseller Agent”** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor’s Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided for in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor’s providing products and services, as well as warranty service and maintenance for equipment the subcontractor has provided on a Master Price Agreement as well as the Takeback Program.**

**“Standard Configurations”** or **“Premium Savings Configurations”** means deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. Any entity, at any time, that commits to purchasing the standard configuration adopted by other Purchasing Entities shall receive the same price from the contract awardees. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**“State Procurement Official”** means the director of the central purchasing authority of a state.

**“Storage Solution/Auxiliary Storage”** means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS) and Storage Area Networks (SAN). **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

**“Takeback Program”** means the Contractor’s process for accepting the return of the equipment or other products at the end of life—as determined by the State utilizing the Master Price Agreement.

**“Trade In”** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

**“Travel”** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**“Universal Resource Locator”** or **“URL”** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**“WSCA”** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

**“WSCA/NASPO Contract Administrator”** means the person or designee authorized by MMD to manage all actions related to the Master Price Agreements on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

## **2. Scope of Work**

The Contractor, or its approved subcontractor, shall deliver computing system Products and services to Purchasing Entities in accordance with the terms of this agreement. This Agreement is a “Master Price Agreement”. Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid “Purchase Orders”. Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor’s PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor’s PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official.

The Contractor is required to provide and/or agree to take legal responsibility for the warranty and maintenance of all proposed equipment, including peripherals. Taking legal responsibility means the Contractor must provide warranty and maintenance call

numbers, accept, process and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities The Contractor shall offer a Takeback Program for all products covered by this Agreement.

### **3. Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon receipt of Product by the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement

### **4. Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

### **5. Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document; and
- F. Contractor's proposal including best and final offer.

### **6. Payment Provisions**

All payments under this Agreement are subject to the following provisions:

#### **A. Acceptance**

A Purchasing Entity shall determine whether all Products and services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days of non-acceptance of a product or service.

#### **B. Payment of Invoice**

Payments shall be submitted to the Contractor at the address shown on

the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. The ordering entity is not required to pay the Contractor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all goods and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card".

In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

**C. Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Invoices shall match the line items on the Purchase Order.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2012. The Agreement may be mutually renewed for two (2) additional one-year terms, or one additional two-year term, unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the WSCA/NASPO Contract

Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

**9. Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

**10. Shipment and Risk of Loss**

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all standard ground transportation and handling charges included in the price of the

product and paid by the Contractor. There will be additional charges quoted and invoiced for next day or second day delivery requests. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all Products shall be shipped within 3 to 5 days after receipt of a purchase order, by a reliable and insured shipping company.

## **11. Warranties**

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished through this Agreement. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process, and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. Notwithstanding the prior sentence, the Contractor disclaims and the Lead State and each Participating Entity waives the implied warranties of non-infringement and fitness for particular purpose. In general, the Contractor warrants that:

1. The Product conforms to the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
2. The product will meet mandatory specifications provided in writing to the Contractor and accepted in writing by the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
3. The Product will be suitable for the ordinary purposes for which such Product is used,
4. The Product has been properly designed and manufactured for its intended use as set forth in the Product Documentation,
5. The Product defects in material and workmanship are covered as described in the applicable warranty statement.
6. The Product is in the legal possession of the Purchasing Entity, as defined

in Article 10 Shipment and Risk of Loss, before any warranty period begins.

7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or the use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
  - a) Band 3 - Printers Warranty Statement
  - b) Band 3 – Multifunction Printers Warranty Statement
- B. Contractor may modify the warranties described in Exhibit A from time to time with the prior approval of the WSCA/NASPO Contract Administrator.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products as provided by the Manufacturer.
- D. The Contractor will provide the basic warranty listed for each product in its PSS. The basic warranty is one-year with the ability to extend the warranties at the time of purchase. Where applicable, all products listed will be EPEAT (bronze minimum) and Energy Star compliant.

## **12. Patent, Copyright, Trademark and Trade Secret Indemnification**

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
  1. Give the Contractor prompt written notice of any claim;
  2. Allow the Contractor to control the defense or settlement of the claim; and
  3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

1. Provide a Purchasing Entity the right to continue using the Products or Services;
  2. Replace or modify the Products or Services so that it becomes non-infringing; or
  3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
  2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
  3. Product modifications by the Purchasing Entity or a third party;
  4. Product use prohibited by Specifications or related application notes; or
  5. Product use with products that are not the Contractor branded.

### **13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit Discount. Only General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial base-line, Cumulative, and Per Transaction Multiple Unit Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

### **14. Product and Service Schedule**

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed prices discount levels on file with WSCA/NASPO Contract Administrator for the following Products:

#### **Band 3 - Printers**

- B. The Contractor may change the price of any Product or Service at any

time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the WSCA/NASPO Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.

- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the WSCA/NASPO Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

## **15. Product Substitutions**

### **A. Substitution of units/configurations**

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA/NASPO Contract Administrator.

### **B. Addition of units/configurations**

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the WSCA/NASPO Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA Directors.

## **16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the Contractor during a product warranty period or during a support agreement.

## **17. Takeback and Other Environmental Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Takeback/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the following standards: Blue Angel, EcoLogo, Energy Star, EPEAT (by level), Green Guard, Nordic Swan, and TCO.
- C. Product labeling of compliance with Item B above, as well as a identification of such information on the web site.

**18. Product Delivery**

Contractor agrees to use commercially reasonable efforts to deliver Products to Purchasing Entities within ten to fourteen (10-14) days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract or transaction must be made available and subject to examination by the contracting agency or its agents, the Legislative Audit and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any participating entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or participating entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

## **22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

## **23. Payments to Subcontractors**

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontract that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property rights and ownership sections of this Contract. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

## **24. Indemnification, Hold Harmless and Limitation of Liability**

The Contractor shall indemnify, protect, save and hold harmless the Lead State, Participating Entities, and its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising

from the performance of the Contract by the Contractor or its agents, employees, or subcontractors for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees. This clause shall not be construed to bar any legal remedies the Contractor may have with the State's or Participating Entities' failure to fulfill its obligations pursuant to the Contract.

The State agrees that the Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$2,000,000 or the amount of net sales for the prior 12 months, whichever is greater. Neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to the goods provided or services performed under this Agreement, whether the claim alleges tortious conduct (including negligence) or any other legal theory. This limitation of liability does not apply to damages for personal injury or death, or to Contractor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement or copyright claims under paragraph 12 of this Agreement. This indemnification does not include liabilities caused by the State's gross negligence, or intentional wrong doing of the State.

**25. Amendments**

Contract amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the

covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

B. Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

C. Neither party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

## **29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids described in the RFP, and/or in accordance with instructions provided by the WSCA/NASPO Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A. above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reports.
- D. Once the website is approved, the Contractor may not make changes to the website without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes.

## **30. Equal Opportunity Compliance**

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the

Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Contract.

**31. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

**32. Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in any Contractor key personnel, in writing, and in advance if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**33. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41, Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**34. Data Practices**

A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (and where applicable, if the state contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

B. In the event the Contractor receives a request to release the data referred

to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the State.

- C. The Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

### **35. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "WSCA/NASPO Contract Administrator" modified appropriately to preserve the State's rights.

### **36. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be manufacturer-certified refurbished parts carrying USA OEM warranties.

**37. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**38. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

**39. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Contract. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Contract due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Contract.

**40. WSCA/NASPO Contract Administrator**

The State shall appoint an WSCA/NASPO Contract Administrator whose duties shall include but not be limited to the following:

- A. The WSCA/NASPO Contract Administrator may provide instructions concerning the contents of the Contractor's website.
- B. The WSCA/NASPO Contract Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the State for resolution.
- C. The WSCA/NASPO Contract Administrator shall promote and support the use of this Agreement by NASPO members and other Participating Entities.
- D. The WSCA/NASPO Contract Administrator shall advise the State regarding the Contractor's performance under the terms and conditions of this Agreement.
- E. The WSCA/NASPO Contract Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- F. The WSCA/NASPO Contract Administrator shall periodically verify the Product and Service prices in the PSS conform to the Contractor's volume price and other guarantees. The WSCA/NASPO Contract Administrator

may require the Contractor to perform web site audits to accomplish this task.

- G. The WSCA/NASPO Contract Administrator shall conduct annual Contractor performance reviews.
- H. The WSCA/NASPO Contract Administrator shall maintain an Agreement administration website containing timely and accurate information.

**41. Survival**

The following rights and duties of the State and Contractor will survive the expiration or cancellation of the resulting Contract. These rights and duties include, but are not limited to Paragraph 12. Patent, Copyright, Trademark and Trade Secret Indemnification; Paragraph 20. Records and Audit; Paragraph 24. Indemnification, Hold Harmless, and Limitation of Liability; Paragraph 31, Governing Law; Paragraph 34. Data Practices; and Paragraph 52. Right to Publish.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisitions Supervisor  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: [bernie.kopischke@state.mn.us](mailto:bernie.kopischke@state.mn.us)

**To Xerox:**

Xerox Corporation  
Alison Petralia  
Contracts Manager  
26600 SW Parkway Ave, M/S 7060-633  
Wilsonville, OR 97070  
Fax: 503-582-6099  
Email: [Alison.petralia@xerox.com](mailto:Alison.petralia@xerox.com)

with copy to:  
Xerox Corporation  
26600 SW Parkway Ave  
M/S 7063-LAW  
Wilsonville, OR 97070  
Fax: 503-685-4223

#### 44. Reporting and Fees

##### A. Administration Reporting and Fees

1. The Contractor agrees to provide monthly utilization reports to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th of March; etc.). The report shall be in the format developed by the Lead State and supplied to the Contractor.
2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor. Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

3. The Contractor agrees to include all Reseller Agent sales in the monthly utilization reports described above. In addition, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the utilization report the environmental information shown in the report format provided; as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the WSCA/NASPO Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed format. Such request shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.

8. The WSCA/NASPO Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. Purchasing Entities will be encouraged to use the reporting format developed by the lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within thirty (30) days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
  1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
  3. Impose liquidated damages, as mutually agreed by the parties as specified in a Participating Addendum;
  4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend

Contractor from receiving future solicitations.

5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor.
- D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

#### **46. Audits**

##### **A. Website Pricing Audit**

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on the requirements described in the Vendor Mandatory meeting presentation. The Contractor performs website price audits on at least a quarterly basis.

1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the WSCA/NASPO Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

##### **B. Sales Audit**

The Contractor further agrees to provide sales audit reports based on the formulas described in the Vendor Mandatory meeting presentation. These presentations were held the week of March 30-April 3, 2009.

- C. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

#### **47. Extensions**

If specifically authorized by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for products or services.

#### **48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

#### **49. Ownership**

- A. Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the

Contractor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Contract. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Contract without the prior written consent of the State.

- B. Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Contract and are ordered as a work product, will be the property of the State and are, by the Contract, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Contract shall be considered "works for hire" as defined in the U.S. Copyright Act.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees

individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the WSCA/NASPO Contract Administrator.

- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Contract, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will survey its customers in each Participating State approximately two (2) months prior to the annual meeting with the Contract Administrator using, at a minimum, the survey questions provided by the State.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**.

**57. E-Rate Program**

Printers are not included in the FCC E-Rate Program.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the State of Minnesota Commissioner of Administration, below.

**1. XEROX CORPORATION**

The Contractor certifies that the appropriate person(s)

By: *Jim Reynolds*  
Title: *V. P. MAJOR ACCOUNTS*  
Date: *JULY 22, 2009*

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: *Bernadette Kopschke*  
Title: *Acquisitions Supervisor*  
Date: *7/29/09*

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By:  
Title:  
Date:

By: *Brenda Willard*  
Date: *7/29/09*

## **EXHIBIT A – ADDITIONAL WARRANTIES**

Xerox product warranties can be found at the following link:

[http://www.office.xerox.com/services/warranty\\_terms.html#Terms](http://www.office.xerox.com/services/warranty_terms.html#Terms)

Please note that no other products, other than the specific printers on the approved WSCA website are included in the WSCA Master Price Agreements. These links are provided for warranty information only.

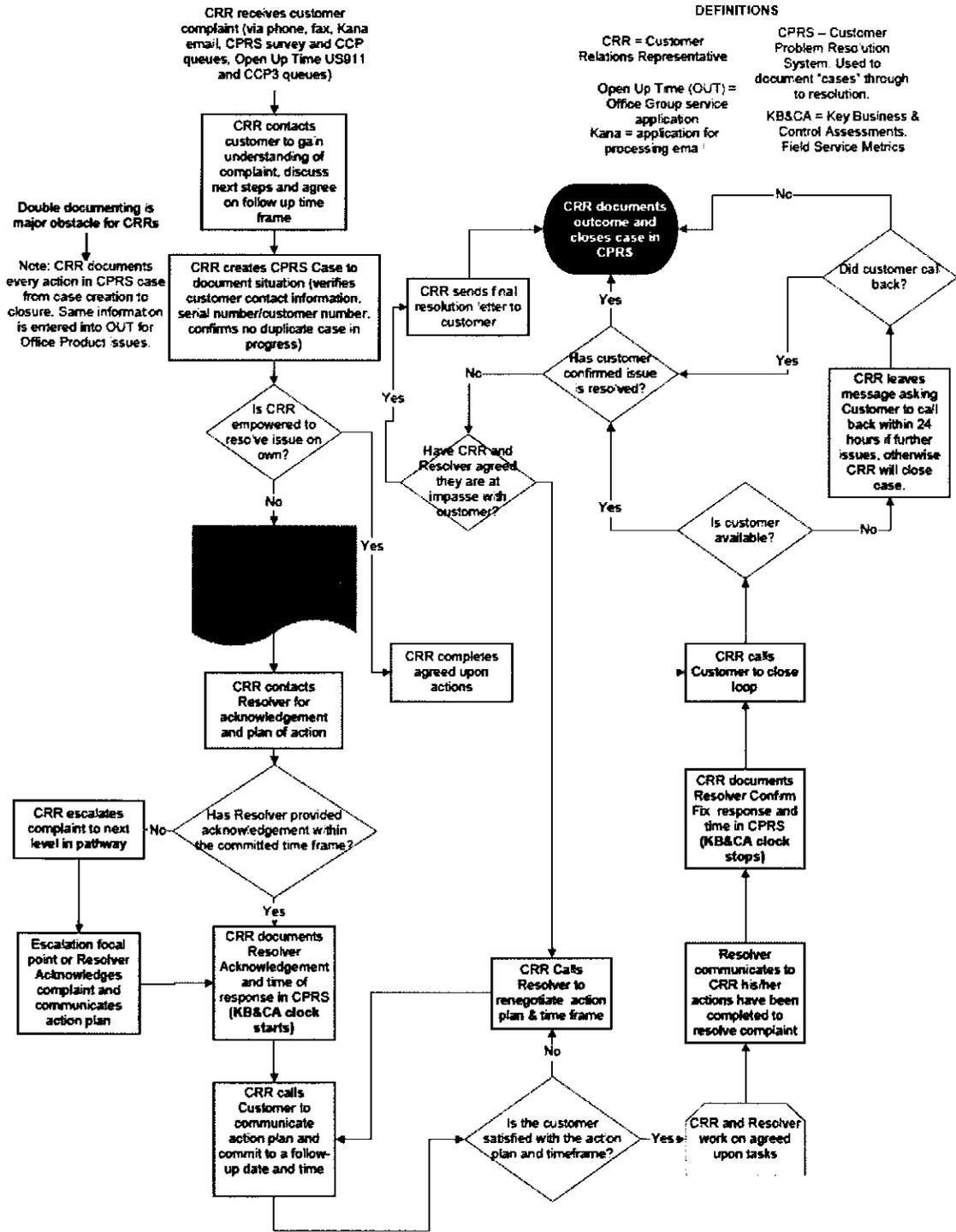
## **EXHIBIT B – COMPLAINT RESOLUTION**

At Xerox, passion for customer satisfaction is central to our mission and to the charter of our Services organization. As such, we have a dedicated Customer Relationships Group (CRG) chartered with managing the complaint resolution process from inception to closure. Our adoption of Lean Six Sigma methodologies and three consecutive certifications by J.D. Powers and Associates for excellence in customer service are indications we have an effective process.

Within 2 hours of receiving a customer complaint, a member of our CRG team will contact the customer to understand the complaint. Following our disciplined process, a 'resolver' in the best position to bring the necessary resources to bear will be identified and asked to contact the customer to address the issue. The Customer Relations representative will maintain ownership until the problem is closed to the satisfaction of the customer. There are structured management escalation steps up to the Xerox Senior Vice President of Xerox Services if the problem is not resolved satisfactorily or in a timely manner.

A complete process flow is presented on the following page.

### Customer Relations Group Closed Loop Process Flow



**DEFINITIONS**  
 CRR = Customer Relations Representative  
 CPRS – Customer Problem Resolution System. Used to document "cases" through to resolution.  
 Open Up Time (OUT) = Office Group service application  
 Kana = application for processing email  
 KB&CA = Key Business & Control Assessments, Field Service Metrics

Double documenting is major obstacle for CRRs  
 Note: CRR documents every action in CPRS case from case creation to closure. Same information is entered into OUT for Office Product issues.

Note: CRR can engage points further up escalation pathway at any time in the process if not receiving timely responses or if not able to reach mutually acceptable resolution.

Wendy Ramsay 07/24/08

## **EXHIBIT C – VALUE-ADDED SERVICES**

### **Extended Warranty Contracts:**

Xerox offers many value-added services to our customers starting with extended service coverage. Priced as a product option and available at significant discounts if purchased with the product, Xerox extended service agreements offer a convenient, cost-effective means of extending warranty protection for the life of your product. Under warranty/extended service protection; you still enjoy the flexibility of either using Xerox Services or another Xerox authorized service provider including the self-maintenance program.

### **Self Maintainer Program:**

Through the Xerox Authorized Service Provider (ASP) Program, participating WSCA eligible organizations can elect to perform their own maintenance. Our industry-leading program offers professionally packaged, self-paced certification training, access to Xerox second-level subject matter experts, and access to the same parts logistics that Xerox uses to support our own service organization. In addition, Xerox pays lucrative labor reimbursement rates for qualifying repair services and also offers deep discounts on service parts purchased through our streamlined ASP web ordering process.

### **Implementation / Installation Services:**

For select major project implementations, Xerox offers professional installation services. Our services team partners with eligible entities project manager to develop and execute an implementation plan that meets your unique requirements, all for competitive fees. Solutions are tailored to each customer situation and are evaluated and quoted on a case by case basis.

### **Xerox Leasing Information**

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. Standard lease terms and conditions will be provided as a link on the Xerox WSCA website.



Washington State Department of  
**Enterprise Services**

1500 Jefferson St SE, P.O. Box 41017 • Olympia, Washington  
98501 • (360) 902-7400  
<http://www.des.wa.gov>

## PARTICIPATING ADDENDUM AMENDMENT

**Participating Addendum  
Number:**  
T10-MST-315

**Date Issued:**  
08/23/2012

**Amendment Number:**  
01

**Date Effective:**  
09/01/2012

This Amendment is by and between the State of Washington and Xerox Corporation. This Participating Addendum Amendment 01 is issued under the provisions of the Washington State Participating Addendum (PA) identified by number above.

### Amendment

**WHEREAS:**

The Lead State has a Master Price Agreement (MPA) with Xerox Corporation (Xerox) identified as No. B27178, effective July 29, 2009; and

**WHEREAS:**

The MPA was amended by the Lead State to extend through August 31, 2014.

**NOW, THEREFORE,** it is agreed by the parties to amend the PA as follows:

1. The State of Washington hereby extends the PA through August 31, 2013 or unless superseded by a replacement contract. If a superseding contract is awarded or established, vendor will have at least 90 days written notice of a pending termination.
2. Except as herein amended, the provisions of the MPA and subsequent amendments thereto, as supplemented, changed or modified by the PA, shall remain in full force and effect until the contract is either cancelled or expires, whichever occurs first.

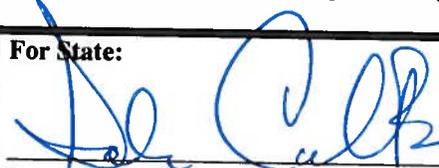
### Authorizing Signatures

This contract amendment, consisting of one (1) pages and zero attachment is executed by the persons signing below who warrant that they have the authority to execute this contract amendment.

**For Contractor:**

**For State:**

 8/28/12  
(Contractor Authorized Representative Signature) (Date)

 8-30-12  
(Procurement Coordinator Signature) (Date)

<b>PRINT NAME:</b>	Alison Petralia
<b>Contractor:</b>	Xerox Corporation
<b>Address:</b>	26600 SW Parkway Ave, M/S 7060-633 Wilsonville, OR 97070
<b>Telephone No.</b>	503-685-2614
<b>Email:</b>	Alison.petralia@xerox.com

<b>Agency:</b>	Dale Colbert Department of Enterprise Services 1500 Jefferson St SE. Olympia, WA 98501
<b>Telephone No.</b>	(360) 407-9425
<b>Email:</b>	Dale.Colbert@des.wa.gov

### DES Approval

<b>DES Authorizing Manager:</b>	Christine Warnock	<b>Date:</b>	8/30/12
<b>Signature:</b>		<b>Email:</b>	Christine.warnock@des.wa.gov
		<b>Phone:</b>	(360) 407-9398