

**PARTICIPATING ADDENDUM
to NASPO ValuePoint
Copiers & Managed Print Services
Administered by the State of Colorado
with Xerox Corporation
Master Agreement No. 140606
And
The State of Colorado
Contract # 160627**

1. PARTIES AND SCOPE

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the “Participating Addendum” or “Contract”), is entered into by and between **Xerox Corporation** (the “Contractor”), and the State of Colorado, acting by and through the State Purchasing & Contracts Office (the “State”). This Participating Addendum covers usage of the **Copiers & Managed Print Services** Master Agreement led by the State of **Colorado** (the “Master Agreement”), for use by State agencies and other entities located in Colorado which are authorized by law to utilize State contracts with the prior approval of the Chief Procurement Officer. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit D (Price Lists)** of this agreement.

2. PARTICIPATION

Agencies, political subdivisions and other entities (including cooperatives) authorized by the State’s statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

A. The Master Agreement and all its terms and conditions shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this Participating Addendum.

B. The following modifications shall be made to the Master Agreement with respect to Contractor’s performance pursuant to this Participating Addendum:

i. **§3.1.12** under Price and Rate Guarantee Period, shall be modified as follows:

“All-inclusive Cost Per Copy (CPC) programs may be offered upon request by the Purchasing Entity, but pricing must not exceed Master Agreement pricing. Contractor must provide the Purchasing Entity with their pricing breakdown which enables the Purchasing Entity to easily compare the pricing in the CPC structure against the pricing in the Master Agreement.”

- ii. **§4.3.9.d**, under Open Market Items, shall be modified as follows:
“NSP items shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all NSP items in a single Order is \$10,000.
- iii. **§4.4.3(b)**, Standard Service Levels shall be modified as follows:
“The Service Level Agreement (SLA) shall adhere to the following requirements:”
- iv. **§4.4.3(c)(iv)**, Meter Read Invoicing, shall be deleted in its entirety.
- v. **§4.4.3(d)(ii)**, Service Level Calculations, shall be deleted in its entirety.
- vi. **§4.5.6(k)**, under Leasing and Rental Overview shall be modified as follows:
“The length of any Renewal Term shall not exceed 12 months, providing the Renewal Term does not exceed the Useful Life of the Equipment.”
- vii. **§4.6.2**, Sensitive Information – “Sensitive Information” shall have the meaning as prescribed to it in **§4**, Definitions, of Exhibit A).
- viii. **§4.6.5(b)**, under Hard Drive Removal and Surrender, shall be modified as follows:
“At the Purchasing Entity’s discretion, Contractor shall remove the hard drive from the applicable Device and provide the Purchasing Entity with custody of the hard drive before the Device is removed from the Purchasing Entity’s location, moved to another location, or any other disposition of the Device. The Purchasing Entity shall then be responsible for securely erasing or destroying the hard drive.”
- ix. **§4.7.3**, under Equipment Demonstration Requirements, shall be modified as follows:
“Upon request by a Purchasing Entity, showroom Equipment for Groups A, B and C may be converted to a purchase or lease, providing the following conditions are met.”
Subsections (a), (b), (c) and (d) shall not be modified.
- x. **§4.11.10**, under Warranty Requirements, shall be deleted in its entirety.
- xi. **§4.11.11(d)**, under Lemon Clause, shall be modified as follows:
“This clause shall take precedence over any other warranty or Services clauses associated with the Master Agreement.”
- xii. **§5.1.3**, under Ordering and Invoicing Specifications, shall be modified as follows:
“Contractor shall provide a centralized billing option for Leasing, upon request by a Purchasing Entity.”
- xiii. **§6.9**, under Force Majeure, shall be modified as follows:
”Neither party to this Participating Addendum shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party’s reasonable control. Purchasing Entity’s payment obligation will be suspended with respect to any equipment that is rendered inoperable or if a facility is not in operation due to a force majeure event. The payment suspension will continue until the Purchasing Entity’s business is operational again, and Xerox is able to restore the equipment to operating condition, if applicable. Payments will then resume within

30 days and the Order term will be extended according to the number of months in which payments were not made due to the force majeure event.

4. EQUIPMENT, SERVICE, AND SOFTWARE OPTIONS

A. A Purchasing Entity may purchase, lease or rent Equipment and software under this Participating Addendum. Financing options include a Fair Market Value (FMV) Lease, \$1 Buyout Lease, Straight Lease, and a Cancellable Rental. The lease terms available are 36, 48 and 60 months, and the rental terms available are 24 and 36 months.

B. The State has reviewed and approved the terms and conditions in the Contractor's documents, which are attached hereto as **Attachments 1 through 6**, and incorporated by reference. In addition, **Attachments A, C, D, E, F, H and J** of the Master Agreement have also been reviewed and approved by the State. Purchasing Entities are still advised however, to conduct their own internal review of Contractor's documents prior to entering into any type of Order.

Attachment N of the Master Agreement has not been reviewed or approved by the State; therefore, Purchasing Entities are encouraged to review the language in the EULA's prior to ordering and/or using the software associated with the agreement.

With the exception of **Exhibits B and C**, and **Attachments A, C, D, E, F, H, J and N** of the Master Agreement, no other Contractor documents are permissible under this Participating Addendum unless mutually agreed to in writing by Contractor and the State, or as otherwise stated in the Master Agreement. Should there be a conflict between the terms and conditions of this Participating Addendum, and any terms of the aforementioned Exhibits and Attachments, this Participating Addendum shall govern.

C. In the event the Purchasing Entity receives or obtains copies of the language in any of the Exhibits or Attachments referenced in **§4.B** above, and the language varies from what is listed in said Exhibits and/or Attachments, the language in the Exhibits and Attachments incorporated into this Participating Addendum and the Master Agreement, shall prevail.

5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum. The Contractor's primary contact shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

Primary Contact for the State:

Nikki Pollack
Colorado State Purchasing & Contracts Office
1525 Sherman Street, 3rd Floor
Denver, CO 80203
Phone: (303) 866-5671
E-mail: nikki.pollack@state.co.us

Primary Contact for the Contractor:

Michelle Yoshino
Xerox Corporation
1851 E. 1st Street, Suite 401 & 253
Santa Ana, CA 92705
Phone: (714) 565-5252
Email: michelle.yoshino@xerox.com

Each individual identified in this **§5** of the Participating Addendum shall be the primary contact of the designated Party. All notices required or permitted to be given under this Participating Addendum

shall be in writing and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party's primary contact at the address set forth above or **(iii)** as an email with read receipt requested to the primary contact at the email address, if any, set forth above. If a Party delivers a notice to another through email and the email is undeliverable then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's primary contact at the address set forth above. Unless otherwise provided in this Participating Addendum, notices shall be effective upon delivery of the written notice.

6. SUBCONTRACTORS

The Contractor is authorized to use Subcontractors to provide sales and service support to any Purchasing Entity, per **Exhibit C, Authorized Dealers by State**, of the Master Agreement. The Contractor's Subcontractor's participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum, as appropriate.

7. ORDERS

Any Order placed by a Purchasing Entity in the State of Colorado for a Good or Service available under this Participating Addendum shall be deemed to be a sale (and governed by the prices and other terms and conditions) under the Master Agreement and this Participating Addendum unless the parties to the Order agree in writing that another contract or agreement applies to such Order or the terms of that Order control to the extent that they conflict with the terms of the Master Agreement or this Participating Addendum.

8. ORDER OF PRECEDENCE AND ATTACHED EXHIBITS AND ATTACHMENTS

All of the exhibits listed in this section are attached to this Participating Addendum and are incorporated herein by reference. In the event of a conflict or inconsistency between this Participating Addendum and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- A. Colorado Special Provisions in **§20** of Exhibit A, State Specific Terms;
- B. Exhibit B, Information Technology Specific Terms;
- C. The provisions of this Participating Addendum;
- D. All other sections of Participating Addendum Exhibit A, State Specific Terms;
- E. Participating Addendum Exhibit C, Statement of Work;
- F. Participating Addendum Exhibit D, Price Lists; and
- G. Participating Addendum Attachment 1 through Attachment 6, with equal precedence.

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement between the Parties that **(i)** requires the State to indemnify or hold harmless Contractor or any other party, **(ii)** is in violation of State law as, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State or **(iii)** is contrary to any of the provisions incorporated into **Exhibit A, §19** or the main body of this Participating Addendum.

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

<p style="text-align: center;">CONTRACTOR Xerox Corporation</p> <p>John Howe By: Title: Vice President Finance</p> <p style="text-align: center;">DocuSigned by: <i>John Howe</i> 9D26EF120A4C4E6... Signature</p> <hr/> <p>Date: 4/15/2020</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Personnel and Administration State Purchasing and Contracts Office Kara Veitch, Executive Director</p> <p style="text-align: center;">DocuSigned by: <i>John Chapman</i> 4D6040D4DA59422... Signature</p> <hr/> <p>By: John Chapman, State Purchasing Manager</p> <p>Date: 4/15/2020</p>
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STATE OF COLORADO
Jared S. Polis, GOVERNOR
Governor's Office of Information Technology
Theresa M. Szczurek, Ph.D., Chief Information Officer and Executive Director

Director
DocuSigned by:
Anthony Neal-Graves
69D5EC6549074E3...
Signature

By: _____

Anthony Neal-Graves, Chief Operating Officer

Date: 4/15/2020

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

§24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Participating Addendum is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jarvis, CPA, MBA, JD

DocuSigned by:
Clark Bolser
29ADEADE71B5433...
Signature

By: _____

Name: Clark Bolser
Delegate

Effective Date: 4/15/2020

TABLE OF CONTENTS

PARTICIPATING ADDENDUM:

1.	PARTIES AND SCOPE	1
2.	PARTICIPATION	1
3.	STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY	1
4.	EQUIPMENT, SERVICE, AND SOFTWARE OPTIONS.....	3
5.	PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES	3
6.	SUBCONTRACTORS	4
7.	ORDERS	4
8.	ORDER OF PRECEDENCE AND ATTACHED EXHIBITS AND ATTACHMENTS	4
EXHIBIT A, STATE SPECIFIC TERMS		
1.	AUTHORITY	7
2.	PURPOSE.....	7
3.	TERM	7
4.	DEFINITIONS	8
5.	STATEMENT OF WORK	11
6.	PAYMENTS TO CONTRACTOR	12
7.	PAYMENTS TO STATE.....	14
8.	REPORTING – NOTIFICATION.....	14
9.	CONTRACTOR RECORDS.....	15
10.	CONFIDENTIAL INFORMATION-STATE RECORDS	16
11.	CONFLICTS OF INTEREST.....	18
12.	INSURANCE	19
13.	BREACH OF CONTRACT	21
14.	REMEDIES	21
15.	DISPUTE RESOLUTION.....	23
16.	RIGHTS IN WORK PRODUCT AND OTHER INFORMATION	24
17.	OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT 25	
18.	STATEWIDE CONTRACT MANAGEMENT SYSTEM	25
19.	GENERAL PROVISIONS	26
20.	COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)	29
	EXHIBIT B, INFORMATION TECHNOLOGY PROVISIONS	33
	EXHIBIT C, STATEMENT OF WORK.....	56
	EXHIBIT D, PRICE LISTS	57
	ATTACHMENT 1, XEROX GENERAL TERMS	58
	ATTACHMENT 2, XEROX SERVICES MASTER AGREEMENT TERMS AND CONDITIONS	62
	ATTACHMENT 3, XEROX PRINT SERVICES AGREEMENT	73
	ATTACHMENT 4, XEROX SOFTWARE LICENSE ADDENDUM.....	76
	ATTACHMENT 5, VERSANT TERMS AND CONDITIONS	78
	ATTACHMENT 6, XEROX WORKFLOW AUTOMATION SAMPLE STATEMENT OF WORK	81

EXHIBIT A, STATE SPECIFIC TERMS

1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01., and its associated rules.

2. PURPOSE

The Parties are entering into this Participating Addendum for the Contractor to provide **Copiers and Managed Print Services** to Purchasing Entities. The Contractor was selected as a result of **RFP-NP-18-001**.

3. TERM

A. Initial Term - Work Commencement

The Parties' respective performances under this Participating Addendum shall commence on the Effective Date and shall be co-terminous with the NASPO ValuePoint Master Agreement #140606. Unless this Participating Addendum is terminated earlier, as described herein, or the State cancels its participation as described in the Master Agreement (the "Term"), the term of the Participating Addendum shall follow the Master Agreement initial term and will be automatically extended beyond the initial term if the Master Agreement term is extended, per §3.B.

B. Extension of Term

If the term of NASPO ValuePoint Master Agreement is extended for any reason, the Term of this Participating Addendum shall be automatically modified to account for that extension, so long as such extension complies with the Colorado Procurement Code.

C. Order Term

Orders may only be placed prior to the expiration or earlier termination of this Participating Addendum, but may have a delivery date that extends no longer than 120 calendar days following that expiration or earlier termination date. Regardless of whether this Participating Addendum has expired or has been terminated, the Contractor shall comply with all Orders that extend past the expiration or termination, as described in this section, and all requirements of this Participating Addendum necessary to complete outstanding Orders shall survive the expiration or termination of this Participating Addendum until all Orders are complete.

D. Early Termination in the Public Interest

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Participating Addendum by the State for breach by Contractor, which shall be governed by §14.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §5 of this Participating Addendum. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Participating Addendum, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§14.A.**

iii. Payments

If the State terminates this Participating Addendum in the public interest, the Purchasing Entities shall pay Contractor according to their orders with the Contractor. The sum of any payment shall not exceed the maximum amount payable to Contractor under each order.

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “Administration Fee”** means the fee that is due to the State for the administration of this Participating Addendum, as described in **§7.A.** of this **Exhibit A.**
- B. “Attachments”** means the following attachments attached to this Contract:
- i.** Attachment 1, Xerox General Terms;
 - ii.** Attachment 2, Xerox Services Master Agreement Terms and Conditions;
 - iii.** Attachment 3, Xerox Print Services Agreement;
 - iv.** Attachment 4, Xerox Software License Addendum;
 - v.** Attachment 5, Versant Terms and Conditions; and
 - vi.** Attachment 6, Xerox Workflow Automation Sample Statement of Work.
- C. “Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- D. “Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- E. “Ceiling Price”** means the maximum price a Contractor or a Subcontractor may charge for a Good or Service under this Participating Addendum.
- F. “Chief Procurement Officer”** means the individual to whom the Executive Director of the Department of Personnel & Administration has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- G. “CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under §24-72-302, C.R.S.

- H. “Confidential Information”** means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S. (“CORA”).
- I. “Contract”** means this Participating Addendum, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- J. “Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Participating Addendum.
- K. “CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- L. “Deliverable”** means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s Work that is intended to be delivered to the State or Purchasing Entity by Contractor.
- M. “Effective Date”** means the date on which this Participating Addendum is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Participating Addendum. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- N. “Environmentally Preferable Products”** means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-904, C.R.S.
- O. “Exhibits”** means the following exhibits attached to this Contract:
- i.** Exhibit A, State Specific Terms;
 - ii.** Exhibit B, Information Technology Provisions;
 - iii.** Exhibit C, Statement of Work; and
 - iv.** Exhibit D, Price Lists.
- P. “Extension Term”** means the period defined in **§3.B.**
- Q. “Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services. Goods may also be referred in this Participating Addendum as “Products” or “Equipment”.
- R. “Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation **(i)** successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; **(ii)** unwanted disruption or denial of service; **(iii)** the unauthorized use of a State system for the processing or storage of data; or **(iv)** changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.

- S.** “**Initial Term**” means the time period defined in §3.A of this **Exhibit A**.
- T.** “**Order**” means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Goods and Services described in this Participating Addendum from the Contractor, and shall include any modification to such a document.
- U.** “**Party**” means the State or Contractor, and “**Parties**” means both the State and Contractor.
- V.** “**Purchasing Entity**” means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the State, government supported institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.
- W.** “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- X.** “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- Y.** “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- Z.** “**Sensitive Information**” means privileged or proprietary information that, if compromised through alteration, corruption, loss, misuse, or unauthorized disclosure, could cause serious harm to the organization owning it.
- AA.** “**Services**” means the services to be performed by Contractor as set forth in this Participating Addendum, and shall include any services to be rendered by Contractor in connection with the Goods.
- BB.** “**State Confidential Information**” means any State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PCI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which **(i)** is subject to disclosure pursuant to CORA; **(ii)** is already known to Contractor without restrictions at the time of its disclosure to Contractor; **(iii)** is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; **(iv)** is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or **(v)** was independently developed without reliance on any State Confidential Information.

- CC. “State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- DD. “State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- EE. “State Records”** means any State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- FF. “Subcontractor”** means third parties, if any, engaged by Contractor pursuant to §19.B. to aid in performance of the Work. The term “Subcontractor” includes, without limitation, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- GG. “Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- HH. “Work”** means the Goods delivered and Services performed pursuant to this Contract.
- II. “Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Participating Addendum that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

5. STATEMENT OF WORK

Contractor shall complete the Work as described in this Participating Addendum and in accordance with the provisions of Exhibit C, the Master Agreement, and with any Purchasing Entity’s Order. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.

A. Ordering and Order Fulfillment

i. Ordering

- a. Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.
- b. Each Purchasing Entity may complete an Order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Order.
- c. Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity’s Orders.

- d. Contractor shall ensure that all Orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of this Exhibit A.
- e. If Contractor provides for Ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor's necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.
- f. Contractor's internet-based portal and electronic catalogs shall clearly designate that they are part of this Participating Addendum and shall have a link to the State's web location, as determined by the State. Contractor shall ensure that all Environmentally Preferable Products are clearly listed on internet-based portal and electronic catalogs.
- g. If Contractor provides an internet-based portal or electronic catalog, Contractor shall also provide paper catalogs or catalogs on other digital media upon request by a Purchasing Entity.
- h. If Contractor's catalog will be either hosted on or accessed through the State's eCommerce system, when available, then Contractor shall comply with all policies, procedures and directions from the State in relation to hosting its catalog on or making its catalog accessible through that system. Contractor shall ensure that all information made available through the State's eCommerce system is accurate and complies with this Participating Addendum.

6. PAYMENTS TO CONTRACTOR

A. Payments Under Orders

- i. Contractor shall allow the State and Purchasing Entities to use a procurement card or other credit card to make payments under any Order, in addition to any other payment procedure available to the State or Purchasing Entity.
- ii. The State shall not pay any amount to Contractor under this Participating Addendum unless the State issues an Order, at which time it shall pay Contractor in accordance with that Order. The State shall not be responsible for payment under any Order that is issued by a Purchasing Entity that is not the State, and the Contractor shall seek no payment or other compensation from the State for any Work performed under any Order issued by a Purchasing Entity that is not the State.

B. Payment Procedures

i. Invoices

Contractor shall invoice each Purchasing Entity in accordance with that Purchasing Entity's Order. Contractor shall not invoice the State under any Order unless the State issued that Order. Contractor shall allow 45 days for the State and Purchasing Entities to pay an invoice following the receipt of the invoice, unless the State or a Purchasing Entity specifically agrees to a shorter time in an Order. State law and regulations provide that State payments made within 45 days are not considered delinquent, and unless otherwise agreed, State Purchasing Entities will pay interest on any unpaid balance beginning on the 45th day at the rate of 1% per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are the subject of a good faith dispute regarding the obligation to pay all or a portion of the liability. Contractor shall invoice State Ordering

Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the applicable interest rate. (§ 24-30-202(24), C.R.S., as amended.)

ii. Payment Disputes

Unless different procedures are specified in an Order, if Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the Purchasing Entity issuing the Order in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by that Purchasing Entity. The Purchasing Entity will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the Purchasing Entity's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the Purchasing Entity has concluded its review, and the Purchasing Entity shall not pay any interest on any amount during the period it is subject to dispute under this subsection. Notwithstanding the foregoing, pending correction of a dispute, the Purchasing Entity is expected to pay all undisputed amounts, including the monthly minimum charge, which is not subject to dispute at any time.

iii. Available Funds-Contingency-Termination of Order

Purchasing Entities, except for authorized non-profit entities, are prohibited by law from making commitments beyond the term of the current Purchasing Entity's Fiscal Year. Payment to Contractor beyond the current Purchasing Entity's Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (See Colorado Special Provision). If federal funds, non-State funds or funds from any other source constitute all or some of the Contract Funds, the Purchasing Entity's obligation to pay Contractor shall be contingent upon such funding continuing to be made available for payment. Orders under this Participating Addendum shall be made only from Contract Funds, and the Purchasing Entity's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other Purchasing Entity funds are not appropriated by the Colorado state legislature, or otherwise become unavailable to fund an Order under this Participating Addendum, the Purchasing Entity may, upon written notice, terminate the Order, in whole or in part, without incurring further liability. The Purchasing Entity however, shall remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination of Order. A State Purchasing Entity Order termination shall otherwise be treated as if the Order was terminated in the public interest as described in §3.D. of this Exhibit A.

The Purchasing Entity may effect such termination by giving Contractor a written notice of termination, to the Contractor's primary contact in accordance with §5 of the Participating Addendum, and by paying to Contractor any amounts which are due and have not been paid through the last day of the Fiscal Year for which appropriated funds are available. The Purchasing Entity shall endeavor to give notice of such termination not less than 30 days prior to the day of non-availability of funds, and shall notify Contractor in writing of any anticipated termination.

iv. Discount and Delinquency Period

Any applicable cash discount period or delinquency period for the amounts shown on an invoice shall begin on the date the Purchasing Entity's approves of the invoice, or from the date of receipt of acceptable Goods or Services at the specified destination by an authorized Purchasing Entity representative, whichever is later.

7. PAYMENTS TO STATE

A. Administrative Fees

- i.** Each State Fiscal Year quarter, Contractor shall, using a form as directed by the State, calculate an Administrative Fee equal to 1% of the total sales made under Orders during that State Fiscal Year quarter. Contractor shall pay the State the Administrative Fee for each State Fiscal Year quarter within 45 days following the end of that State Fiscal Year quarter.
- ii.** Contractor shall remit all administrative fees to the State's primary contact identified in §5 of the Participating Addendum and with the payee as "State of Colorado."

8. REPORTING – NOTIFICATION

A. Volume Reporting

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State's primary contact identified in §5 of this Participating Addendum within 30 calendar days following the end of the State Fiscal Year quarter that the report covers. The quarterly volume report shall be submitted in a form directed by the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

- i.** A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:
 - a.** The total spent by each type of Purchasing Entity under this Participating Addendum.
 - b.** The total of the list price of all items purchased by each type of Purchasing Entity under this Participating Addendum.
 - c.** The total estimated price savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list price of all items purchased by each type of Purchasing Entity minus the total spent for that type of Purchasing Entity.
 - d.** The total paid with a procurement card or credit card for each Purchasing Entity under this Participating Addendum.
 - e.** The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.
 - f.** The amount of the total administrative fee due to the State.
 - g.** Any additional summary information as requested by the State.
- ii.** A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:
 - a.** The name of the Purchasing Entity to whom the sale was made;

- b. The date of the sale;
- c. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, and the unit price for the item; and
- d. Any other detail information as requested by the State.

B. Additional Operational Reporting

Upon mutual agreement by the State and Contractor, the Contractor shall provide operational reporting that includes detailed and summary transaction, historical or payment information related to the State or any of the Purchasing Entities. The Contractor shall provide all such additional reports either within 10 Business Days following the State's request for that information or as mutually agreed to by both parties.

C. Environmentally Preferable Product Reporting

Upon mutual agreement by the State and Contractor, the Contractor shall provide detailed reporting on environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, which are purchased or made available under this Participating Addendum. The State and the Contractor shall agree upon the scope, timing, and detail of such reports. The Contractor shall provide all such additional reports per mutual agreement, within either 10 Business Days or a longer period, following the State's request for that information.

D. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, Contractor shall, within 10 business days after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact identified in §5 of the Participating Addendum.

E. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact in accordance with §5 of the Participating Addendum and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum. This section shall not apply if the Participating Addendum Funds include any federal funds.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records") performed by the Contractor and any Subcontractors, that are required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date 3 years after the date this

Participating Addendum expires or is terminated, **(ii)** final payment under this Participating Addendum is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the “Record Retention Period”).

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days’ notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor’s performance of its obligations under this Participating Addendum using procedures as determined by the State. The State shall monitor Contractor’s performance in a manner that does not unduly interfere with Contractor’s performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor’s records that relates to or affects this Participating Addendum or the Work, whether Contractor or a third party conducts the audit.

E. Periodic Business Reviews

- i.** The State may schedule periodic business reviews to review Contractor’s performance under this Participating Addendum.
- ii.** Contractor shall ensure personnel assigned to the Participating Addendum are available for these meetings with the State as scheduled by the State.
- iii.** Contractor’s primary contact designated in §5 of this the Participating Addendum shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Participating Addendum, permitted by law or approved in Writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security

Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJ, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract , if applicable. Contractor shall immediately forward any request or demand for State Records to the State's primary contact as identified in §5 of the Participating Addendum.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Participating Addendum. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Participating Addendum, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Participating Addendum, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that neither Contractor nor any of Contractor's agents, employees, assigns nor Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the

State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Participating Addendum. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Participating Addendum.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Participating Addendum, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Participating Addendum.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction concerning the actual or apparent conflict constitutes a breach of this Participating Addendum.

D. Contractor acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Contract. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Contractor employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Contractor shall provide a disclosure statement as described in §11.C. no later than ten days following entry into a contractual or employment relationship as described

in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Contract. Contractor may also be subject to such penalties as are allowed by law.

12. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Participating Addendum and until all orders for goods or Services or both have been delivered and accepted, regardless of whether this Participating Addendum has expired or has been terminated. Insurance companies as approved by the State shall issue all insurance policies required by this Participating Addendum.

A. Workers' Compensation

Workers' Compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment. Insurance must stay in place and in effect even if the contract terms expires, until all product or terms of the contract are completed and satisfied up to 120 days after contract term expires.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i.** \$1,000,000 each occurrence;
- ii.** \$2,000,000 general aggregate;
- iii.** \$1,000,000 products and completed operations aggregate; and
- iv.** \$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i.** \$1,000,000 each occurrence; and
- ii.** \$2,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i.** \$1,000,000 each occurrence; and
- ii.** \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

H. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

I. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without endeavoring to provide at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §5 of the Participating Addendum within 10 days of Contractor's receipt of such notice.

J. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Participating Addendum shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Participating Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Participating Addendum, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Participating Addendum within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under

this Participating Addendum within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§12**.

13. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§14** for that Party. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion in order to protect the public interest of the State, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in this Participating Addendum; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect. With exception of Contractor's debarment or suspension under §24-109-105, C.R.S., termination under this provision shall not apply to equipment accepted by the Purchasing Entity prior to the effective date of the termination.

14. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Participating Addendum and fails to cure such breach, the State, following the notice and cure period set forth in **§13**, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Participating Addendum or any part of this Participating Addendum. Contractor shall continue performance of this Participating Addendum to the extent not terminated, if any.

If after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest under **§3.D**.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and neither the State nor any Purchasing Entity shall be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest or the State's best interest.

c. Intellectual Property

If any Work infringes, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, **(i)** secure that right to use such Work for the State, Purchasing Entity and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the Purchasing Entity.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period in **§13** and the dispute resolution process in **§15** shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

C. Purchasing Entity's Remedies

- i.** If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in that Order, all remedies listed in **§14.A.ii** above, all remedies listed here in **§14.C** and all other remedies available by law or equity provided the Purchasing Entity has given Contractor notice of the breach in writing and Contractor has not cured such breach within 30 days of receipt of such notice. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.
- ii.** If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.
- iii. Payments and Damages**
 - a.** Unless otherwise stated in this Participating Addendum, Purchasing Entities shall only pay Contractor for accepted Work received as of the date of termination. A Purchasing Entity may withhold any amount that may be due Contractor as the Purchasing Entity deems necessary until Contractor corrects its Work or to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the Purchasing Entity in procuring from third parties replacement Work as cover. Prior to withholding any payments, Purchasing Entity will provide Contractor written notice describing the issue and a minimum of 30 days to address the issue before the Purchasing Entity exercises its rights under this provision. Pending resolution, the Purchasing Entity is expected to pay all undisputed amounts, including the monthly minimum charge, which is not subject to dispute at any time.

- b. Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any damages sustained by the State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the purpose of mitigating the Purchasing Entity's damages provided the State gives Contractor the notice stated under §14.C.i.

A Purchasing Entity may deny payment to Contractor for Work not performed, or that due to Contractor's actions or inactions, cannot be performed, provided, that any denial of payment shall be equal to the value of the obligations not performed.

15. DISPUTE RESOLUTION

A. Order Disputes, Termination and Resolution

- i. If a dispute related to an Order arises between Contractor and a Purchasing Entity for any reason other than the monthly minimum charge agreed upon by both parties, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with §5 of the Participating Addendum. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Purchasing Entity under this Contract of any Order.
- ii. A Purchasing Entity may terminate the affected Equipment or Services under an Order if it determines that Contractor was in breach of that Order provided Contractor has received written notice from the State and 30 days opportunity to cure such breach. Termination of an Order shall not terminate any other Order or this Participating Addendum.
- iii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's uncured breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

B. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum which cannot be resolved by the designated Participating Addendum primary contacts, as identified in §5 of the Participating Addendum, or through a dispute on an Order shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

C. Resolution of Controversies arising under this Participating Addendum

If the initial resolution described in §15.B. fails to resolve the dispute within ten (10) Business Days, Contractor shall submit any alleged breach of this Participating Addendum by the State to the Procurement Official of the State Purchasing and Contracts Office as described in in §24-102-202 (3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such

statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the Purchasing Entity and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product under an Order. Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance to enable the Purchasing Entity to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the Purchasing Entity, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the Purchasing Entity a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product created under that Purchasing Entity’s Order and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The Purchasing Entity may assign and license its rights under this license.

ii. Patents

In addition, Contractor grants to the Purchasing Entity (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product created under an Order. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone.

iii. Assignments and Assistance

Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses, and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Participating Addendum, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Participating Addendum without the prior written consent of the State. Upon termination of this Participating Addendum for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: (i) entered into as exhibits to this Contract; (ii) obtained by the State from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

17. OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to Purchasing Entities all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum's terms. At the request of the State, Contractor shall assign to the appropriate Purchasing Entity all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts, if applicable. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the appropriate Purchasing Entity has an interest. At the State or Purchasing Entity's request, Contractor shall return materials owned by the Purchasing Entity that Contractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the appropriate Purchasing Entity at the State or Purchasing Entity's request.

18. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

19. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Participating Addendum are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Participating Addendum.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Participating Addendum without the prior, written approval of the State. Contractor shall submit to the State a copy of each subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Participating Addendum shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Participating Addendum.

C. Binding Effect

Except as otherwise provided in **§19.A.**, all provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Participating Addendum and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Participating Addendum are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Participating Addendum to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Participating Addendum may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute the same agreement.

G. Entire Understanding

This Participating Addendum represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Participating Addendum. Prior or contemporaneous additions, deletions, or other changes to this Participating Addendum shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

J. Modification

Except as otherwise provided in this Participating Addendum, any modification to this Participating Addendum shall only be effective if agreed to in a formal amendment to this Participating Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Participating Addendum, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

K. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Participating Addendum to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Participating Addendum.

L. Severability

The invalidity or unenforceability of any provision of this Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect, if the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of this Participating Addendum.

M. Survival of Certain Contract Terms

Any provision of this Participating Addendum that imposes an obligation on the Contractor or a Purchasing Entity after termination or expiration of this Participating Addendum shall survive the termination or expiration of this Participating Addendum and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Contractor shall honor any tax exemption that

any Purchasing Entity has, and shall not charge any Purchasing Entity any excise, sales, or use taxes from which that Purchasing Entity is exempt.

O. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in §19.A, this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Participating Addendum, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Participating Addendum and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Contractor shall perform its obligations under this Participating Addendum in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Participating Addendum, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Participating Addendum, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Participating Addendum.

T. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Participating Addendum. Contractor will not be liable for any negligent or willful act on behalf of the State, its employees, agents, or assignees or the negligent or willful acts of any party other than Contractor's employees, agents, Subcontractors, or assignees.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §10 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including reasonable attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §10.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Contractor under this Contract (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor's obligations hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is (a) provided by Contractor or Contractor's subsidiaries or affiliates; (b) specified by Contractor to work with the IP Deliverables; (c) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (d) is reasonably expected to be used in combination with the IP Deliverables.

20. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until the Colorado State Controller or designee has approved it. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed an agent

or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes, income taxes, and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference, which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor

has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United

States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT B, INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit.

1. PROTECTION OF SYSTEM DATA

- A.** In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
- B.** The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. Information Technology is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
 - i.** Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.;
 - ii.** The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
 - iii.** Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
- C.** Contractor shall meet all of the following:
 - i.** Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
 - ii.** Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
 - iii.** Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - iv.** Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - v.** Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State’s Office of Information Security (“OIS”).
 - vi.** Comply with all rules, policies, procedures, and standards issued by the Governor’s Office of Information Technology (“OIT”), including change management, project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at www.oit.state.co.us/about/policies.
- D.** Subject to Contractor’s reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access to Contractor’s devices on

State's sites for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.

- E.** Contractor shall perform current background checks in a form reasonably acceptable to the State on all of its respective employees and agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to State Records shall be deemed to be current.
- i.** Upon request, Contractor shall provide notice to a designated representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
 - ii.** If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

2. DATA HANDLING

- A.** Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- B.** Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- C.** Upon expiration of a lease or rental Order, Contractor will provide the State with a disk removal service whereby a Contractor's service technician will remove the device's hard disk drive from the Xerox-branded copier for an additional flat fee charge and leave the disk with the State before the device is removed from the State's premises. If Contractor's Services include data processing, upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete download file of all State data.
- i.** This download file shall be made available to the State within 10 Business Days of the State's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format.
 - ii.** Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State

Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State's ability to access and retrieve State Records stored by Contractor.

- D.** If Contractor's Services include data processing, the State retains the right to use the established operational services to access and retrieve relevant State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its relevant data processing information for an audit of the measures referred to in this Exhibit in accordance with the terms of this Participating Addendum.
- E.** If Contractor processes, handles, or transmits information provided to a state agency by the Social Security Administration (SSA) or has authority to perform on the state agency's behalf, the state agency should clearly state the specific roles and functions of the Contractor within the agreement. Any Order placed with the Contractor must contain non-disclosure language as it pertains to SSA-provided information.

3. DELIVERY AND ACCEPTANCE

- A.** Contractor shall provide and maintain a quality assurance system acceptable to the State for any Work or Deliverables under this Contract and shall provide to the State only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any applicable solicitation, bid, offer, or proposal from which this Contract results.
- B.** Contractor's delivery of any Work or Deliverables to the State shall constitute certification that such Work or Deliverable has been determined to conform to the applicable specifications, and Contractor shall make records of such quality assurance available to the State upon request during the term of the Contract or at any time within three years following expiration or termination of the Contract.
- C.** Unless any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State pursuant to the State's Participating Addendum. Such communication shall be provided within a reasonable time period from the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor's gross negligence or willful misconduct.

4. WARRANTY

- A.** Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources.

Contractor's warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable. In the event that the Software contains disabling code, Contractor will notify the Purchasing Entity by screen message on the Device, at least 60 days prior to the activation of such disabling code. In the event that, in response to this notification, Purchasing Entity notifies Contractor in writing that it disputes Contractor's right hereunder to disable the Equipment with respect to any Software, Contractor will, if provided timely access to the Software, deactivate the disabling code until such dispute has been resolved to Purchasing Entity's reasonable satisfaction.

- B.** Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the State to ascertain the feasibility, risks, and impacts of each recommendation. The State's remedy for such defect or material non-conformity shall be:
- i.** Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the State. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work or Deliverable.
- C.** Any Work or Deliverable delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.

5. COMPLIANCE

- A.** In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:
- i.** All Colorado Office of Information Security (OIS) policies and procedures which OIS has issued pursuant to §§24-37.5-401 through 406, C.R.S. and 8 CCR §1501-5 and posted at <http://oit.state.co.us/ois>
 - ii.** All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any specifically incorporated industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance under the Contract. Such obligations may arise from:
 - a.** Health Information Portability and Accountability Act (HIPAA)
 - b.** IRS Publication 1075
 - c.** Payment Card Industry Data Security Standard (PCI-DSS)
 - d.** FBI Criminal Justice Information Service Security Addendum
 - e.** CMS Minimum Acceptable Risk Standards for Exchanges
 - f.** Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration
 - iii.** Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, et seq., C.R.S. Contractor shall comply with all State of Colorado technology standards related to technology accessibility and with

Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.

- B.** Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.
- C.** Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. If applicable, such access and information may include:
 - i.** An annual summary of SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by OIS; or
 - ii.** The performance of a security audit and penetration tests, as requested by OIS and agreed upon both parties.
- D.** To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application level risk assessments, and other security assessment activities as required by this Contract or reasonably requested by OIS. Contractor will make reasonable efforts to remediate any vulnerabilities or will request a security exception from the State. The State will work with Contractor and OIS to prepare any requests for exceptions from the security requirements described in this Contract and its Exhibits, including mitigating controls and other factors, and OIS will consider such requests in accordance with their policies and procedures referenced herein.

6. TRANSITION OF SERVICES

Upon request by the State prior to expiration or earlier termination of this Contract or any Services provided in this Contract, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services. Contractor shall cooperate fully with the State or any successor provider and shall promptly take all steps required to assist in effecting a complete transition of the Services designated by the State. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Contract.

7. LICENSE OR USE AUDIT RIGHTS

- A.** To the extent that Contractor, through this Contract or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.
- B.** Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which

shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor (“Audit Certification”) within 120 days following the State’s receipt of the Audit Request.

- C.** If upon receipt of the State’s Audit Certification, the Parties reasonably determine that: **(i)** the State’s use of licenses, use of software, use of programs, or any other use during the audit period exceeded the use restrictions and limitations contained in this Contract (“Overuse”) and **(ii)** the State would have been or is then required to purchase additional maintenance and/or services (“Maintenance”), Contractor shall provide written notice to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request that the State bring its use into compliance with such use restrictions and limitations.

ATTACHMENT B.1 TO EXHIBIT B – IRS PUBLICATION 1075**I. PERFORMANCE**

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- 1) All work will be done under the supervision of the contractor or the contractor's employees.
- 2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- 3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- 4) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- 5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- 6) All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- 7) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- 8) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- 9) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS:

- 1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against

the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- 2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.
- 3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

III. INSPECTION:

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

ATTACHMENT B.2 – HIPAA BUSINESS ASSOCIATE ADDENDUM

This **Exhibit B.2 – HIPAA Business Associate Addendum** (“Addendum”) is part of that certain contract, CMS # 160627 (“Contract”), by and between Xerox Corporation (“Contractor”) and the State of Colorado (“State”). In the event of a conflict or inconsistency between the Contract and its Exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified in §8 of the main body of the Contract. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Contract and its Exhibits. For purposes of this Addendum, the State is referred to as “Covered Entity” or “CE” and Contractor is referred to as “Associate.” Unless the context clearly requires a distinction between the Contract document and this Addendum, all references herein to “the Contract” or “this Contract” include this Addendum.

RECITALS

- A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 USC §1320d-1320d-8 (“HIPAA”) as amended by the American Recovery and Reinvestment Act of 2009 (“ARRA”)/HITECH Act (PL 111-005), and its implementing regulations promulgated by the US Department of Health and Human Services, 45 CFR Parts 160, 162, and 164 (the “HIPAA Rules”) and other applicable laws, as amended.
- C. As part of the HIPAA Rules, the CE is required to enter into a written contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, §§160.103, 164.502(e), and 164.504(e) of the Code of Federal Regulations (“CFR”) and contained in this Addendum.

The parties agree as follows:

1. Definitions.

- a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Rules at 45 CFR Parts 160, 162, and 164, as amended. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the provisions of this Contract, the HIPAA Rules shall control. Where the provisions of this Contract differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Contract shall control.
- b. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- c. “Protected Information” shall mean PHI provided by CE to Associate or created, received, maintained, or transmitted by Associate on CE’s behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment,

and health care operations, Protected Information under this Contract does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access, and amendment of Associate's PHI.

- d. "Subcontractor" shall mean a third party to whom Associate delegates a function, activity, or service that involves CE's Protected Information, in order to carry out the responsibilities of this Addendum.

2. Obligations of Associate.

- a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under this Contract and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the HIPAA Rules if so used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment B.2 to this Addendum. Associate accepts full responsibility for any penalties incurred as a result of Associate's breach of the HIPAA Rules.
- b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the HIPAA Rules if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this Contract; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 CFR §164.502(j)(1). To the extent that Associate discloses Protected Information to a third-party Subcontractor, Associate must obtain, prior to making any such disclosure, reasonable assurances through execution of a written agreement with such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and that such third party will notify Associate within two (2) business days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment B.2.
- c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Contract. Associate shall comply with the requirements of the HIPAA Security Rule at 45 CFR §§164.308, 164.310, 164.312, and 164.316. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Associate shall review, modify, and update the documentation of, its safeguards as needed to ensure continued provision of reasonable and appropriate protection of Protected Information.
- d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this Contract within five (5) business days of becoming aware of such use or disclosure.

- e. Associate's Rights. If Associate uses one or more Subcontractors or agents to provide services under the Contract, and such Subcontractors or agents receive or have access to Protected Information, each Subcontractor or agent shall sign an agreement with Associate containing the same provisions as this Addendum and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from such Subcontractors or agents in the event of any violation of such Subcontractor or agent agreement. The agreement between Associate and the Subcontractor or agent shall ensure that the Subcontractor or agent agrees to at least the same restrictions and conditions that apply to Associate with respect to such Protected Information. Associate shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.
- f. Access to Protected Information. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate shall make Protected Information maintained by Associate or its agents or Subcontractors in such Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the HIPAA Rules, including, but not limited to, 45 CFR §164.524. If such Protected Information is maintained by Associate in an electronic form or format, Associate must make such Protected Information available to CE in a mutually agreed upon electronic form or format.
- g. Amendment of PHI. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate or its agents or Subcontractors shall make such Protected Information available to CE for amendment within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, and shall incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the HIPAA Rules, including, but not limited to, 45 CFR §164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or Subcontractors, Associate must notify CE in writing within five (5) business days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or Subcontractors shall be the responsibility of CE.
- h. Accounting Rights. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate and its agents or Subcontractors shall make available to CE within ten (10) business days of notice by CE, the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the HIPAA Rules, including, but not limited to, 45 CFR §164.528. In the event that the request for an accounting is delivered directly to Associate or its agents or Subcontractors, Associate shall within five (5) business days of the receipt of the request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.
- i. Governmental Access to Records. Associate shall keep records and make its internal practices, books, and records relating to the use and disclosure of Protected Information available to the Secretary of the US Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's or Associate's compliance with the HIPAA Rules. Associate shall

- provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary when the Secretary is investigating CE. Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of Associate's policies, procedures, or practices to determine whether Associate is complying with the HIPAA Rules, and permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including Protected Information, that are pertinent to ascertaining compliance.
- j. Minimum Necessary.** Associate (and its agents or subcontractors) shall only request, use, and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure, in accordance with the Minimum Necessary requirements of the HIPAA Rules including, but not limited to 45 CFR §§164.502(b) and 164.514(d).
- k. Data Ownership.** Associate acknowledges that Associate has no ownership rights with respect to Protected Information.
- l. Retention of Protected Information.** Except upon termination of the Contract as provided in Section 4(d) of this Addendum, Associate and its Subcontractors or agents shall retain all Protected Information throughout the term of this Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years.
- m. Associate's Insurance.** Associate shall maintain insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the Contract (e.g. occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
- n. Notice of Privacy Practices.** Associate shall be responsible for reviewing CE's Notice of Privacy Practices, available on CE's external website, to determine any requirements applicable to Associate per this Contract.
- o. Notification of Breach.** During the term of this Contract, Associate shall notify CE within two (2) business days of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall not initiate notification to affected individuals per the HIPAA Rules without prior notification and approval of CE. Information provided to CE shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed during the breach. Associate shall take **(i)** prompt corrective action to cure any such deficiencies and **(ii)** any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- p. Audits, Inspection, and Enforcement.** Within ten (10) business days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies, and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: **(i)** Associate and CE shall mutually agree in advance upon the scope, timing, and location of such an inspection; and **(ii)** CE shall protect the

- confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract.
- q. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of Protected Information transmitted pursuant to the Contract, in accordance with the standards and requirements of the HIPPA Rules.
- r. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 CFR §164.522, Associate will restrict the use or disclosure of an individual's Protected Information. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.
3. Obligations of CE.
- a. Safeguards During Transmission. CE shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of Protected Information transmitted pursuant to the Contract, in accordance with the standards and requirements of the HIPAA Rules.
- b. Notice of Changes. CE maintains a copy of its Notice of Privacy Practices on its website. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent that it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of PHI, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR §164.522.
4. Termination.
- a. Material Breach. In addition to any other provisions of the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of this Contract and shall provide grounds for immediate termination of this Contract by CE pursuant to the provisions of the Contract covering termination for cause, if any. If the Contract contains no express provisions regarding termination for cause, the following terms and conditions shall apply to this Addendum:
- 1) Default. If Associate refuses or fails to timely perform any of the provisions of this Contract, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this Contract. Associate shall continue performance of this Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

- 2) Associate's Duties. Notwithstanding termination of this Contract, and subject to any directions from CE, Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.
 - 3) Compensation. Payment for completed supplies delivered and accepted by CE shall be at the Contract Price. In the event of a material breach under paragraph 4a, CE may withhold amounts due Associate as CE deems necessary to protect CE against loss from third-party claims of improper use or disclosure and to reimburse CE for the excess costs incurred in procuring similar goods and services elsewhere.
 - 4) Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this Contract had been terminated for convenience, as described in this Contract.
- b. Reasonable Steps to Cure Breach.** If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Contract pursuant to Section 4(a), then CE shall take reasonable steps to cure such breach or end such violation. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either **(i)** terminate the Contract, if feasible or **(ii)** if termination of this Contract is not feasible, CE shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services. If Associate knows of a pattern of activity or practice of a Subcontractor or agent, that constitutes a material breach or violation of the Subcontractor's or agent's obligations under the written agreement between Associate and the Subcontractor or agent, Associate shall take reasonable steps to cure such breach or end such violation, if feasible.
- c. Judicial or Administrative Proceedings.** Either party may terminate the Contract, effective immediately, if **(i)** the other party is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules or other security or privacy laws or **(ii)** a finding or stipulation that the other party has violated any standard or requirement of the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- d. Effect of Termination.**
- 1) Except as provided in paragraph (2) of this subsection, upon termination of this Contract, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or Subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If associate elects to destroy the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.
 - 2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d), and 2(e) of this Addendum to such Protected Information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. Injunctive Relief. CE shall have the right to seek injunctive and other equitable and legal relief against Associate or any of its Subcontractors or agents in the event of any use or disclosure of Protected Information in violation of this Contract or applicable law.
6. No Waiver of Immunity. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq. or the Federal Tort Claims Act, 28 USC §2671 et seq. as applicable, as now in effect or hereafter amended.
7. Limitation of Liability. Any limitation of Associate's liability in the Contract shall be inapplicable to the terms and conditions of this Addendum.
8. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Contract or the HIPAA Rules will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.
9. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to the HIPAA Rules relating to certification of its security practices, CE or its authorized agents or contractors may, at CE's expense, examine Associate's facilities, systems, procedures, and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with the HIPAA Rules or this Addendum.
10. Amendment.
 - a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Rules and other applicable laws relating to the confidentiality, integrity, availability, and security of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information and that it is Associate's responsibility to receive satisfactory written assurances from Associate's Subcontractors and agents. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Rules or other applicable laws. CE may terminate this Contract upon thirty (30) days' written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section, or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules.
 - b. Amendment of Attachment B.2. Attachment B.2 may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

- 11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any Subcontractors, employees, or agents assisting Associate in the performance of its obligations under the Contract, available to CE, at no cost to CE up to a maximum of thirty (30) hours, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of the HIPAA Rules or other laws relating to security and privacy or PHI, except where Associate or its Subcontractor, employee, or agent is a named adverse party.
- 12. No Third-Party Beneficiaries. Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 13. Interpretation and Order of Precedence. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. Together, the Contract and this Addendum shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules. The parties agree that any ambiguity in this Contract shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. This Contract supersedes and replaces any previous separately executed HIPAA addendum between the parties.
- 14. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate’s obligations under Section 4(d) (“Effect of Termination”) and Section 12 (“No Third-Party Beneficiaries”) shall survive termination of this Contract and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate. This Addendum shall remain in effect during the term of the Contract including any extensions.
- 15. Representatives and Notice.
 - a. Representatives. For the purpose of the Contract, the individuals identified elsewhere in this Contract shall be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties’ respective representatives for purposes of this Contract. Either party may from time to time designate in writing new or substitute representatives.
 - b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

State/Covered Entity Representative

Contractor/Business Associate Representative

Name: John Chapman

Name: John Howe

Title: John Chapman State Purchasing Manager

Title: John Howe VP Finance

Department and Division: _____

Department and Division: _____

Address: _____

Address: _____

ATTACHMENT B.3 – HIPAA BAA ATTACHMENT

This **Attachment B.3 – HIPAA BAA Attachment** is part of that certain contract, CMS # 160627 (“Contract”), by and between Xerox Corporation (“Contractor”) and the State of Colorado acting by and through the Governor’s Office of Information Technology (“State” or “OIT”). In the event of a conflict or inconsistency between the Contract and its Exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified in §8 of the main body of the Contract. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Contract and its Exhibits.

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum, which is part of the Contract, and is effective as of the Effective Date of the Contract (the “Attachment Effective Date”). This Attachment may be amended from time to time.

1. Additional Permitted Uses. In addition to those purposes set forth in the Addendum, Associate may use Protected Information as follows: N/A
2. Additional Permitted Disclosures. In addition to those purposes set forth in the Addendum, Associate may disclose Protected Information as follows: N/A
3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this Contract: Refer to Exhibit C of the Master Agreement
4. Receipt. Associate’s receipt of Protected Information pursuant to this Contract shall be deemed to occur as follows, and Associate’s obligations under the Addendum shall commence with respect to such PHI upon such receipt: Ongoing throughout life of contract
5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information: N/A
6. Additional Terms. [This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.] N/A

ATTACHMENT B.4 – FEDERAL BUREAU OF INVESTIGATION CRIMINAL JUSTICE INFORMATION SERVICES SECURITY ADDENDUM

Legal Authority for and Purpose and Genesis of the Security Addendum

To the extent applicable, Xerox has processes and procedures in place in order to comply with this Attachment B.4 on a contract specific basis with specification provided by the Purchasing Entity.

Traditionally, law enforcement and other criminal justice agencies have been responsible for the confidentiality of their information. Accordingly, until mid-1999, the Code of Federal Regulations Title 28, Part 20, subpart C, and the National Crime Information Center (NCIC) policy paper approved December 6, 1982, required that the management and exchange of criminal justice information be performed by a criminal justice agency or, in certain circumstances, by a noncriminal justice agency under the management control of a criminal justice agency.

In light of the increasing desire of governmental agencies to contract with private entities to perform administration of criminal justice functions, the FBI sought and obtained approval from the United States Department of Justice (DOJ) to permit such privatization of traditional law enforcement functions under certain controlled circumstances. In the Federal Register of May 10, 1999, the FBI published a Notice of Proposed Rulemaking, announcing as follows:

1. Access to CHRI [Criminal History Record Information] and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization). Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest such disclosure be viewed as unauthorized. In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific

agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management Control Agreements between criminal justice agencies and noncriminal justice governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to properly perform services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

Consistent with such intent, Title 28 of the Code of Federal Regulations (C.F.R.) was amended to read:

§20.33 Dissemination of criminal history record information.

- a) Criminal history record information contained in the Interstate Identification Index (III) System and the Fingerprint Identification Records System (FIRS) may be made available:
- 1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies.
 - 2) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and
 - 3) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and

confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

This Security Addendum, appended to and incorporated by reference in a government-private sector contract entered into for such purpose, is intended to insure that the benefits of privatization are not attained with any accompanying degradation in the security of the national system of criminal records accessed by the contracting private party. This Security Addendum addresses both concerns for personal integrity and electronic security that have been addressed in previously executed user agreements and management control agreements.

A government agency may privatize functions traditionally performed by criminal justice agencies (or noncriminal justice agencies acting under a management control agreement), subject to the terms of this Security Addendum. If privatized, access by a private contractor's personnel to NCIC data and other CJIS information is restricted to only that necessary to perform the privatized tasks consistent with the government agency's function and the focus of the contract. If privatized the contractor may not access, modify, use or disseminate such data in any manner not expressly authorized by the government agency in consultation with the FBI.

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CHS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information."

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

1. Definitions

- 1.1.** Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.
- 1.2.** Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

2. Responsibilities of the Contracting Government Agency

- 2.1.** The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CHS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).

3. Responsibilities of the Contractor

- 3.1.** The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

4. Security Violations

- 4.1.** The CGA must report security violations to the CHS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.
- 4.2.** Security violations can justify termination of the appended agreement.

- 4.3.** Upon notification, the FBI reserves the right to:
- a.** Investigate or decline to investigate any report of unauthorized use;
 - b.** Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CJA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5. Audit

- 5.1.** The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6. Scope and Authority

- 6.1.** This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.
- 6.2.** The following documents are incorporated by reference and made part of this agreement: **(1)** the Security Addendum; **(2)** the NCIC 2000 Operating Manual; **(3)** the CJIS Security Policy; and **(4)** Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.
- 6.3.** The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CHS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.
- 6.4.** This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.
- 6.5.** All notices and correspondence shall be forwarded by First Class mail to:

Assistant Director
Criminal Justice Information Services Division, FBI
1000 Customer Hollow Road
Clarksburg, West Virginia 26306

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

Printed Name/Signature of Contractor Employee

Date

Printed Name/Signature of Contractor Representative

Date

Organization and Title of Contractor Representative

Date

EXHIBIT C, STATEMENT OF WORK

1. GOODS AND/OR SERVICES

Contractor shall provide Goods and Services per §4, Statement of Work, of the Master Agreement, contract # 140606, or as otherwise indicated in §3, State Modifications to Master Agreement and Applicability, of the Participating Addendum.

2. OTHER PROJECT REQUIREMENTS

A. Delivery of Goods and Performance of Services

- i.** Contractor shall provide all Goods and perform all Services described in each Order.
- ii.** Unless specifically agreed to otherwise in an Order, Contractor shall deliver all Goods under an Order in good, working and undamaged condition. All Goods shall be free on board (“F.O.B.”) destination to the location specified in the Order.
- iii.** If a good in an Order is out of stock, Contractor may only provide a substitute good if it has notified the Purchasing Entity for that Order, in writing, that the good is out of stock and has received the Purchasing Entity’s approval to provide the substitute good. Purchasing Entities may request additional information comparing the substitute good with the original good in the Purchasing Entity’s sole discretion.

B. Additional Terms

Any additional terms and conditions on any invoice, statement, Contractor time sheet, website, electronic license or use agreement or any other form, including, without limitation, terms regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Participating Addendum or an Order. The signature of any employee of a Purchasing Entity on any such form shall be effective to establish receipt of Goods or completion of Services and shall not make any term of that form enforceable.

EXHIBIT D, PRICE LISTS

1. Contractor has been awarded the following categories:

- Group A – MFD, A3
- Group B – MFD, A4
- Group C – Production Equipment
- Group D – Single-function Printers
- Group E – Large/Wide Format Equipment
- Managed Print Services (MPS)

2. The price lists are located on the State's dedicated contract website, and are incorporated into this Participating Addendum by reference. Changes in product and pricing must be approved by the Lead State and shall be effective when published on the dedicated state website.

3. Pricing

The price lists contain Ceiling Prices. Contractor may offer lower prices to Purchasing Entities, and Purchasing Entities may negotiate lower prices with Contractor, without the review or approval of the State. Contractor shall not allow an Authorized Dealer to charge an amount greater than the Ceiling Price for any Order.

ATTACHMENT 1, XEROX GENERAL TERMS

GENERAL TERMS & CONDITIONS:

- 1. REPRESENTATIONS.** The individuals entering into this Agreement are duly authorized to do so and all financial information you provide completely and accurately represents your financial condition.
- 2. CONSUMABLE SUPPLIES.** If "Consumable Supplies" is identified in Maintenance Plan features, Maintenance Services will include black toner and/or solid ink and color toner and/or solid ink, if applicable ("Consumable Supplies"). Highlight color toner, clear toner, and custom color toner are excluded. Depending on the Equipment model, Consumable Supplies may also include developer, fuser agent, imaging units, waste cartridges, transfer rolls, transfer belts, transfer units, belt cleaner, maintenance kits, print Cartridges, drum Cartridges, waste trays and cleaning kits. Consumable Supplies are Xerox's property until used by you, and you will use them only with the Equipment for which "Consumable Supplies" is identified in Maintenance Plan Features. If Consumables Supplies are furnished with recycling information, Customer will return the used item to Xerox for remanufacturing. Shipping information is available at Xerox.com/GWA. Upon expiration of this Agreement, Customer will include any unused Consumable Supplies with the Equipment for return to Xerox at the time of removal. If your use of Consumable Supplies exceeds Xerox's published yield by more than 10%, Xerox will notify you of such excess usage. If such excess usage does not cease within 30 days after such notice, Xerox may charge you for such excess usage. Upon request, you will provide current meter reads and/or an inventory of Consumable Supplies in your possession.
- 3. CARTRIDGES.** If Xerox is providing Maintenance Services for Equipment utilizing cartridges designated by Xerox as customer replaceable units, including copy/print cartridges and xerographic modules or fuser modules ("Cartridges"), you agree to use only unmodified Cartridges purchased directly from Xerox or its authorized resellers in the U.S. Cartridges packed with Equipment and replacement Cartridges may be new, remanufactured or reprocessed. Remanufactured and reprocessed Cartridges meet Xerox's new Cartridge performance standards and contain new or reprocessed components. To enhance print quality, Cartridge(s) for many models of Equipment have been designed to cease functioning at a predetermined point. In addition, many Equipment models are designed to function only with Cartridges that are newly manufactured original Xerox Cartridges or with Cartridges intended for use in the U.S.
- 4. "Guarantee Period"** means the period commencing 90 days after installation of the Equipment to 18 months after installation of the Equipment. For the Guarantee Period, if the Equipment is not performing substantially consistent with the performance expectations outlined in the Customer Expectations Document ("CED") or such other documentation provided with the Equipment if a CED does not accompany the Equipment (the "Documentation"), Xerox will, after attempting to repair the device per the Maintenance Services provision hereto and upon Purchasing Entity's request but in Xerox's sole discretion, replace such Equipment without charge with identical Equipment or with other Equipment with comparable features and capabilities (the "Equipment Guarantee"). This Equipment Guarantee applies only to Equipment that has been **(a)** continuously maintained by Xerox per a contract with Xerox, and **(b)** operated at all times in accordance with the CED or Documentation. The Equipment Guarantee does not apply to certain Equipment, which models shall be identified in your applicable order-related documents. Except as otherwise stated in an order-related document, this Equipment Guarantee replaces and supersedes any other guarantee from Xerox, whether made orally or in writing, styled a "Total Satisfaction Guarantee", "Satisfaction Guarantee" or otherwise covering the subject matter set forth above.
- 5. LIMITATION OF LIABILITY.** For claims arising out of or relating to this Agreement, whether the claim alleges tortious conduct (including negligence) or any other legal theory, but excepting liability under the indemnification obligations set forth in this Agreement, Xerox will not be liable to you for any direct damages in excess of \$10,000

or the amounts paid hereunder, whichever is greater, and Xerox will not be liable to you for any special, indirect, incidental, consequential or punitive damages. Any action you take against Xerox must be commenced within 2 years after the event that caused it. The limitations of liability shall apply only in excess of any insurance to be maintained under Section 12 of Exhibit A to the Participating Addendum, and no insurance policy shall be interpreted as being subject to any limitations of liability of this agreement.

6. **ASSIGNMENT.** Xerox reserves the right to assign this Agreement to a parent, subsidiary, or third party, upon written notification to the Lead State and Purchasing Entity, for the purpose of securitizing or monetization the transaction. Xerox will remain 100% responsible for all aspects of the contract after assignment.
7. **TAXES.** The Purchasing Entity will be responsible for all applicable taxes, fees or charges of any kind (including interest and penalties) assessed by any governmental entity on this Agreement or the amounts payable under this Agreement ("Taxes"), which will be included in Xerox's invoice unless you timely provide proof of your tax exempt status. Taxes do not include personal property taxes in jurisdictions where Xerox is required to pay personal property taxes, and taxes on Xerox's income. This Agreement is a lease for all income tax purposes and you will not claim any credit or deduction for depreciation of the Equipment, or take any other action inconsistent with your role as lessee of the Equipment.
9. **CREDIT REPORTS.** You authorize Xerox or its agent to obtain credit reports from commercial credit reporting agencies.
10. **WARRANTY DISCLAIMER.** XEROX DISCLAIMS THE IMPLIED WARRANTIES OF NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE AND, FOR THIRD PARTY PRODUCTS, THE IMPLIED WARRANTY OF MERCHANTABILITY.
11. **REMOTE SERVICES.** Certain models of Equipment are supported and serviced using data that is automatically collected by Xerox or transmitted to or from Xerox by the Equipment connected to Customer's network ("Remote Data") via electronic transmission to a secure off-site location ("Remote Data Access"). Remote Data Access also enables Xerox to transmit to Customer Releases for Software and to remotely diagnose and modify Equipment to repair and correct malfunctions. Examples of Remote Data include product registration, meter read, supply level, Equipment configuration and settings, software version, and problem/fault code data. Remote Data may be used by Xerox for billing, report generation, supplies replenishment, support services, recommending additional products and services, and product improvement/development purposes. Remote Data will be transmitted to and from Customer in a secure manner specified by Xerox. Remote Data Access will not allow Xerox to read, view or download the content of any Customer documents or other information residing on or passing through the Equipment or Customer's information management systems. Customer grants the right to Xerox, without charge, to conduct Remote Data Access for the purposes described above. Upon Xerox's request, Customer will provide contact information for Equipment such as name and address of Customer contact and IP and physical addresses/locations of Equipment. Customer will enable Remote Data Access via a method prescribed by Xerox, and Customer will provide reasonable assistance to allow Xerox to provide Remote Data Access. Unless Xerox deems Equipment incapable of Remote Data Access, Customer will ensure that Remote Data Access is maintained at all times Maintenance Services are being performed.

SOFTWARE

12. **SOFTWARE LICENSE.** Xerox grants you a non-exclusive, non-transferable license to use in the U.S.: (a) software and accompanying documentation provided with Xerox-brand Equipment and/or Third Party Hardware ("Base Software") only with the Xerox-brand Equipment and/or Third Party Hardware with which it was delivered; and (b) Software and/or Third Party Software that is set forth as a separate line item in this Agreement ("Application Software") (including its accompanying documentation) and may only be used on any single unit of Equipment or Third Party Hardware, as applicable, for as long as you are current in the payment of all applicable software

license fees. "Base Software" and "Application Software" are referred to collectively as "Licensed Software". The Purchasing Entity has no other rights and may not: **(1)** distribute, copy, modify, create derivatives of, decompile, or reverse engineer Licensed Software; **(2)** activate Licensed Software delivered with the Equipment or Third Party Hardware in an inactivated state; or **(3)** allow others to engage in the same. Title to, and all intellectual property rights in, Licensed Software will reside solely with Xerox and/or its licensors (who will be considered third-party beneficiaries of this Section). Licensed Software may contain code capable of automatically disabling the Equipment. Disabling code may be activated if: **(a)** Xerox is denied access to periodically reset such code; **(b)** you are notified of a default under this Agreement; or **(c)** your license is terminated or expires. The Base Software license will terminate: **(i)** if you no longer use or possess the Equipment and/or Third Party Hardware; **(ii)** you are a lessor of the Equipment and/or Third Party Hardware and your first lessee no longer uses or possesses it; or **(iii)** upon the expiration or termination of this Agreement, unless you have exercised your option to purchase the Equipment and/or Third Party Hardware, as applicable. Neither Xerox nor its licensors warrant that Licensed Software will be free from errors or that its operation will be uninterrupted. The foregoing terms do not apply to Diagnostic Software or to Licensed Software/documentation accompanied by a clickwrap or shrinkwrap license agreement or otherwise made subject to a separate license agreement.

- 13. SOFTWARE SUPPORT.** Except for Products and/or Third Party Products identified as "No Svc.", Xerox (or a designated servicer) will provide the software support set forth below ("Software Support"). As used in this Agreement, "Base Software" means software and accompanying documentation provided with Xerox-brand Equipment and/or Third Party Hardware. For Base Software for Equipment, Software Support will be provided during the initial Term and any renewal period, but in no event longer than 5 years after Xerox stops taking customer orders for the subject model of Equipment. For Base Software for Third Party Hardware, Software Support will be provided during the initial Term and any renewal period but in no event longer than the Third Party Hardware vendor provides similar support for it. For Software and/or Third Party Software that is set forth as a separate line item in this Agreement ("Application Software") (including its accompanying documentation), Software Support will be provided as long as you are current in the payment of all applicable software license and support fees. Xerox will maintain a web-based or toll-free hotline during Xerox's standard working hours to report Licensed Software problems and answer Licensed Software-related questions. Xerox, either directly or with its vendors, will make reasonable efforts to: **(a)** assure that Licensed Software performs in material conformity with its user documentation; **(b)** provide available workarounds or patches to resolve Software performance problems; and **(c)** resolve coding errors for **(i)** the current Release and **(ii)** the previous Release for a period of 6 months after the current Release is made available to you. Xerox will not be required to provide Licensed Software Support if you have modified the Software. New releases of Licensed Software that primarily incorporate compliance updates and coding error fixes are designated as "Maintenance Releases" or "Updates". Maintenance Releases or Updates that Xerox may make available will be provided at no charge and must be implemented within six months. New releases of Licensed Software that include new content or functionality ("Feature Releases") will be subject to additional license fees at Xerox's then Master Agreement pricing. Maintenance Releases, Updates and Feature Releases are collectively referred to as "Releases". Each Release will be considered Licensed Software governed by the Licensed Software License and Licensed Software Support provisions of this Agreement (unless otherwise noted). Implementation of a Release may require you to procure, at your expense, additional hardware and/or software from Xerox or another entity. Upon installation of a Release, you will return or destroy all prior Releases. For Third Party Software identified as "No Svc.", you may enter into a support agreement with a Third Party Software vendor or its support services provider, who shall be solely responsible for the quality, timeliness and other terms and conditions of such support services. Xerox shall have no liability for the acts or omissions of such third party support services provider.
- 14. DIAGNOSTIC SOFTWARE.** Software used to evaluate or maintain the Equipment ("Diagnostic Software") is included with the Equipment. Diagnostic Software is a valuable trade secret of Xerox. Title to Diagnostic Software

will remain with Xerox or its licensors. Xerox does not grant you any right to use Diagnostic Software, and you will not access, use, reproduce, distribute or disclose Diagnostic Software for any purpose (or allow third parties to do so). You will allow Xerox reasonable access to the Equipment to remove or disable Diagnostic Software if you are no longer receiving Maintenance Services from Xerox, provided that any on-site access to your facility will be during your normal business hours.

15. **DATA SECURITY.** Certain models of Equipment can be configured to include a variety of data security features. There may be an additional cost associated with certain data security features. The selection, suitability and use of data security features are solely Customer's responsibility. Upon request, Xerox will provide additional information to Customer regarding the security features available for particular Equipment models.

ATTACHMENT 2, XEROX SERVICES MASTER AGREEMENT TERMS AND CONDITIONS

SERVICES MASTER AGREEMENT



THIS SERVICES MASTER AGREEMENT NO. Fill-In is between Xerox Corporation (“**Xerox**”), a New York corporation with offices at 201 Merritt 7, Norwalk, CT 06851-1056, and << Enter Customer's Legal Name >>> (“**Customer**”), a State of Colorado entity with offices at << Enter Customer's Full Address >>.

Products and Services hereunder are acquired under the auspices of the NASPO ValuePoint Master Agreement 140606 between the State of Colorado (State) and Xerox Corporation; therefore, the terms and conditions of the NASPO ValuePoint Master Agreement Contract are incorporated by reference into this Agreement. Any conflict between the terms and conditions of the NASPO ValuePoint Master contract and this Agreement will be resolved in favor of the NASPO ValuePoint Master Agreement.

AGREEMENT STRUCTURE

This Agreement serves as a master agreement to enable Xerox and Customer to contract with each other for a range of products and services to be provided to Customer's and its Eligible Affiliates' United States (“U.S.”) locations. This Agreement is grouped into Modules. The “GEN” Module applies to all products and services provided hereunder, while the other Modules apply as appropriate to what Xerox is providing to Customer under the applicable Order.

DEFINITIONS MODULE

DEF 1. – DEFINITIONS

The following definitions (and those found elsewhere in this Agreement) apply unless otherwise specified in an Order.

- a. **Affiliate** means a legal entity that directly or indirectly controls, is controlled by, or is under common control with either party. An entity is considered to control another entity if it owns, directly or indirectly, more than 50% of the total voting securities or other such similar voting rights.
- b. **Agreement** means this Services Master Agreement. This Agreement may also be referred to in ordering and contracting documents as a “Services and Solutions Agreement” or “SSA.”
- c. **Amortized Services** means certain services such as consulting and training, the Charges for which are amortized over the term of an Order.
- d. **Application Software** means Xerox-brand software that allows Equipment or Third Party Hardware to perform functions beyond those enabled by its Base Software.
- e. **Base Software** means software embedded, installed, or resident in Equipment that is necessary for operation of the Equipment in accordance with published specifications.
- f. **CPI Adjustment Percentage** means the CPI-U (Consumer Price Index for All Urban Consumers).
- g. **Cartridges** means copy/print cartridges and xerographic modules or fuser modules designated by Xerox as customer- replaceable units for the Equipment.
- h. **Charges** mean the fees payable by Customer for Services, Maintenance Services and/or Products as specified in this Agreement.
- i. **Confidential Information** shall have the meaning set forth in Section **GEN1.12**.
- j. **Customer Assets** means all hardware, equipment, fixtures, software, assets, networks, work space, facilities, services and other assets owned, leased, rented, licensed or controlled by Customer (including Existing Equipment and Existing Software) that Customer makes available to Xerox to enable Xerox to fulfill its obligations under an Order.
- k. **Customer Facilities** means those facilities controlled by Customer where Xerox performs Services or provides Products.
- l. **Customer Information** means documents, materials, and information (including Private Information) belonging to Customer that Customer provides to Xerox for Xerox to provide Products and Services under an Order.
- m. **Date of Installation** means: (a) for Equipment (or Third Party Hardware) installed by Xerox, the date Xerox determines the Equipment (or Third Party Hardware) to be operating satisfactorily as demonstrated by

- successful completion of diagnostic routines and is available for Customer's use; and (b) for Equipment (or Third Party Hardware) designated as "Customer Installable," the Equipment (or Third Party Hardware) delivery date.
- n. **Description of Services or DOS** means a document attached to an Order which references the applicable Services Contract number and specifies the Products and/or Services provided under such Order.
 - o. **Diagnostic Software** means Xerox-proprietary software embedded in or loaded onto Equipment and used by Xerox to evaluate or maintain the Equipment.
 - p. **Documentation** means all manuals, brochures, specifications, information and software descriptions, and related materials customarily provided by Xerox to customers for use with certain Products or Services.
 - q. **Effective Date** means the date this Agreement is signed by Xerox.
 - r. **Eligible Affiliate** means a domestic Customer Affiliate that has met Xerox's credit requirements for ordering Services, Maintenance Services and/or Products under this Agreement.
 - s. **Equipment** means Xerox-brand equipment.
 - t. **Excluded Taxes** means (i) taxes on Xerox's income, capital, and employment, (ii) taxes for the privilege of doing business, and (iii) personal property tax on Equipment rented or leased to Customer under this Agreement.
 - u. **Existing Equipment** means devices which are leased, rented or owned by the Customer outside of this Agreement, which are used to provide Services, and which remain subject to the terms and conditions of the agreements under which they were originally acquired.
 - v. **Existing Software** means software licensed by the Customer outside of this Agreement and which is used to provide the Services and which remains subject to the terms and conditions of the agreements under which it was originally acquired.
 - w. **Feature Releases** means new releases of Software that include new content or functionality.
 - x. **Funds** means collectively Amortized Services and Third Party Funds.
 - y. **Intellectual Property** means all intellectual property and associated intellectual property rights including patent, trademark, service mark, copyright, trade dress, logo and trade secret rights which exist and belong to a party as of the Effective Date or that may be created by a party after the Effective Date. Xerox's Intellectual Property includes, without limitation, Software, Remote Data and Xerox Tools.
 - z. **Maintenance Releases or Updates** means new releases of Software that primarily incorporate coding compliance updates and error fixes and are designated as "Maintenance Releases" or "Updates."
 - aa. **Maintenance Services** means required maintenance of Equipment to keep the Equipment in good working order.
 - bb. **Module** means a specific set of terms and conditions contained in this Agreement that is identified as a "Module." The Modules under this Agreement are the DEF, GEN, SVC, EQP, EP, MS and SW Modules.
 - cc. **Monthly Minimum Charge or MMC** means the regular recurring Charge that is identified in an Order and which, along with any additional print/impression charges, covers the cost for the Services, Maintenance Services and/or Products. The MMC may also include lease buyout funds, Funds, monthly equipment component amounts, remaining Customer obligations from previous contracts, and amounts being financed or refinanced. One-time items, recurring separate charges and usage based charges (as such items or charges, as applicable, are defined on an Order) are billed separately from the MMC.
 - dd. **Order** means a document that Xerox requires for processing of orders for Services, Maintenance Services and/or Products hereunder, which may specify the contracting parties and location(s) where the foregoing will be provided; Customer's requested shipment date; the Products that Customer will purchase, lease, rent or license; the Services and/or Maintenance Services that Xerox will provide; the applicable Charges and expenses; the term during which the Services, Maintenance Services and/or Products described therein shall be provided; the Xerox-provided contract number; and any applicable SLAs. An Order must reference the applicable Services Contract number, and may also be in the form of a Services and Solutions Order ("SSO"), a Xerox Order Agreement ("XOA") (which is used solely for an outright purchase by Customer under the EP module of this Agreement) or a Customer-issued PO. A Statement of Work may be part of an Order but cannot function as a stand-alone ordering document.
 - ee. **Privacy Laws** means laws relating to data privacy and data protection as applicable to Xerox's performance of the Services.
 - ff. **Private Information** means Protected Health Information ("PHI") as defined by the Health Insurance Portability and Accountability Act ("HIPAA"), Non-Public Personal Information ("NPI") as defined by the Gramm-Leach Bliley Act ("GLBA") and equivalent categories of protected health and financial information under applicable state Privacy Laws.
 - gg. **Products** means Xerox Products and/or Third Party Products supplied by Xerox and provided to Customer pursuant to an Order.
 - hh. **Purchase Order or PO** means a document containing the applicable Services Contract number that is issued by Customer to Xerox for Order entry purposes only.

- ii. **Purchased Equipment** means Equipment or Third Party Hardware that Xerox sells outright to Customer under the EP Module.
- jj. **Remote Data** means data that is automatically collected by Xerox from, or transmitted to or from Xerox by, Equipment or Third Party Products connected to Customer's network. Examples of Remote Data include product registration, meter read, supply level, equipment configuration and settings, software version, and problem/fault code data. Remote Data may also be collected by the Xerox Tools and certain Services Software as set forth in the applicable SOW.
- kk. **Remote Data Access** means electronic transmission of Remote Data to or from a secure offsite location.
- ll. **Residuals** means general ideas, concepts, know-how, methods, processes, technologies, algorithms or techniques related to the Products and/or Services, which are in non-tangible form and retained in the unaided memory of persons who have had access to Confidential Information.
- mm. **Service Level Agreements or SLAs** means the levels of performance for the Services, if applicable, as set out in the applicable Order.
- nn. **Services** means managed services (e.g. copy center and mailroom services), consultative services, and/or professional services, including, but not limited to, assessment, document management, and managed and centralized print services, as more fully described in the applicable Order. Standard back-office administrative and contract support functions, such as billing contract management and order processing, are not Services, but are included in the pricing provided for the Services hereunder.
- oo. **Services Contract** means the applicable terms and conditions of this Agreement, the first Order having a particular assigned Services Contract number, and each additional Order, if any, with the same Services Contract number.
- pp. **Services Software** means software products used to provide certain Services (both a server component and/or client component to be installed on end user's workstations, mobile devices and/or laptops) that may include one or more of the individual software modules identified on a Statement of Work or Order.
- qq. **Software** means Services Software, Base Software and Application Software.
- rr. **Statement of Work or SOW** means a document which references the applicable Services Contract number and specifies the details of a particular transaction where Customer wishes to acquire Services, Maintenance Services and/or Products from Xerox under this Agreement.
- ss. **Supplier Equipment** means devices which are supplied by Xerox to the Customer during the term of an Order. Supplier Equipment may be Equipment or Third Party Hardware.
- tt. **Third Party Funds** means funds Xerox provides to Customer to acquire Third Party Hardware or to license Third Party Software and/or to retire debt on existing Third Party Hardware.
- uu. **Third Party Hardware** means non-Xerox brand equipment.
- vv. **Third Party Products** means, collectively, Third Party Hardware and Third Party Software.
- ww. **Third Party Software** means non-Xerox brand software.
- xx. **Transaction Taxes** means any and all Taxes that are required to be paid in respect of any transaction and resulting Charges under this Agreement and any transaction documents, including but not limited to sales, use, services, rental, excise, transactional-based gross receipts, and privilege Taxes.
- yy. **Xerox Products** means Equipment, Software and Consumable Supplies acquired pursuant to this Agreement.
- zz. **Xerox Tools** means certain proprietary tools used by Xerox to provide certain Services, and any modifications, enhancements, improvements thereto and derivative works thereof.

GENERAL MODULE

GEN 1. – GENERAL

The terms and conditions in this General (GEN) Module apply to all Services, Maintenance Services, and Products acquired by Customer under this Agreement.

GEN 1.1 – Agreement Structure

- a. **General Contract Structure.** The parties intend for this Agreement to serve as a master agreement stating the terms and conditions governing separate transactions between (i) Xerox and Customer, and (ii) Xerox and Eligible Affiliates. Xerox will provide, and Customer will procure, Services, Maintenance Services and/or Products in accordance with the terms and conditions stated in this Agreement, any Services Contract(s), and any applicable Orders.
- b. **Orders and Services Contracts.**
 - i. Xerox may accept Orders either by its signature or by commencing performance. Xerox reserves the right to review and approve Customer's credit, or in the case of an Order by an Eligible Affiliate, such Eligible Affiliate's credit, prior to acceptance of an Order and the entity placing the Order hereby authorizes Xerox or its agent to obtain credit reports from commercial credit reporting agencies for this purpose.

- ii. Orders for Services, Maintenance Services, and/or Products are grouped into Services Contracts. Each separate Services Contract will be established when the first Order is placed that bears a new Services Contract number assigned by Xerox and Xerox accepts that Order. Each Services Contract will be assigned its own Services Contract number that will consist of this Agreement's number followed by a three-digit extension. Each Services Contract constitutes a separate contract under this Agreement. Customer may add Services, Maintenance Services or Products to an existing Services Contract by submitting additional Orders referencing the applicable Services Contract number. Each Services Contract will consist of the terms and conditions of this Agreement, the first Order under the Services Contract number and each additional Order with the same Services Contract number.
- iii. Orders may be submitted by hard copy or electronic means and those submitted electronically will be considered: **(a)** a "writing" or "in writing;" **(b)** "signed" by the Customer; **(c)** an "original" when printed from electronic records established and maintained in the ordinary course of business; and **(d)** valid and enforceable.

GEN 1.2 – CHARGES, PAYMENT AND DEFAULT

- a. **Charges.** Charges for the particular Services, Maintenance Services, and/or Products will be set forth in an Order and are exclusive of any and all Transaction Taxes. Xerox's overtime rates, per the NASPO ValuePoint Master Agreement, will apply to Services requested and performed outside Customer's standard working hours.
- b. **Payment.** Customer agrees to pay Xerox all undisputed amounts due under each invoice via check, Automated Clearing House debit, Electronic Funds Transfer, or direct debit from Customer's bank account within thirty (30) days after the invoice date. Restrictive covenants submitted for or with payment to indicate that it is in full satisfaction of an invoice will not operate as an accord and satisfaction to reduce Customer's payment obligations if it is not, in fact, full payment. If Customer disputes any amount included in an invoice, then **(i)** Customer must notify Xerox of the dispute in writing, **(ii)** such notice shall include a description of the items Customer is disputing and the reason such items are being disputed; and **(iii)** Customer shall promptly exercise its best efforts to work with Xerox to resolve such dispute. Pending resolution of such disputed amount, Customer shall pay any and all undisputed amounts within thirty (30) days of invoice date, including the MMC which Customer agrees shall not be subject to dispute at any time.
- c. **Default.** Customer will be in default if Xerox does not receive any payment within fifteen (15) days after the date it is due (45 days after invoice date), or if Customer breaches any other obligation under this Agreement. If Customer defaults, Xerox, in addition to its other remedies (including cessation of Services, Maintenance Services and/ or Consumable Supplies), may require immediate payment of **(1)** all amounts then due, and **(2)** any early termination charges set forth in this Agreement or in the applicable Services Contract and/or Order(s).

GEN 1.3 – RESERVED

GEN1.4 – RESERVED

GEN 1.5 – RESERVED

GEN 1.6 – Customer Responsibilities

Customer agrees to perform its responsibilities under this Agreement in support of the Services, Maintenance Services, or Products in a timely manner. Customer agrees:

- a. that Products acquired hereunder are ordered for Customer's own internal business use (rather than resale, license and/or distribution outside of Customer's organization) and will not be used for personal, household or family purposes;
- b. to **(1)** provide Xerox and its agents with timely and sufficient access, without charge, to Customer Facilities required by Xerox to perform Services and Maintenance Services and/or provide Products, and **(2)** ensure that Customer Facilities are suitable for the Services, Maintenance Services and/or Products, safe for Xerox personnel, and fully comply with all applicable laws and regulations, including without limitation any federal, state and local building, fire and safety codes;
- c. to provide Xerox and its agents with timely and sufficient use of and access, without charge, to Customer Assets required by Xerox to perform Services and Maintenance Services and/or provide Products, and to grant Xerox and its agents sufficient rights to use, access and, if agreed, modify the same;
- d. to acquire or continue maintenance, repair and software support services, without charge to Xerox, for all Customer Assets that Customer permits Xerox to use or access;
- e. to maintain the manufacturer's maintenance agreement for any Third Party Products;

- f. to provide Xerox with access to appropriate members of Customer personnel, as reasonably requested by Xerox, in order for Xerox to perform the Services and Maintenance Services and/or provide Products;
- g. to respond to and provide such documentation, data and other information as Xerox reasonably requests in order for Xerox to perform the Services and Maintenance Services and/or provide Products;
- h. to contract for the minimum types and quantities of Equipment and Consumable Supplies required by Xerox to perform the Services and Maintenance Services;
- i. that, as between Xerox and Customer, Customer alone is responsible for backing up its data and content and Xerox shall not be responsible for Customer's failure to do so;
- j. that as between Xerox and Customer, Customer alone is responsible for determining whether content and materials provided to Xerox (i) is libelous, defamatory or obscene, or (ii) may be duplicated, scanned or imaged without violating a third party's intellectual property rights; and
- k. to provide contact information for Equipment such as name and address of Customer contact.

GEN 1.7 – Warranties

- a. **Mutual Warranties.** Each party represents and warrants to the other, as an essential part of this Agreement, that:
 - i. it is duly organized and validly existing and in good standing under the laws of the state or country of its incorporation or formation;
 - ii. this Agreement and the Orders hereunder have been duly authorized by all appropriate corporate action for signature; and
 - iii. the individual signing this Agreement, and all Orders (where applicable), is duly authorized to do so.
- b. **Xerox Warranties**
 - i. Services Performance. Xerox agrees to perform the Services in a professional manner, consistent with applicable industry standards. Xerox will re-perform any Services not in compliance with this representation and brought to Xerox's attention in writing within thirty (30) days after such Services are performed.
 - ii. Equipment Warranty. Any Equipment warranty to which Customer is entitled shall commence upon the Date of Installation. Use by Customer of consumables not approved by Xerox that affect the performance of the Equipment may invalidate any applicable warranty.
 - iii. Third Party Product Warranty. Where Xerox in its sole discretion selects and supplies Third Party Products, Xerox warrants they will operate substantially in conformance with applicable SLAs or other requirements in the Order. Customer's remedy for breach of this warranty is to return the Third Party Product to Xerox and then receive a refund of any fees paid for such non-conforming Third Party Product, less a reasonable usage fee. If Customer requests a specific Third Party Product, Xerox will pass-through as permitted any third party warranties.
 - iv. Exclusions. Xerox shall not be responsible for any delay or failure to perform the Services or provide Products, including achieving any associated SLAs or other requirements in the applicable SOWs, DOSs or Orders, to the extent that such delay or failure is caused by:
 - (a) Customer's failure or delay in performing its responsibilities under this Agreement;
 - (b) reasons outside Xerox's reasonable control, including Customer Assets, Customer's content or materials, or delays or failures by Customer's agents, suppliers or providers of maintenance and repair services for Customer Assets; or
 - (c) unauthorized modifications to Equipment, Software or Third Party Hardware.
- c. **Disclaimer.** THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND XEROX DISCLAIMS AND CUSTOMER WAIVES ALL OTHER WARRANTIES INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CUSTOMER WAIVES ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.

The warranties set forth in this Agreement are expressly conditioned upon the use of the Services and Products for their intended purposes in the systems environment for which they were designed and shall not apply to any Services or Products which have been subject to misuse, accident or alteration or modification by Customer or any third party.

GEN 1.8 – Intellectual Property

- a. Xerox Tools may be used by Xerox to provide certain Services, as set forth in an Order or a Statement of Work. Xerox and its licensors will at all times retain all right, title and interest in and to Xerox Tools including without limitation, all intellectual property rights therein, and, except as expressly set forth herein, no rights to use, access or operate the Xerox Tools are granted to Customer. Xerox Tools will be installed and operated only by Xerox or its authorized agents. Customer will not decompile or reverse engineer any Xerox Tools, or

allow others to engage in same. Customer will have access to Remote Data and reports generated by the Xerox Tools and stored in a provided database as set forth in the applicable SOW. Xerox may remove Xerox Tools at any time in Xerox's sole discretion, provided that the removal of Xerox Tools will not affect Xerox's obligations to perform Services, and Customer shall reasonably facilitate such removal.

- b. Each party will retain ownership of its Intellectual Property. Each party grants the other a limited, non-exclusive, royalty-free right and license to use the other party's Intellectual Property (excluding the Xerox Tools) in the U.S. only to the extent necessary for such party and its designees to receive the benefit of, and/or, fulfill its obligations under this Agreement. Neither party will (i) distribute, copy, modify, create derivatives of, decompile, or reverse engineer the Intellectual Property of the other or, (ii) allow others to engage in same, except as permitted by applicable law or as expressly permitted under this Agreement or the applicable SOW.
- c. The parties acknowledge and agree that no Intellectual Property will be created or transferred under this Agreement. If the scope of the parties' relationship changes to include creation or transfer of Intellectual Property, that activity will be addressed in a separate written agreement.
- d. If the Products or Services are configured to provide output (excluding Remote Data), including modification or transformation of Customer Information, Customer shall be the sole owner of any such output in any format or media obtained by use of the Products or Services and may freely use and disclose such output to any third party. Examples of output include scans and printed output of Customer Information processed by Equipment.

GEN 1.9 – RESERVED

GEN 1.10 – RESERVED

GEN 1.11 – Term and Termination

This Agreement shall commence on the Effective Date and shall continue for a term of _____ months, and upon Customer's request it may continue on a month-to-month basis thereafter until expressly renewed by mutual written agreement or terminated by either party upon thirty (30) days' written notice. Upon termination, Customer shall permit Xerox to enter Customer Facilities for purposes of removing the Products owned by Xerox and/or Xerox Tools. Each Order hereunder shall have its own term, which shall be stated in the Order. In the event the Agreement is terminated, each Services Contract in effect at such time shall remain in full force and effect until the expiration or termination of all Orders constituting such Services Contract (including any extensions or renewals thereof) and shall at all times be governed by, and be subject to, the terms and conditions of this Agreement as if this Agreement were still in effect. Termination of any Order shall not affect this Agreement or any other Orders then in effect. Notwithstanding any other provision in the Agreement to the contrary, should an Order be terminated prior to expiration for any reason, other than Non-Appropriation of Funds, or a unit of Third Party Hardware or any Third Party Software for which Third Party Funds have been provided is removed or replaced prior to expiration, Customer agrees to pay to Xerox, in addition to any other amounts owed under said Order, an amount equal to the remaining principal balance of the Funds.

GEN 1.12 – Confidentiality

- a. **Obligations.** Information exchanged under this Agreement will be treated as confidential if it is identified as confidential at disclosure or if the circumstances of disclosure would indicate to a reasonable person that the information should be treated as confidential. The terms and conditions of this Agreement, all Services Contracts and Orders, and any attachments and exhibits thereto, are subject to the Colorado Open Records Act (CORA), §§24-72-200.1, et. seq., C.R.S. Any services procedures manuals and Xerox's Intellectual Property are Xerox Confidential Information. Private Information is Customer's Confidential Information. Confidential Information may only be used for the purposes of receiving the benefit of or fulfilling obligations under this Agreement, and shared with employees, agents or contractors with a need to know such information to support the foregoing purposes. Confidential Information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure. These obligations of confidentiality will not apply to any Confidential Information that: (1) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the receiving party; (2) was rightfully in the receiving party's possession or the possession of any third party free of any obligation of confidentiality; (3) was developed by the receiving party's employees independently of and without reference to any of the other party's Confidential Information; or (4) where disclosure is required by law or a government agency.
- b. **Residual Rights.** Neither party shall pay royalties for the use of Residuals. However, the foregoing shall not be deemed to grant either party a license under the other party's copyrights or patents.

GEN 1.13 – Data Protection/Privacy

- a. To the extent that Privacy Laws are applicable to Customer and Xerox in connection with the performance of Services, each party agrees to comply with the applicable provisions of such Privacy Laws.
- b. Xerox has adopted reasonable physical, technical and organizational safeguards designed to prevent accidental, unauthorized or unlawful loss, disclosure, access, transfer or use of Private Information. Xerox

will promptly notify Customer in the event of any known unauthorized or unlawful loss, disclosure, access, transfer or use of Private Information.

GEN 1.14 – RESERVED

GEN 1.15 – RESERVED

GEN 1.16 – RESERVED

GEN 1.17 – RESERVED

GEN 1.18 – RESERVED

GEN 1.19 – RESERVED

GEN 1.20 – Miscellaneous

- a. **Copies of Agreement.** Except as required by law, both parties agree that any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) shall be considered an original. Xerox may retain a hardcopy, electronic image, photocopy or facsimile of this Agreement and each Order hereunder, which shall be considered an original and shall be admissible in any action to enforce said Agreement or Order.
- b. **Amendment.** All changes to this Agreement must be made in a writing signed by Customer and Xerox. Any amendment of this Agreement shall not affect the obligations of either party under any then-existing Orders, which shall continue in effect unless the amendment expressly states that it applies to such existing Orders. An amendment to a Services Contract shall reference the number of the Services Contract that it amends.
- c. **No Waiver; Severability; Survival.** The failure by Customer or Xerox to insist upon strict performance of any of the terms and conditions in this Agreement or to exercise any rights or remedies will not be construed as a waiver of the right to assert those rights or to rely on that term or condition at any time thereafter. If any provision is held invalid by any arbitrator or any court under applicable law, such provision shall be deemed to be restated as nearly as possible to reflect the original intention of the parties in accordance with applicable law. The remainder of this Agreement shall remain in full force and effect. Any terms and conditions of this Agreement or any Order which by their nature extend beyond the termination or expiration of the Agreement or Order will survive such termination or expiration.
- d. **Communication Authorization.** Customer authorizes Xerox or its agents to communicate with Customer by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address that Customer provides to Xerox.
- e. **Limitation on Charges.** In no event will Xerox charge or collect any amounts in excess of those allowed in the Order, or as stated in the NASPO ValuePoint Master Agreement.
- f. **Order of Precedence; Entire Agreement.** This SMA is part of the NASPO ValuePoint Master Agreement including all schedules, attachments, exhibits and amendments hereto and the Services Contract(s) hereunder, and constitutes the entire agreement between the parties as to the subject matter and supersedes all prior and contemporaneous oral and written agreements regarding the subject matter hereof and neither party has relied on or is relying on any other information, representation, discussion or understanding in entering into and completing the transactions contemplated in this Agreement. The parties agree that except as expressly set forth in this Agreement, in the event of any conflict between terms and conditions, the order of precedence shall be as outlined in the NASPO ValuePoint Master Agreement. Notwithstanding the foregoing, provisions in the General Module of this Agreement related to: **(1)** Section **GEN 1.8** (Intellectual Property Ownership); and **(2)** Section **GEN 1.12** (Confidentiality); will prevail over conflicting provisions in any other section of this Agreement.

SERVICES MODULE

SVC 1 – TERMS AND CONDITIONS SPECIFIC TO SERVICES

In addition to the terms and conditions in the General (GEN) Module, the following terms and conditions apply to Xerox's performance of Services

SVC 1.1 – Scope of Services

Subject to the terms and conditions of this Agreement, Services will be performed by Xerox and/or its Affiliates in accordance with the requirements set forth in an Order. If Customer fails to perform or is delayed in performing any of its responsibilities under this Agreement, such failure or delay may prevent Xerox from being able to perform any part of the Services or Xerox-related activities. Xerox shall be entitled to an extension or revision of the applicable term of the Order (which may include setting a new expected date for commencement of Services) or to an equitable adjustment in performance metrics associated with such failure or delay. Xerox grants Customer a non-exclusive, non-transferable, non-sub licensable right and license to access and use the Services only for the purpose of such Customer and its designees receiving the benefit of the Services set forth in

the applicable SOW.

SVC 1.2 – Charges for Services

Charges for Services are set forth in the applicable Order. Charges are based upon Master Agreement pricing, as well as information exchanged between Customer and Xerox, which is assumed to be complete and accurate, and also depend upon other factors such as the timely performance by Customer of its responsibilities. If: **(a)** such information should prove to be incomplete or inaccurate in any material respect; or **(b)** there is a failure or delay by the Customer in performing its responsibilities under this Agreement or an Order which results in Xerox incurring a loss or additional cost or expense, then the charges shall be adjusted to reflect proportionately the impact of such materially incomplete or inaccurate information or such failure or delay, upon mutual agreement by the Customer. Charges that are indicated in an Order as being fixed are not subject to an annual percentage escalation for the initial term of such Order. If Xerox provides Services partially or early (for example, prior to the start of the initial term of an Order), Xerox will bill Customer on a pro rata basis, based on a thirty (30) day month, and the terms and conditions of this Agreement will apply.

SVC 1.3 – Use of Subcontractors

Xerox may, when it reasonably deems it appropriate to do so, subcontract any portion of the Services. Xerox shall remain responsible for any Services performed by subcontractors retained by Xerox to the same extent as if such Services were performed by Xerox.

SVC 1.4 – Services Scope Changes

Except as otherwise set forth in an Order, either party may propose to modify the then-existing Services that are described in an Order, or to add new Services under a Services Contract. If Xerox determines such changes are feasible, Xerox will prepare and propose to Customer an Order incorporating the requested changes and any related impact to the Charges or terms. Once Customer executes and Xerox accepts the Order, Xerox will promptly proceed with the new and/or revised Services in accordance with the terms of the Order and this Agreement.

SVC 1.5 – Early Termination of Services and Labor

Except as otherwise set forth in a Services Contract, upon thirty (30) days prior written notice, Customer may terminate or reduce any Services or labor provided pursuant to an Order without incurring early termination charges except as set forth in the next sentence. Notwithstanding the foregoing, if any such Services or labor provided under an Order are terminated **(a)** by Xerox due to Customer's default or **(b)** by Customer and Customer acquires similar services from another supplier within six (6) months of the termination of such Services or labor, Customer shall pay all amounts due as of the termination date, together with the early termination charges, as outlined in the NASPO ValuePoint Master Agreement.

EQUIPMENT MODULE

EQP 1 – TERMS AND CONDITIONS SPECIFIC TO EQUIPMENT & THIRD PARTY HARDWARE

In addition to the terms and conditions in the General (GEN) Module, the following terms and conditions apply to Equipment and Third Party Hardware provided to Customer.

EQP 1.1 – Term and Date of Installation

The term for each unit of Equipment shall be the term stated on the applicable Order, with the commencement date based upon the actual Date of Installation. If the Date of Installation for a unit of Equipment is prior to the applicable Order start date, Xerox will bill the Customer for such Equipment on a pro rata basis, based on a thirty (30) day month, and the terms and conditions of this Agreement and the applicable Services Contract will apply as of the Date of Installation.

EQP 1.2 – Delivery and Removal and Suitability of Customer Facilities

Xerox will be responsible for all standard delivery charges for Equipment and Third Party Hardware and, for Equipment or Third Party Hardware for which Xerox holds title, standard removal charges. Non-standard delivery or removal charges will be at Customer's expense. The suitability of Customer Facilities for installation of Equipment or Third Party Hardware, including compliance with state and local building, fire and safety codes and any non-standard state or local installation requirements, is Customer's responsibility.

EQP 1.3 – RESERVED

EQP 1.4 – RESERVED

EQP 1.5 – Use and Relocation

For any Equipment or Third Party Hardware provided by Xerox, with the exception of Purchased Equipment for which Customer has paid in full, Customer agrees that: **(a)** the Equipment or Third Party Hardware shall remain personal property; **(b)** Customer will not attach any of the Equipment or Third Party Hardware as a fixture to any real estate; **(c)** Customer will not pledge, sub-lease or part with possession of the Equipment or Third Party Hardware or file or permit to be filed any lien against the Equipment or Third Party Hardware; and **(d)** Customer will not make any permanent alterations to the Equipment or Third Party Hardware. While Equipment or Third Party Hardware is subject to an Order, Customer must provide Xerox prior written notice of all Equipment or Third Party Hardware relocations and Xerox may arrange to relocate the Equipment or Third Party

Hardware at Customer's expense. While Equipment or Third Party Hardware is being relocated, Customer remains responsible for making all payments to Xerox required under the applicable Order. All parts or materials replaced, including as part of an upgrade, will become Xerox's property. Equipment or Third Party Hardware cannot be relocated outside of the U.S. until Customer has paid in full for the Equipment or Third Party Hardware and has received title thereto. Notwithstanding anything to the contrary in the foregoing, to the extent the Equipment contains any Software, any relocation of such Equipment is subject to the terms and conditions set forth in the Software License Module of this Agreement.

EQP 1.6 – Supplier Equipment Provided

In the event Xerox provides Supplier Equipment to Customer, the following terms shall apply unless otherwise specified in an Order:

- a. Unless Supplier Equipment is purchased by Customer, Xerox (or the applicable third party vendor) shall at all times retain title to the Supplier Equipment. Customer hereby authorizes Xerox or its agents to file financing statements necessary to protect Xerox's rights to the Supplier Equipment. Customer will promptly notify Xerox, in writing, of any change in ownership, or if it relocates its principal place of business or changes the name of its business. The risk of loss or damage to the Supplier Equipment shall pass to Customer upon acceptance to the applicable Customer Facilities. Customer will insure the Supplier Equipment against loss or damage and the policy will name Xerox as loss payee.
- b. Customer agrees to use the Supplier Equipment in accordance with, and to perform, all operator maintenance procedures for the Supplier Equipment described in the applicable Documentation made available or provided by Xerox. The Customer shall not (unless the Supplier Equipment is Purchased Equipment, and then only with Xerox's prior consent):
 - i. sell, charge, let or part with possession of the Supplier Equipment;
 - ii. remove the Supplier Equipment from Customer Facilities in which it is installed; or
 - iii. make any changes or additions to the Supplier Equipment.
- c. **Early Termination.** Equipment is provided for a minimum order term (as specified in the applicable Order per EQP 1.1 above). If Equipment is terminated for any reason before the end of its minimum order term, the following termination charges shall apply: With respect to the Equipment, the termination charge shall not exceed the balance of remaining Equipment Payments (including any current and past due amounts), and with respect to Service or maintenance obligations, the termination charge shall not exceed four (4) months of the Service and Supply base charge or twenty- five percent (25%) of the remaining Maintenance Agreement term, whichever is less.

EQP 1.7 – RESERVED

EQP 1.8 – RESERVED

EQP 1.9 – Removal of Hazardous Waste

Customer agrees to take responsibility for legally disposing of all hazardous wastes generated from the use of Third Party Hardware or supplies.

EQUIPMENT PURCHASE MODULE

EP 1 – TERMS AND CONDITIONS SPECIFIC TO EQUIPMENT PURCHASE

In addition to the terms and conditions in the General (GEN) Module, the following terms and conditions apply to the acquisition of Purchased Equipment:

EP 1.1 – Order

Orders for an outright purchase of Purchased Equipment shall include the unique Xerox-provided contract number and the number of this Agreement on all applicable ordering documents.

EP 1.2 – Title and Risk of Loss

Title and risk of loss or damage to the Purchased Equipment will pass to Customer upon acceptance at the applicable Customer Facilities.

EP 1.3 – Default

If Customer defaults under a XOA for Purchased Equipment, Xerox, in addition to its other remedies (including the cessation of Maintenance Services if applicable), may require immediate payment of all amounts then due, plus all Transaction Taxes and applicable interest on all amounts due from the due date until paid.

EP 1.4 – Maintenance Services for Purchased Equipment

If Customer elects to receive Maintenance Services for Purchased Equipment, Customer shall do so under a separate Order under the Agreement for such Maintenance Services.

EP 1.5 – Agreement Provision Exclusions

The following Agreement provisions do not apply to Orders for an outright purchase of Purchased Equipment: Sections **GEN 1.1(c)(ii)-(iii)**; **GEN 1.6(b)-(j)**; **GEN 1.7(b)(1)**; **GEN 1.11**; and **EQP 1.6**.

MAINTENANCE SERVICES MODULE**MS 1 – TERMS AND CONDITIONS SPECIFIC TO MAINTENANCE SERVICES**

In addition to the terms and conditions in the General (GEN) Module, and except as otherwise set forth in an Order, the following terms and conditions apply to provision of Maintenance Services.

MS 1.1 – Maintenance Services

As part of an Order for **(a)** stand-alone Maintenance Services related to Purchased Equipment, or **(b)** Maintenance Services related to Equipment to which Xerox does not hold title, or as a mandatory part of an Order for Equipment (other than Purchased Equipment) that includes Maintenance Services, Xerox or a designated service provider will provide the following Maintenance Services for Equipment. If Customer is acquiring Equipment for which Xerox does not offer Maintenance Services, such Equipment will be designated as “No Svc.” This Module does not apply to maintenance of Third Party Hardware. Maintenance that Xerox provides on Third Party Hardware will be provided in accordance with the terms of the applicable Order.

The provision of Maintenance Services is contingent upon Customer facilitating timely and efficient resolution of Equipment issues by: **(i)** utilizing Customer-implemented remedies provided by Xerox; **(ii)** replacing Cartridges; and **(iii)** providing information to and implementing recommendations provided by Xerox telephone support personnel in those instances where Xerox is not providing on-site Equipment support personnel. If an Equipment issue is not resolved after completion of **(i)** through **(iii)** above, Xerox will provide on-site support as provided in the applicable Order.

MS 1.2 – Repairs and Parts

- a.** Xerox will make repairs and adjustments necessary to keep the Equipment in good working order and operating in accordance with its written specifications (including such repairs or adjustments required during initial installation). Maintenance Services shall cover repairs and adjustments required as a result of normal wear and tear or defects in materials or workmanship. Parts required for repair may be new, reconditioned, reprocessed or recovered.
- b.** If Xerox is providing Maintenance Services for Equipment that uses Cartridges, Customer will use only unmodified Cartridges purchased directly from Xerox or its authorized resellers. Failure to use such Cartridges will void any warranty applicable to such Equipment. Cartridges packed with Equipment or furnished by Xerox as Consumable Supplies will meet Xerox’s new Cartridge performance standards and may be new, remanufactured or reprocessed and contain new and/or reprocessed components. To enhance print quality, Cartridges for many models of Equipment have been designed to cease functioning at a predetermined point. Many Equipment models are designed to function only with Cartridges that are newly manufactured original Xerox Cartridges or with Cartridges intended for use in the U.S.

MS 1.3 – Hours and Exclusions

Unless otherwise set forth in an Order, Maintenance Services will be provided in areas accessible for repair services during Xerox’s standard working hours. Maintenance Services excludes repairs due to: **(a)** misuse, neglect or abuse; **(b)** failure of the installation site or the PC or workstation used with the Equipment to comply with Xerox’s published specifications; **(c)** use of options, accessories, or other products not serviced by Xerox; **(d)** non-Xerox alterations, relocation, service or supplies; and **(e)** failure to perform operator maintenance procedures identified in operator manuals. Customer agrees to furnish all referenced parts, tools, and supplies needed to perform those procedures that are described in the applicable manuals and instructions.

MS 1.4 – Installation Site and Meter Readings

In order to receive Maintenance Services for Equipment requiring connection to a PC or workstation, Customer must utilize a PC or workstation that either **(a)** has been provided by Xerox or **(b)** meets Xerox’s published specifications. The Equipment installation site must conform to Xerox’s published requirements. If applicable, unless otherwise set forth in an Order, Customer agrees to provide meter readings in the manner prescribed by Xerox. If Customer does not provide Xerox with meter readings as required, for Equipment not capable of Remote Data Access, or if Remote Data Access is interrupted, Xerox may estimate them and bill Customer accordingly.

MS 1.5 – Remedy

Xerox will, for 5 years after the installation date of the initial unit or the initial term of the Order, whichever is longer, replace the Equipment with an identical product or, at Xerox’s option, another model with comparable features and capabilities. If replacement Equipment is provided pursuant to this Section, there shall be no additional charge for its provision by Xerox during the initial term of the Order and it shall be subject to the terms and conditions of this Agreement and the applicable Order(s). Customer’s use of non-Xerox approved consumables that affect the performance of the Equipment may invalidate this remedy. If Xerox is unable to keep a unit of Equipment in good working order after the period noted above, either party

may terminate Maintenance Services for that unit without any penalties or early termination charges upon not less than 30 days written notice to the other party.

MS 1.6 – End of Service

Xerox has no obligation to maintain or replace Equipment beyond the “End of Service” for that particular model of Equipment. End of Service (“EOS”) means the date announced by Xerox after which Xerox will no longer offer Maintenance Services for a particular Equipment model. An EOS Equipment List is available upon request.

SOFTWARE LICENSE MODULE

SW 1 – TERMS AND CONDITIONS SPECIFIC TO SOFTWARE

In addition to the terms and conditions in the General (GEN) Module and Xerox General Terms and Conditions, the following terms and conditions apply to the license and use of Software and its associated Documentation.

SW 1.1

Third Party Software

Third Party Software is subject to license and support terms provided by the applicable Third Party Software vendor.

ATTACHMENT 3, XEROX PRINT SERVICES AGREEMENT

1. **XPS SERVICES.** Xerox will provide the services identified in the attached Xerox Print Services Description of Services ("DOS") or Statement of Work ("SOW"), as applicable, ("XPS Services") for the devices identified in Exhibit B ("Managed Devices") to this Xerox Print Services Agreement ("XPS Services Contract").
2. **DEFINED TERMS.**
 - a. "Equipment Agreement" means the agreement between Client and Xerox under which Xerox provides "Maintenance Services" or "Basic Services" (as those terms are defined in the applicable Equipment Agreement) for a Xerox Contracted Device.
 - b. "Managed Device(s)" means the devices identified in Exhibit B of the XPS Services Contract.
 - c. "Services Commencement Date" means the date that Xerox reasonably determines that Break Fix Services and Supplies, as applicable, are available for the Managed Devices.
 - d. "Supplies" means toner or ink provided by Xerox for certain of the Managed Devices, as identified in Exhibit A.
 - e. "Xerox Contracted Device(s)" means a Xerox brand device(s) for which Xerox provides Maintenance Services or Basic Services under an Equipment Agreement.
 - f. "Xerox Work" means, collectively (i) items used or incorporated into the XPS Services, or developed or acquired by Xerox independent of performing the XPS Services, and (ii) items created by Xerox and its employees, agents, and/or licensors, including, but not limited to, computer programs, code, reports, operations and procedures manuals, forms, design or other works of authorship or materials, in the course of performing the XPS Services. All items of Xerox Work are Xerox trade secrets.
 - g. Capitalized terms not defined above or elsewhere in this XPS Services Contract shall have the meaning assigned to them in the Equipment Agreement(s), SOW, DOS or Exhibits hereto.
3. **SUPPLIES.** For Xerox Contracted Devices, Xerox will provide Consumable Supplies if required by the applicable Equipment Agreement. Except for Managed Devices identified in Exhibit B as "Service Only", Xerox will furnish the Supplies identified in Exhibit A. Supplies may be new, remanufactured or reprocessed. Supplies are Xerox's property until used by Client and Client will use them only with the Managed Devices. Upon request, Client will provide an inventory of Supplies in its possession. Upon expiration or termination of the XPS Services Client will, at Xerox's option and expense, return any unused Supplies to Xerox, permit access to its facilities to permit collection, or dispose of them as directed in writing by Xerox.
4. **COMMENCEMENT & TERM.** The initial term of this XPS Services Contract will be {enter 36, 48, or 60} months from the Services Commencement Date. Neither party may terminate this XPS Services Contract during the first twelve (12) months after the Services Commencement Date. Thereafter, either party may, upon 30 days prior written notice to the other party, terminate the XPS Services. In addition, Xerox will have the right to terminate this XPS Services Contract upon not less than 30 days written notice if the Services Commencement Date has not occurred, for any reason whatsoever; within 90 days after the date this XPS Services Contract is accepted by Xerox. The expiration or termination of this XPS Services Contract will not affect the Equipment Agreement(s), or any other agreement with Xerox under which Client acquired Xerox Contracted Device(s), each of which will remain in full force and effect until the end of its term.
5. **PRICING.** The pricing for XPS Services for the Managed Devices is identified in Exhibit A.
6. **INVOICING.** Client will be invoiced for XPS Services in a standard Xerox format. The Total Monthly Minimum Charge ("MMC") identified in Exhibit A is billed monthly in advance through the end of the month in which the termination effective date occurs. If the Services Commencement Date is other than the first day of a month, a prorated amount of the MMC will be billed for the first month, based on the number of days XPS Services were provided in such month. If a Managed Device is added to the XPS Services Contract during a month, billing of the Monthly Fee for such device will start with the next monthly invoice. If a Managed Device is removed from the XPS Services Contract during a month, billing of the Monthly Fee

for such device will continue through the end of the month. The Excess Charge per Impression ("ECI") identified in Exhibit A is billed in arrears on a quarterly basis for all impressions in excess of three times the Monthly Minimum Print Volume ("MMPV") identified in Exhibit A. If the Services Commencement Date is other than the first day of a month, the Monthly Minimum Print Volume ("MMPV") for the first month will be prorated, based on the number of days XPS Services were provided in such month, and the ECI will be billed based on the prorated MMPV. Payment must be received by Xerox within 30 days after the invoice date. Restrictive covenants on payment instruments will not reduce Client's obligations. If a payment is not received by Xerox within 45 days of the invoice date, Xerox may charge interest from the due date until paid at the rate of 1% per month. Client will be invoiced in a standard Xerox format. Invoicing and payment for Xerox Contracted Devices will be governed by the terms and conditions of the applicable Equipment Agreement.

- 7. CLIENT RESPONSIBILITIES.** Client will perform the Client Responsibilities identified in the SOW or DOS.
- 8. TAXES.** Client is responsible for all applicable taxes, fees or charges of any kind (including interest and penalties) assessed by any governmental entity on this XPS Services Contract or the amounts payable under this XPS Services Contract ("Taxes"), which will be included in Xerox's invoice unless Client provides proof of its tax exempt status. Taxes do not include taxes on Xerox's income.
- 9. LIMITATION OF LIABILITY.** Xerox will not be liable, in the aggregate, for any direct damages arising out of or relating to the XPS Services Contract, in excess of \$10,000 or the amounts paid hereunder in the 12 months prior to the claim, whichever is greater. Xerox will not be liable for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this XPS Services Contract, whether the claim alleges tortious conduct (including negligence) or any other legal theory. The foregoing limitations of liability will not apply to Xerox's obligations under the section entitled "Intellectual Property Indemnity" or where either party has **(a)** exceeded the rights to the other party's intellectual property granted to it under this XPS Services Contract, or **(b)** misappropriated or infringed the other party's intellectual property under this XPS Services Contract. Any action against Xerox must be commenced within 2 years after the event that caused it. The limitations of liability of this agreement shall apply only in excess of any insurance to be maintained under Section 12 of Exhibit A of the Participating Addendum, and no insurance policy shall be interpreted as being subject to any limitations of liability of this agreement.
- 10. XEROX CLIENT TOOLS & XEROX TOOLS.** Xerox may use Xerox Client Tools, and/or certain other proprietary Xerox software ("Xerox Tools"), to perform its obligations under this XPS Services Contract. Xerox Client Tools and Xerox Tools (collectively, "Tools") are Xerox trade secrets. Xerox Client Tools and any related documentation are licensed under a separate clickwrap or shrinkwrap license agreement that Client must accept at the time of installation. The Xerox Tools will be installed and operated only by Xerox, and Client has no rights to use, access or operate the Xerox Tools. Client will not decompile or reverse engineer the Tools. The Tools will be removed by Xerox at the expiration or termination of this XPS Services Contract. The Tools facilitate Xerox's performance of XPS Services through the automatic collection of data from certain networked Managed Devices and the transmission of such data to secure off-site location. This automatic data collection and transmission capability will not allow Xerox to read, view or download any Client documents or other information residing on or passing through the Managed Device or Client's information management systems. Examples of automatically collected and transmitted data include product registration, meter read, supply level, equipment configuration and settings, software version, and problem/fault code data. All such data will be transmitted in a secure manner specified by Xerox. If a meter reading is not generated by Xerox Client Tools or, upon request, Client fails to provide a meter reading, Xerox may estimate the reading and bill Client accordingly.
- 11. INTELLECTUAL PROPERTY INDEMNITY.** Xerox will defend, and pay any settlement agreed to by Xerox or any final judgment for, any claim that the Tools infringe a third party's U.S. intellectual property rights. Client will promptly notify Xerox of any alleged infringement and permit Xerox to direct the defense. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless Xerox pre-approves them in writing. To avoid infringement, Xerox may modify or substitute an equivalent tool, or obtain any necessary licenses. Xerox is not liable for any infringement based upon a modification of the Tools to Client's specifications or the Tools being used by Client in a manner not permitted by this XPS Services Contract.

12. WARRANTY. The XPS Services will be performed in a skillful and workmanlike manner. XEROX MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

13. CONFIDENTIALITY. During the term of this XPS Services Contract, each party may disclose to the other certain confidential business information ("Confidential Information"). Each party will make reasonable efforts not to disclose the other party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: **(a)** was in the public domain before, at the time of, or after the date of disclosure through no fault of the non-disclosing party; **(b)** was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or **(c)** was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. The terms and conditions of this XPS Services Contract, the DOS or SOW, the Exhibits hereto, the Xerox Implementation Plan hereunder, the Xerox Work and the Tools are Xerox Confidential Information. The confidentiality obligations set forth herein will expire 1 year after expiration or termination of this XPS Services Contract, except that: **(y)** for any Confidential Information that qualifies as a trade secret under applicable law, the confidentiality obligations hereunder shall survive until such information ceases to be a trade secret under applicable law, other than due to breach of this XPS Services Contract by the non-disclosing party; and **(z)** for any Confidential Information that is protected by the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act or any other applicable state and federal privacy laws, and the regulations promulgated thereunder, the confidentiality obligations hereunder shall survive for the period set forth in such privacy laws or regulations. The parties do not intend for Client to disclose confidential technical information to Xerox, and any such disclosure shall be pursuant to a separate written agreement. Upon expiration or termination of this XPS Services Contract, each party will return to the other or, if requested, destroy all Confidential Information of the other in its possession or control.

14. MISCELLANEOUS. Notices must be in writing and will be deemed given 5 days after mailing, or 2 days after sending by nationally recognized overnight courier. Notices will be sent to Client at the address where Client will receive invoices, and to Xerox at the inquiry address set forth on the most recent invoice, or to such other address as either party may designate by written notice. Client authorizes Xerox or its agents to communicate with Client by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address Client provides to Xerox. Xerox will not be liable for any failure to perform during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond Xerox's reasonable control. Except for assignment by Xerox of its right to receive payment hereunder, neither party will assign any of its rights or obligations under this XPS Services Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld. This XPS Services Contract will be governed by the laws of the State of New York (without regard to conflict-of-law principles). In any action to enforce this XPS Services Contract, the parties agree to the jurisdiction and venue of the federal and state courts in Denver County, Colorado, and to waive their right to a jury trial. Client will pay all reasonable costs including attorney's fees, incurred by Xerox to enforce this XPS Services Contract. If a court finds any term of this XPS Services Contract unenforceable, the remaining terms will remain in effect. The failure by either party to exercise any right or remedy will not constitute a waiver of such right or remedy. Each party may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this XPS Services Contract, which will be admissible in any action to enforce it. Xerox may accept this XPS Services Contract either by signature or by commencing performance. Changes to this XPS Services Contract must be in a written amendment signed by both parties. Both parties will comply with applicable laws. Xerox will not charge or collect any amounts in excess of those allowed by applicable law. Client authorizes Xerox or its agent to obtain credit reports from commercial credit reporting agencies. This XPS Services Contract constitutes the entire agreement between Xerox and Client as to its subject matter, and supersedes all prior oral and written agreements.

IN WITNESS WHEREOF, duly authorized representatives of Client and Xerox have executed this XPS Addendum.

<< CLIENT NAME >>

XEROX CORPORATION

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT 4, XEROX SOFTWARE LICENSE ADDENDUM



THIS AGREEMENT ADDENDUM ("Addendum") amends the [Agreement Type (e.g., Lease, Purchase, Rental)] Agreement between [Customer Name] ("Customer" or "you") and Xerox Corporation ("Xerox") identified by agreement number WS [Insert Worksheet Number] (the "Agreement").

1. The following is added at the end of the Section of the Agreement titled "SOFTWARE LICENSE":

"For MathWorks, Inc. ("MathWorks") software incorporated into the Software, these additional terms apply:

 - a. **LICENSE GRANT.** Subject to the restrictions below, MathWorks hereby grants to you a license to install and use the MATLAB Compiler Runtime Libraries ("MCR"), solely and expressly for the purpose of running software created with the MATLAB Compiler (the "Application Software"), and for no other purpose. This license is personal, nonexclusive, and nontransferable.
 - b. **LICENSE RESTRICTIONS.** You shall not modify or adapt the MCR for any reason. You shall not disassemble, decompile, or reverse engineer the MCR. You shall not alter or remove any proprietary or other legal notices on or in copies of the MCR. Unless used to run Application Software, you shall not rent, lease, or loan the MCR, time share the MCR, provide service bureau use, or use the MCR for supporting any other party's use of the MCR. You shall not sublicense, sell, or otherwise transfer the MCR to any third party. You shall not republish any documentation that may be provided in connection with the MCR. All rights not granted, including without limitation rights to reproduce, sublicense, rent, sell, distribute, create derivative works, serve other software by means of, decompile, reverse engineer, and disassemble the MCR, are expressly reserved by MathWorks.
 - c. **NO TECHNICAL SUPPORT.** Technical support is not provided by MathWorks for users of the MCR under this license. MathWorks may, at its sole discretion, offer bug fixes or updates to the MCR.
 - d. **TERM AND TERMINATION.** This license shall automatically terminate upon your failure to comply with this license.
 - e. **EXPORT CONTROL.** The MCR may be subject to U.S. and non-U.S. export control laws and other applicable governmental export and import laws and regulations. In exercising your rights under this license, you agree not to violate any such laws and regulations. You also represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
 - f. **U.S. GOVERNMENT LICENSEES:** You agree that the MCR qualifies as commercial computer software or documentation as defined in the FAR and/or DFARS; that the terms and conditions of this MCR (MATLAB Compiler Runtime) LIBRARIES LICENSE shall govern your use, reproduction, performance, display, and disclosure of the MCR, superseding any inconsistent government provisions.
 - g. **ASSIGNMENT.** You may not assign or otherwise transfer this license and its rights and obligations hereunder, in whole or in part.
 - h. **LIMITATION OF LIABILITY.** To the extent permitted by law, any liability of MathWorks (whether in relation to breach of contract, negligence or otherwise) shall be limited to the price paid for the license and MathWorks shall have no liability for any indirect or consequential loss (whether foreseeable or otherwise and including loss of profits, loss of business, loss of opportunity, and loss of use, or unauthorized use or access, of any computer hardware or software). Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above exclusion or limitation may not apply to you. MathWorks' liability for death or personal injury resulting from negligence or for any other matter in relation to which liability by law cannot be excluded or limited shall not be excluded or limited. This limitation of liability of this agreement shall apply only in excess of any insurance to be maintained under Section 12 of the Participating Addendum, and no insurance policy shall be interpreted as being subject to any limitations of liability of this agreement.
 - i. **DISCLAIMER OF WARRANTIES.** The MCR is delivered "as is" and MathWorks makes, and you receive, no additional express or implied warranties. MathWorks hereby expressly disclaims any and all other conditions, warranties, or other terms of any kind or nature concerning the MCR (including, without limitation, any with regard to noninfringement, merchantability, quality, accuracy, or fitness for a particular purpose or for your purpose). MathWorks also expressly disclaims any warranties that may be implied from usage of trade, course of dealing, or course of performance.
 - j. **GOVERNING LAW; JURISDICTION.** This license shall be governed by the laws of the State of Colorado, United States of America, without regard to its conflicts of law provisions. Neither the U.N. Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act, or any version thereof ("UCITA"), shall apply to this license. To the extent that UCITA is applicable, the parties agree to opt out of the applicability of UCITA.
 - k. **ENTIRE AGREEMENT.** This license contains the entire understanding of the parties with respect to the MCR provided hereunder, and may not be modified or amended except by written instrument, executed by MathWorks and you. This license shall not supersede any product license you have with MathWorks for the MATLAB Compiler."
2. The following changes are made to the Section of the Agreement titled "FREEFLOW LICENSE":
 - a. The first two sentences in subsection 4. of this Section, which said sentences begin "The Copyright Management feature..." and "You will comply with...", respectively, are deleted and following is inserted in their place:

"The Copyright Management feature of FreeFlow Makeready ("FFCM") contains the optional Copyright Clearance Center, Inc. ("CCC") copyright licensing services feature of FFCM ("CCC Service"). If this option is ordered, you will comply with any applicable terms and conditions contained on the CCC website, www.copyright.com, and any other rights holder terms governing use of materials, which are accessible in FFCM."

b. The following is added as subsection 7. to this Section:

"7. FreeFlow Software may include Microsoft Embedded Standard operating system software to which the following terms apply:

- a. You agree to and will comply with the Microsoft terms and conditions contained on the Xerox website, <http://www.support.xerox.com/support/open-source-disclosures/file-redirect/enus.html?&contentId=136023>.
- b. Any updates, upgrades or reinstallations of Microsoft Embedded Standard operating system software are subject to the terms and conditions of this license and may be used only with the Xerox-brand Equipment with which it was delivered. Any other use of the software is strictly prohibited and may subject you to legal action.
- c. If the Equipment includes Remote Desktop Services that enable it to connect to and access applications running on a server, such as Remote Desktop Protocol, Remote Assistance and Independent Computer Architecture, such Desktop Functions will not run locally on the system, except for network/Internet browsing functions.
- d. The FreeFlow Base Software contains the Windows Update feature that allows you to access Windows Updates directly through the Microsoft Corp. Windows Update server. If you elect to activate this feature, any Windows Updates installed by you using the Windows Update feature may not function on the Equipment or may cause malfunctions or cause harm to the Equipment. Before you download a Windows Update using this feature, you should contact Xerox so that Xerox can ensure that each Windows Update is suitable for use on the Equipment and provide any necessary technical support for the installation and use of such Windows Update.
- e. **No High Risk Use.** WARNING: The Windows Embedded 7 Standard operating system is not fault-tolerant. The Windows Embedded 7 Standard operating system is not designed or intended for any use in any computing device where failure or fault of any kind of the Windows Embedded 7 Standard operating system could reasonably be seen to lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Xerox is not licensed to use, distribute, or sublicense the use of the Windows Embedded 7 Standard operating system in High Risk Use. High Risk Use is STRICTLY PROHIBITED."

3. Capitalized terms not defined in this Addendum have the meaning provided for them in the Agreement. Except as set forth above, the Agreement continues in full force and effect. In the event of a conflict between the terms of the Agreement and this Addendum, this Addendum controls.

[CUSTOMER NAME]

XEROX CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT 5, VERSANT TERMS AND CONDITIONS

1. **EXTRA LONG PRINTS.** The following Equipment model(s), V180P may now, or in the future, have extra-long print capability, which is the ability to produce a print that is longer than 491mm. Maximum print length may vary by model. The meters for Equipment with extra-long print capability will register the following, as applicable: **(i)** for impressions greater than 491mm, up to and including 661mm, the Extra Long Impressions meter will register two (2) prints for each such extra-long print, in addition to registering one (1) print on either the Color Impressions meter (in the case of a color print) or the Black Impressions meter (in the case of a B&W print); **(ii)** for impressions greater than 661mm, up to and including 877mm, the Extra Long Impressions meter will register three (3) prints for each such extra-long print, in addition to registering one (1) print on either the Color Impressions meter (in the case of a color print) or the Black Impression meter (in the case of a B&W print); **(iii)** for impressions greater than 877mm, up to and including 1,083mm, the Extra Long Impressions meter will register four (4) prints for each such extra-long print, in addition to registering one (1) print on either the Color Impressions meter (in the case of a color print) or the Black Impression meter (in the case of a B&W print); and **(iv)** for impressions greater than 1,083mm, up to and including 1,299mm, the Extra Long Impressions meter will register five (5) prints for each such extra-long print, in addition to registering one (1) print on either the Color Impressions meter (in the case of a color print) or the Black Impression meter (in the case of a B&W print).
2. **FREEFLOW LICENSE.** The following terms apply to Xerox FreeFlow Print Server /DocuSP software included in Base Software ("FreeFlow Base Software") and/or Application Software identified as Xerox FreeFlow software (including, but not limited to, FreeFlow Makeready and FreeFlow Process Manager) (collectively, "FreeFlow Application Software"), and are additive to and supplement those found elsewhere in the Agreement. FreeFlow Base Software and FreeFlow Application Software are collectively referred to as "FreeFlow Software."
 - a. FreeFlow Software may include and/or incorporate font programs ("Font Programs") and other software provided by Adobe Systems Incorporated ("Adobe Software"). You may embed copies of the Font Programs into your electronic documents for the purpose of printing and viewing the document. You are responsible for ensuring that you have the right and are authorized by any necessary third parties to embed any Font Programs in electronic documents created with the FreeFlow Application Software. If the Font Programs are identified as "licensed for editable embedding" at www.adobe.com/type/browser/legal/embeddingeula, you may also embed copies of those Font Programs for the additional purpose of editing your electronic documents. No other embedding rights are implied or permitted under this license.
 - b. You will not, without the prior written consent of Xerox and its licensors:
 - i. alter the digital configuration of the FreeFlow Software, or solicit others to cause the same, so as to change the visual appearance of any of the FreeFlow Software output;
 - ii. use the FreeFlow Software in any way that is not authorized by the Agreement;
 - iii. use the embedded code within the FreeFlow Software outside of the Equipment on which it was installed or in a stand- alone, time-share or service bureau model;
 - iv. disclose the results of any performance or benchmark tests of the FreeFlow Software;
 - v. use the FreeFlow Software for any purpose other than to carry out the purposes of the Agreement; or
 - vi. disclose or otherwise permit any other person or entity access to the object code of the FreeFlow Software.
 - c. FreeFlow Process Manager contains Oracle Database Express Edition database software and documentation licensed from Oracle America, Inc. ("Oracle"). Oracle grants you a nonexclusive, nontransferable limited license to use Database Express Edition for purposes of developing, prototyping and running your applications for your own internal data processing operations. Database Express Edition may be installed on a multiple CPU server, but may only be executed on one processor in any server. Upon not less than 45 days prior written notice, Xerox and/or its licensors may, at their expense, directly or through an independent auditor, audit your use of FreeFlow Process Manager and all relevant records not more than once annually. Any such audit will be conducted at a mutually agreed

location and will not unreasonably interfere with your business activities.

- d. The Copyright Management feature of FreeFlow Makeready ("FFCM") contains the optional Copyright Clearance Center, Inc. ("CCC") copyright licensing services feature of FFCM ("CCC Service"). If this option is ordered, you will comply with any applicable terms and conditions contained on the CCC website, www.copyright.com, and any other rights holder terms governing use of materials, which are accessible in FFCM. If CCC terminates Xerox's right to offer access to the CCC Service through FFCM, Xerox may, upon written notice and without any liability to you, terminate your right to access the CCC Service through FFCM. THE CCC SERVICE IS PROVIDED "AS IS," WITHOUT ANY WARRANTIES, WHETHER EXPRESS OR IMPLIED. XEROX DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- e. If you install FreeFlow Application Software on a computer that you supply, the following terms apply:
- i. Xerox will only be obligated to support FreeFlow Application Software if it is installed on hardware and software meeting Xerox's published specifications (collectively "Workstation");
 - ii. IF YOU USE FREEFLOW APPLICATION SOFTWARE WITH ANY HARDWARE OR SOFTWARE OTHER THAN A WORKSTATION, ALL REPRESENTATIONS AND WARRANTIES ACCOMPANYING SUCH FREEFLOW APPLICATION SOFTWARE WILL BE VOID AND ANY SUPPORT/MAINTENANCE YOU CONTRACT FOR IN CONNECTION WITH SUCH FREEFLOW APPLICATION SOFTWARE WILL BE VOIDABLE AND/OR SUBJECT TO ADDITIONAL CHARGES; and
 - iii. you are solely responsible for:
 - 1) the acquisition and support, including any and all associated costs, charges and other fees, of any Workstation you supply;
 - 2) compliance with all terms governing such Workstation acquisition and support, including terms applicable to any non-Xerox software associated with such Workstation; and
 - 3) ensuring that such Workstation meets Xerox's published specifications.
- f. The following terms apply to FreeFlow Software licensed to U.S. government customers. Java technology contained in FreeFlow Software is subject to:
- i. FAR 52.227- 14(g)(2) and FAR 52.227-19; and
 - ii. if licensed to the U.S. Department of Defense ("DOD"), DFARS 252.227-7015(b) and DFARS 227.7202-3(a).
 - 1) Adobe Software is a "commercial item," as that term is defined at FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212, and is licensed to civilian agencies consistent with the policy set forth in FAR 12.212, or to the DOD consistent with the policies set forth in DFARS 227.7202-1.
 - 2) Oracle Database Express Edition is "commercial computer software" and is subject to the restrictions as set forth in the Rights in Technical Data and Computer Software Clauses in DFARS 252.227-7015 and FAR 52.227-19 as applicable.
- g. FreeFlow Software may include Microsoft Embedded Standard operating system software to which the following terms apply:
- i. You agree to and will comply with the Microsoft terms and conditions contained on the Xerox website, <http://www.support.xerox.com/support/open-source-disclosures/fileredirect/enus.html?&contentId=136023>.
 - ii. Any updates, upgrades or reinstallations of Microsoft Embedded Standard operating system software are subject to the terms and conditions of this license and may be used only with the Xerox-brand Equipment with which it was delivered. Any other use of the software is strictly prohibited and may subject you to legal action.
 - iii. If the Equipment includes Remote Desktop Services that enable it to connect to and access applications running on a server, such as Remote Desktop Protocol, Remote Assistance and Independent Computer Architecture, such Desktop Functions will not run locally on the system, except for network/Internet browsing functions.

- iv.** The FreeFlow Base Software contains the Windows Update feature that allows you to access Windows Updates directly through the Microsoft Corp. Windows Update server. If you elect to activate this feature, any Windows Updates installed by you using the Windows Update feature may not function on the Equipment or may cause malfunctions or cause harm to the Equipment. Before you download a Windows Update using this feature, you should contact Xerox so that Xerox can ensure that each Windows Update is suitable for use on the Equipment and provide any necessary technical support for the installation and use of such Windows Update.
- v.** No High Risk Use. **WARNING:** The Windows Embedded 7 Standard operating system is not fault-tolerant. The Windows Embedded 7 Standard operating system is not designed or intended for any use in any computing device where failure or fault of any kind of the Windows Embedded 7 Standard operating system could reasonably be seen to lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Xerox is not licensed to use, distribute, or sublicense the use of the Windows Embedded 7 Standard operating system in High Risk Use. High Risk Use is **STRICTLY PROHIBITED**.

ATTACHMENT 6, XEROX WORKFLOW AUTOMATION SAMPLE STATEMENT OF WORK

(SOW included in this section are “Sample” only. Actual SOW will vary dependent on the actual/specific services being offered)

This Statement of Work (“**SOW**”) for Xerox® Workflow Automation Services is made by and between Xerox Corporation (“**Xerox**”) and <<insert Customer name>> (“**Customer**”, and together with Xerox, the “**Parties**”), pursuant to the terms and conditions of the <<insert name of Agreement>> between the Parties.

Name of WFA OnBase® Solution for: XXXXXXXX

1. DEFINITIONS - Terms used herein shall have the meaning set forth below. Additional definitions applicable to the Services are set forth in Attachment B-1.

- 1. Business Requirements** - A statement of required capabilities for the system from the business point of view. E.g., “The system will generate productivity reports”.
- 2. Capabilities** - The functionalities available in an MFD or printer Device (e.g. scanning, copying, faxing, etc.) that are enabled and included in the Pricing under this SOW.
- 3. E-Forms** – Electronic forms.
- 4. End Users** - Customer’s employees or nominated agents at Sites who utilize the Services defined in this SOW.
- 5. EULA (“End User License Agreement”)** - the terms and conditions under which the Licensed Software is provided by Hyland Software Inc. to Customer that is available by download from www.onbase.com/community.
- 6. Functional Specification** - A statement of capability for the system from the systems point of view. E.g. “When the user enters the Sales Order Number, the number will be verified and the following elements added to the document Metadata from the Oracle System: Order Date, Customer Number, Customer Name, and Customer PO Number.”
- 7. Go-Live** – At the completion of the Deployment Phase and upon acceptance by Customer, the WFA OnBase® Solution will be deemed operational. Software Maintenance Support Services per Attachment E and Business Process Support per Attachment B will commence at Go-Live.
- 8. Hyland** – Hyland Software Inc., creator, and licensor of OnBase®.
- 9. In-Scope** – The range of materials, activities, business processes, Professional Services, and Sites that are included in the range of work to be accomplished under this SOW.
- 10. Implementation** – The requirements gathering/definition, software installation, configuration, activation of the Licensed Software, testing, training, and other Professional Services as further set forth herein.
- 11. Kickoff Meeting** - The initial meeting of Customer and Xerox project management teams to set responsibilities, activities, schedules, deliverables, and communications for that Phase of the project.
- 12. Licensed Software (or “OnBase® Software”)** - The software identified on Attachment B-1, if any, that Xerox, or its licensor(s) is licensing to Customer as part of the Services.
- 13. Business Process Support Services** – The ongoing support services to be provided after Go-Live for the business processes portion of the WFA OnBase® Solution as set forth in Attachment B.

14. **MFP – (Multifunctional Peripheral)** - A Device that includes various Capabilities, including, but not limited to copying, printing, faxing, and scanning.
 15. **Normal Working Hours/Days** - The hours during which Xerox will perform the Services, which are Monday through Friday, 8 AM to 5 PM, local Site time, excluding Customer holidays.
 16. **OnBase® Software Client** – A windows-based application, optimized for maximum efficiency and speed when working with and processing high volumes of documents on the same high-speed network as the OnBase® infrastructure.
 17. **Phase** – A distinct period or stage within a Professional Services WFA OnBase® projects. The WFA OnBase® Solution may have up to three (3) Phases: Discovery, Development, and Deployment.
 18. **Professional Services** – The solution implementation services (may include, but not be limited to consulting, software installation, configuration, testing, documentation, and training) provided by Xerox related to the WFA OnBase® Solution as set forth in Attachment B.
 19. **Software Maintenance Support Services** – The maintenance and support services for the Licensed Software to be provided after Go Live.
 20. **Software Maintenance Support Addendum** - The additional terms and conditions under which Xerox will provide Software Maintenance Support Services attached hereto as Attachment E.
 21. **SOW Effective Date** – MM-DD-YYYY
 22. **SOW Services (or “Services”)** – All In-Scope services as expressly set forth in this SOW and Attachment B.
 23. **Site (or “On-Site”)** – Customer or Eligible Subsidiary location where Services are performed and/or Licensed Software is installed under this SOW.
 24. **User Acceptance Testing (“UAT”)** - The process of validating the correct implementation of Business Requirements by executing testing scripts based on the Business Requirements gathered during Discovery.
 25. **User Training** – Training activity utilizing training material to instruct the End Users on how to utilize the WFA OnBase® Solution.
 26. **Workflow Automation OnBase® Solution or WFA OnBase® Solution** - the workflow automation solution developed by Xerox in accordance with the scope of this SOW including software and business processes based on Customer’s Business Requirements and Functional Specifications using the Licensed Software.
 27. **Xerox® MFP Connector (or “Connector”)** – **A software connector for OnBase® software that links an MFP to the Hyland OnBase® system. The Connector is provided pursuant to the terms of a click wrap end user license agreement.**
2. **SERVICES DESCRIPTION** - Xerox will perform the SOW Services in accordance with the terms of the Agreement and this SOW. Any changes to this SOW, including Attachment B, shall require the written consent of both Parties.
 3. **Customer Acknowledgement:** Customer acknowledges and agrees that: **(i)** Xerox shall have local and/or remote access to the network and server(s) where the Licensed Software is installed for purposes of providing the SOW Services under this SOW; and **(ii)** the Licensed Software may be configured to provide reports to Xerox via email or other communication means for purposes of providing the SOW Services. The SOW Services and Licensed Software are delivered electronically unless otherwise stated in this SOW.
 4. **TERM** - This SOW shall commence upon the SOW Effective Date and shall continue for a period of thirty-six (36) months following Go-Live (“**Initial Term**”). The Maintenance and Support Services will be provided for the Initial Term and billed annually from the Go-Live date.
 1. Either Party may terminate the Maintenance and Support Services within thirty (30) days prior to the anniversary date of Go-Live for perpetual Licenses only.

2. Effect of Termination: Upon termination or expiration of this SOW, all rights to use the Licensed Software shall continue in accordance with the terms of the EULA. Customer shall pay to Xerox all amounts due and owing for any Services provided by Xerox prior to the notification of Termination to Xerox.
5. **CHARGES** - Total Charges for the SOW Services consist of the Charges as set forth in Attachment A, and are exclusive of all applicable Transaction Taxes. When the deliverables for each Phase have been completed by Xerox according to the requirements documented in this SOW, the Customer will acknowledge Phase completion in accordance with Attachment B, enabling Phase billing as defined in this SOW.

In a perpetual License structure, Customer's failure to pay annual Maintenance and Support Charges when billed will result in cancellation of Maintenance and Support. Support can be reestablished through a support reestablishment Charge of fifty percent (50%) of the annual Maintenance and Support, plus all Maintenance and Support Charges outstanding within a new signed Order agreement.

6. **CHANGES** - To the extent that the Parties wish to add or make modifications to this SOW after the SOW Effective Date, including without limitation modifications to the SOW Services, the addition of Professional Services, the addition of new Sites at which SOW Services will be performed, and changes to the pricing resulting from any of the foregoing, all such changes will be documented in a signed Order or as mutually acceptable in-writing signed by both Parties.
7. **ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO SOW SERVICES -**

1. **Delays:** The Charges provided in Attachment A and SOW Services described in Attachment B do not include any delays incurred due to the unavailability of Customer, Customer vendors, or other non-Xerox individuals whose participation in the SOW Services is critical, or delays by Customer in providing information needed. Delays that prevent Xerox from continuing work may result in the SOW Services being put on hold by Xerox. SOW Services that have been put on hold will need to be rescheduled based on the availability of Xerox resources. Notwithstanding the foregoing, if the Customer's team ceases to interact with Xerox for a period of more than four (4) weeks, the project will be deemed to be concluded, and final billing will be submitted.
2. **MAINTENANCE:** Maintenance and Support Services during the first twelve (12) months following the completion of Go-Live are required and provided during the Term per Section 3 above. Software Maintenance Support Services will be provided pursuant to the Software Maintenance Support Addendum.
3. **Licensed Software:** Customer acknowledges and agrees that Xerox cannot provide the Services until Customer has executed the EULA and received counter-signature or acceptance from Hyland. Customer agrees to execute the EULA within _____ days after the SOW Effective Date.

8. **LIST OF ATTACHMENTS -**

Attachment A	Charges for SOW Services and Licensed Software
Attachment A-1	Install Locations
Attachment B	Description of Services
Attachment C	Acceptance Form (SAMPLE)
Attachment D	Software Maintenance Support Addendum

The terms and conditions of this SOW apply only to the provision of the SOW Services and do not affect, amend, or modify any of the provision of Services under any other Order under the Agreement. In particular, in the event of any failure by Xerox to perform under this SOW, such failure shall not be considered a failure or breach under any other Order under the Agreement.

ATTACHMENT A CHARGES FOR SERVICES

CHARGES for the Services include **(i)** either Perpetual Licensed Charges, **(ii)** Professional Services Charges, **(iii)** Software Maintenance Support Services Charges, and **(iv)** Training Charges set forth below.

Charges for the Services are invoiced as outlined in Table 2, below.

1.1. Licensed Software

The Licensed Software modules needed to implement the WFA OnBase® Solution via a Hyland perpetual solution are set forth in Table 1. Perpetual License Charges are provided in Table 2 and are based on Customer provided information and subject to change if Customer revises their requirements. If changes are required, they must be accomplished in accordance with the Change clause of Section 5 of the SOW whether initiated by Xerox or the Customer.

Table 1: Perpetual or Subscription - Licensed Software

Module Name	Module Code	Quantity

1.2. Professional Services Pricing

Professional Services Charges are provided in Table 2 below. Any changes to the quantity, rate, or type of services must be accomplished in accordance with the Change clause of Section 5 of the SOW, whether initiated by Xerox or the Customer. Included in the Professional Services Pricing are the Discover and Design, Implement, Train and Test, and Deploy services outlined in [Attachment B](#).

Professional Services are billed to Customer upon completion of the applicable Phase.

1.3. Software Maintenance Support (M&S) Pricing

Perpetual License - M&S refers to annual Software Maintenance Support Services for the solution components and the solution implementation. This cost is identified as a separate line item in Table 2 below. Subsequent M&S will be charged as outlined in Table 2 below.

1.4. Training

In order for Customer to manage the system after Go-Live, Customer will have at least one (1) person trained and certified by Hyland to operate the OnBase® system at an off-site Hyland training location. As part of the SOW, required training is listed below. Failure to maintain the OnBase® system will result in poor performance and unreliable operation. Support requests associated with untrained operators or poor system maintenance will not be supported, and may result in service charges for repair or recovery. Customer is responsible for all travel related expenses for personnel to attend and complete the training.

1.5. Overall Pricing

Table 2: Pricing Summation

Product Name	Price	Quantity	Extended Price	Billing Type	Billing Timing
			\$xxx		
			\$xxx		
Total:	\$xxx				

1.6. Professional Services Estimate Assumptions

**ATTACHMENT A-1
INSTALL LOCATIONS**

Installation locations are important for the accurate assessment and collection of sales, and use taxes. For the purposes of assessment, the following conventions are used, unless otherwise contravened by competent jurisdictional tax authority:

- Server based software is deemed to be installed into the tax jurisdiction where the primary operational Server, virtual or physical, is located at the time of installation completion (see stages of project).
- Named Workstation, Name User, and non-server based licenses, software, and equipment shall be deemed to be installed in the tax jurisdiction of the "Primary Location" or "Home Base" where the license, software, or equipment is assigned by the customer at the time of installation completion.
- The Customer will attest and affirm to the location of installation by competent authority as part of the Customer acceptance of installation.
- Xerox will designate and report specifics and cost of all software and other taxable material, along with tax jurisdiction and tax rates applied, within the installation-billing invoice.

One Locations (production servers and scanning locations):

Table 3: Production Servers, Scanning Locations, etc.

Location ID**	What is installed at Location	Street Address	City	State	Zip
001		xxx			
002		xxx			

** Location ID is an optional field and may include a Customer defined name, e.g. "Bldg 200".

ATTACHMENT B**DESCRIPTION OF STATEMENT OF WORK (SOW) SERVICES TO IMPLEMENT THE WFA ONBASE® SOLUTION**

This Statement of Work defines all the tasks, responsibilities, and costs associated with the product(s) and service(s) of the WFA OnBase® Solution by Xerox in support of Customer.

The objective of the proposed solution is to provide a combined Electronic and Paper Records Management solution (Based on the Hyland OnBase® software platform) to manage the complete life cycle (declaration through disposition) of all final records at Customer. The Electronic and Paper Records Management solution shall set up a records structure based on the Taxonomy and retentions schedules provided by Customer and shall include workflow processes for records approval and records destruction incorporating record holds. The solution shall include the migration of existing final records stored in AppXtender and in Customer file shares. Post migration and solution implementation, the OnBase® solution shall be utilized to manage the life cycle of any day forward records at Customer that are outside the Customer Production system. Records migrated from the XXX production system will be imported as specific document types with associated meta data (but without an associated electronic document) and will managed based on the record retention schedules/rules for that specific document type.

Phase 2 of the solution shall include an integrated method to pass final records from the Customer production system into the OnBase® and providing a link back to the production system as to where the record is located in OnBase® so that it can be retrieved as required through the production system. Phase 2 is out of scope for this SOW and shall be covered as a follow-on project after the completion of Phase 1. The solution shall include two (2) Xerox provided document scanners for scanning day forward records.

The solution will include the following capabilities:

Records Capture and Management Solution

The objective of the proposed solution is:

The WFA OnBase® Solution, utilizing Hyland OnBase®, is a software solution that integrates document capture, secure document storage and management, business process automation, remote and mobile access, external systems and data integration, and overall solution management into one coherent platform. Hyland Software, the creator of OnBase®, is a Xerox Alliance Partner who provides technology, which is fundamental to this solution.

This solution will be delivered over the course of several Phases. The details and SOW summary are provided below, but a high-level summary of the phasing of this effort includes:

- Discover and Design Phase – Enables Xerox and the Customer to refine and/or validate understanding of requirements and goals, verify assumptions, finalize the solution design and delivery strategy, and clearly document those details in order to support the downstream project Phases.
- Implement Phase – Addresses the creation of new technologies, processes, and documentation to support the Deployment and subsequent Phases of this solution project.
- Train and Test Phase – Enables the Customer to interact with and validate the solution design through training and user acceptance testing and ensures that the Customer is ready for Go-Live.
- Deploy Phase – Accomplishes the delivery of the solution and ensures that it and the Customer is ready for Go-Live.

This WFA OnBase® Solution is built on a set of platform technologies that includes:

- Xerox Documate 4440 VRS Pro Improved Document Scanner and Hyland OnBase®.
- The delivery activities are then followed by an ongoing Software Maintenance Support Services (M&S). This section addresses the delivery activities relevant to this solution. For each Phase, we outline the Activities, and Deliverables associated.

**ATTACHMENT C
CUSTOMER ACCEPTANCE FORM (SAMPLE)**

Customer Acceptance Document

All fields with * are mandatory

*Customer: _____

*Install Address: _____

*City: _____

*State: _____

*Zip: _____

*Date of work completion and Customer acceptance: _____

As specified by the SOW between Xerox and the above Customer, Xerox has delivered the products/solutions and successfully completed work associated with the installations and/or Professional Services and/or training specified in the SOW.

The below are hereby acknowledged as delivered, completed, and/or accepted by the Customer:

Discover and Design (Please lists the item description and reference number)

Implement (Please lists the item description and reference number)

Train and Test (Please lists the item description and reference number)

Supplier:		Customer	
Signature:		Signature:	
Printed Name:		Printed Name:	
Title:		Title:	
Phone number:		Phone Number:	
Date:		Date:	

ATTACHMENT D SOFTWARE MAINTENANCE SUPPORT ADDENDUM

Subject to the terms of this SOW and the Agreement, Software Maintenance Support Services is provided by Xerox in accordance with the following:

1. DEFINED TERMS.

The following terms shall have the meanings set forth below for all purposes of this Attachment D:

(a) Documentation. "Documentation" means for the "Help Files" included in the Licensed Software published by Hyland Software, Inc. and that relate to the functional, operational or performance characteristics of the Licensed Software.

(b) Error. "Error" means any defect or condition inherent in the Licensed Software that causes the Licensed Software to fail to perform in accordance with the current Documentation.

(c) Licensee. "Licensee" means Customer.

(d) Licensed Software. "Software" means **(1)** the current released version of the Licensed Software as set forth in Attachment A, and **(2)** at any time after Xerox has delivered to Licensee a new version of such computer software as an Upgrade and Enhancement under this Addendum, the released version of such computer software last released prior to the current released version; provided, that the Software will not include any prior released version of such computer software that has been superseded for more than two (2) years (as determined from the date that Hyland Software, Inc. first announced publicly, through its web site or otherwise, the general release of the next later version of such computer software) by any later released version of such computer software.

(e) Upgrades and Enhancements. "Upgrades and Enhancements" means all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that Hyland Software, Inc. commercially releases to its end users generally during the applicable Addendum Term to correct deficiencies or enhance the capabilities of the Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules, re-platformed Software or new functionality.

(f) Addendum Term. "Addendum Term" means each annual period during which Customer has purchased Software Maintenance Support Services.

2. SOFTWARE MAINTENANCE SUPPORT SERVICES.

(a) Generally. Subject to the terms and conditions of the SOW, Xerox shall: **(1)** use its commercially reasonable efforts to correct any properly reported Error(s) in the Software reported in accordance with Xerox's current policies for the reporting of Errors, and which are confirmed by Hyland Software, Inc., in the exercise of its commercially reasonable judgment; **(2)** use its commercially reasonable efforts to correct any properly reported defect(s) (non-conformity to Functional Specifications mutually agreed upon by Xerox and Licensee) in any configurations of the Workflow or WorkView modules of the Software that are created by Xerox or any integrations of the Software with other applications, software or hardware that are configured or created by Xerox, which are confirmed by Xerox, in the exercise of its commercially reasonable judgment; and **(3)** upon the request of Licensee, provide technical support and assistance and advice related to the operation and use of the Software by Licensee, or any problems with any of the foregoing. Licensee's report must include updated information on its installed version of the Software and information reasonably necessary to describe the circumstances under which the reported Error is manifest. Xerox shall undertake to report to Hyland Software, Inc. for confirmation any reported Errors promptly after receipt of proper notice from Licensee. Xerox shall undertake to confirm any reported defect(s) described in clause (2) above promptly after receipt of proper notice from Licensee in accordance with Xerox's current defect reporting procedures. Xerox shall perform services in an effort to correct confirmed Errors in the Software or defects in configurations or integrations created by Xerox promptly after making such confirmation. Software Maintenance Support Services generally will be available during Normal Business Hours, Monday through Friday, excluding holidays, or as otherwise provided by Xerox to its end users purchasing continuing Software Maintenance Support Services in the normal course of its business, by on-line connectivity, telephonically or both.

Licensee acknowledges and agrees that Xerox and Hyland Software, Inc. require on-line access to the Software installed on Licensee's systems in order for Xerox to provide Software Maintenance Support Services hereunder. Accordingly, Licensee shall install and maintain, at Licensee's sole cost and expense, appropriate communications software as specified by Xerox; and Licensee shall establish and maintain, at Licensee's sole cost and expense, an adequate connection with Xerox and Hyland Software, Inc. to facilitate Xerox's on-line Software Maintenance Support Services.

(b) On-Site Services. Upon the reasonable request of Licensee, and submission of a purchase order for such services agreeing to pay for such services on a time and materials basis in accordance with the Agreement and this SOW, Xerox may provide on-site Software Maintenance Support Services at Licensee's facilities in connection with the correction of any Error(s) involving a mission critical function of the Software that is not functioning in a production environment.

(c) Exclusions. Xerox is not responsible for providing, or obligated to provide, Software Maintenance Support Services or Upgrades and Enhancements under this Addendum: **(a)** in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Software, including any configuration of the Workflow or WorkView modules of the Software that was not undertaken by Xerox or Hyland Software, Inc. or authorized in writing in advance by Hyland Software, Inc.; **(b)** in connection with any Error if Xerox (directly or through Hyland Software, Inc.) has previously provided corrections for such Error, which correction Licensee chooses not to implement; **(c)** in connection with any Errors or problems that have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than third party software bundled with the Software by Hyland Software, Inc.), hardware or any system or networking utilized by Licensee; **(d)** if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or **(e)** if any party other than Xerox or Hyland Software, Inc. has provided any services in the nature of Software Maintenance Support Services to Licensee with respect to the Software.

3. UPGRADES AND ENHANCEMENTS.

Xerox will provide to Licensee, in accordance with Hyland Software, Inc.'s then current policies, all Upgrades and Enhancements to the Software released by Hyland Software, Inc. during the term of this SOW. Licensee acknowledges and agrees that Hyland Software, Inc. has the right, at any time, to change the specifications and operating characteristics of the Software and Hyland Software, Inc.'s policies respecting Upgrades and Enhancements and the release thereof to its end users. Any Upgrades and Enhancements to the Software and Documentation shall remain proprietary to Hyland Software, Inc. and the sole and exclusive property of Hyland Software, Inc., and shall be subject to all of the restrictions, limitations, and protections of the EULA. All applicable rights to patents, copyrights, trademarks, other intellectual property rights, applications for any of the foregoing and trade secrets in the Software and Documentation and any Upgrades and Enhancements are and shall remain the exclusive property of Hyland Software, Inc.

4. LICENSEE'S RESPONSIBILITIES.

(a) Operation of the Software. Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management, and control of the Software, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Licensee is solely responsible for its data, its database and for maintaining suitable backups of the data and database to prevent data loss in the event of any hardware or software malfunction. Xerox and Hyland Software, Inc. shall have no responsibility or liability for data loss regardless of the reasons for said loss. Xerox and Hyland Software, Inc. shall have no responsibility or liability for Licensee's selection or use of the Software or any hardware, third party software or systems.

(b) Licensee's Implementation of Error Corrections and Upgrades and Enhancements. In order to maintain the integrity and proper operation of the Software, Licensee agrees to implement, in the manner instructed by Xerox, all Error corrections and Upgrades and Enhancements. Licensee's failure to implement any Error corrections or Upgrades and Enhancements of the Software as provided in this Section 4(b) shall relieve Xerox of any responsibility or liability whatsoever for any failure or malfunction of the Software, as modified by a subsequent Error correction or Upgrade and Enhancement, but in no such event shall Licensee be relieved of the responsibility for the payment of Charges and Charges otherwise properly invoiced during the term hereof.

(c) Notice of Errors; Documentation of Errors. Licensee shall provide prompt notice of any Errors in the Software discovered by Licensee, or otherwise brought to the attention of Licensee, in accordance with Xerox's then current policies for reporting of Errors. Proper notice may include, without limitation, prompt telephonic and written notice to Xerox of any alleged Error. If requested by Xerox, Licensee agrees to provide written documentation of Errors to substantiate the Errors and to assist Xerox in the detection and correction of said Errors.

(d) Access to Premises and Systems. Licensee shall make available reasonable access to and use of Licensee's premises, computer hardware, peripherals, Software, and other software, as Xerox deems necessary to diagnose and correct any Errors or to otherwise provide Software Maintenance Support Services. In addition, Licensee acknowledges and agrees that Hyland Software, Inc. may be retained by Xerox to provide Error corrections or other Software Maintenance Support Services directly to Licensee and, accordingly, Licensee shall provide such same access directly to Hyland Software, Inc. Such right of access and use shall be provided at no cost or charge to Xerox or Hyland Software, Inc.

End of Xerox® Workflow Automation Services Statement of Work

EXAMPLE - Xerox® DocuShare® Private Cloud Services Statement of Work

1. **DEFINITIONS:** Terms defined within the Agreement and used herein shall have the meaning set forth therein unless expressly set forth otherwise below:
 - Cloud User** means a single authorized individual End User who has access rights to the Service.
 - Customer** includes Customer Affiliates and End Users.
 - Customer Hosted Site** means the hosted site provided by the Service for Customer to receive the Service
 - Customer Data** shall mean any data, information, or other materials of any nature whatsoever, provided to Xerox by Customer in the course of implementing and/or using the Services.
 - Electronic Communications** shall mean any transfer of signs, signals, text, images, sounds, or data of any nature transmitted in whole or part electronically.
 - End User** shall mean Customer's employees, consultants, service providers or any third party clients authorized to use the Service.
 - Software** means DocuShare software program provided in a hosted format accessed through a web portal, the corresponding Documentation, in printed materials and/or online electronic form used to provide the Service. The Software is for business use only and not for personal, household, family or any other unlawful purposes.
 - Term** means the Initial Term and any Renewal Term as defined in Section 5 of this SOW.
 - Update** shall mean any corrections, minor improvements, minor additions, and minor substitutions to the Software that are designated as Updates by Xerox, in its sole discretion. Updates may be identified by a change in the numerals on the right side of the decimal point of the Software version number.
 - Upgrade** shall mean any modifications, additions, and substitutions to the Software that result in substantial performance, structural or functional improvements or additions, and are designated as Upgrades by Xerox. Upgrades may be identified by a change in the numerals on the left side of the decimal point of the Software version number.
 - Professional Services** means the services provided by Xerox to define the Customer's needs and objectives in enabling a Xerox® Content Management Services solution as set forth in **Exhibit B** attached hereto.
2. **SERVICE:** Xerox will provide Customer with a hosted instance of the Software and any Updates and patches that augment or enhance the current business application (the "**Service**"). Xerox shall host the Service and may

update the content, functionality, and user interface of the Service from time to time, in its sole discretion during the Term and in accordance with this SOW. Additionally, if required, Xerox will provide the Professional Services identified in **Exhibit B**.

- 3. LICENSE GRANT:** Subject to the terms and conditions of this SOW, Xerox grants Customer during the Term of this SOW the non-exclusive, non-transferable, and terminable license to use and access the Service and to display content solely for Customer's business operations, provided such operations shall not include service bureau use, outsourcing, renting, or time-sharing the Service. Customer acknowledges and agrees that the license granted herein is not a concurrent user license and that the rights granted to Customer are provided to Customer on the condition that Customer does not (and does not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Software or any part thereof or otherwise attempt to discover any source code, modify the Software in any manner or form, or use unauthorized modified versions of the Software or Service, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Services. Customer is expressly prohibited from sublicensing use of the Service to any third parties. Customer acknowledges and agrees that Xerox shall own all rights, title, and interest in and to all intellectual property rights in the Service. Except as provided in this SOW, the license granted to Customer does not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by Xerox.
- 4. LICENSE FROM CUSTOMER:** Subject to the terms and conditions of this SOW, Customer grants Xerox the non-exclusive, worldwide, royalty-free, transferable license during the Term to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display and otherwise use the Customer Data as necessary to render the Service to Customer under this SOW. Customer grants Xerox a worldwide non-exclusive, nontransferable, non-assignable right to use the Customer's trademarks in connection with the Service set forth in this SOW.
- 5. TERM, CHARGES, AND PAYMENT:**

 - 5.1 Charges:** Charges for this SOW are set forth in the Order associated with this SOW. Charges include Fees for Professional Services, provisioning of the Service and number of CLOUD USER in accordance with the configuration set forth in **Exhibit A**.
 - 5.2 Changes.** All changes to this SOW, including, without limitation, will be made through a signed Order, prior to implementation of such changes.
 - 5.3 Term.** The initial term of this SOW is a minimum of thirty-six (36) months after the date of installation ("**Initial Term**").
 - 5.4 Termination:** Upon thirty (30) days' prior written notice to the other Party, either Party may terminate the Services. If Customer terminates the Services, then Customer agrees to pay to Xerox, in addition to other amounts due and owing under the Agreement, (i) an amount equal to the remaining principal balance of any Professional Services and implementation fees as set forth in the Agreement and (ii) an amount equal to the then current Monthly Charge for CLOUD USER multiplied by the number of months remaining in the Term, not to exceed three (3) months. Upon termination, Customer's rights to use the Services cease.
 - 5.5 Payment.** Xerox will begin invoicing Customer upon provisioning of the Services, i.e., when Xerox determines that the Services are ready for use by the Customer. After the Initial Term, Xerox reserves the right to change the amount of the fee for the Services to the then-current list prices under the NASPO ValuePoint Master Agreement. Invoices are payable in accordance with the payment provisions of the Agreement.
- 6. TERMS OF SERVICE:** Customer acknowledges and agrees that Customer's use of the Services is subject to the following terms of service. In addition, Customer agrees that unless explicitly stated otherwise, any new features that augment or enhance the Services will be subject to this SOW.

 - 6.1. Accuracy Of Customer's Registration Information.** Customer agrees to provide accurate, current, and complete information ("**Registration Data**") about Customer as prompted by the registration form attached hereto as **Exhibit E**, which Customer will fill out in order to gain access to the Service. Customer

further agrees to use commercially reasonable efforts to notify Xerox with any updates to the Registration Data to keep it accurate, current and complete. Customer acknowledges and agrees that if Customer provides Information that is intentionally inaccurate, not current, or incomplete in a material way, or Xerox has reasonable grounds to believe that such information is untrue, inaccurate, not current, or complete in a material way, Xerox has the right to terminate this SOW for Customer's material breach.

6.2 Xerox Terms and Conditions of Use. Customer acknowledges that End Users accessing the Service will be subject to the Xerox Terms and Conditions of Use. A copy of the Xerox Terms and Conditions of Use is attached hereto as **Exhibit F**.

6.3. Email and Notices. Customer agrees to provide Xerox with Customer's e-mail address, to promptly provide Xerox with any changes to Customer's e-mail address, and to accept e-mails (or other Electronic Communications) from Xerox at the e-mail address Customer specifies in the Registration Data. Customer further agrees that Xerox may provide all notices, statements, and other communications to Customer through either e-mail, or by mail or express delivery service. Notices for this SOW shall be sent to the following:

<p>If to Xerox: Xerox Content Management 3333 Coyote Hill Road Palo Alto, CA 94304 Attention: Contracts Manager Telephone: Facsimile: Email:</p>	<p>If to Customer: Attention: Telephone: Facsimile: Email:</p>
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6.4 Passwords, Access, and Notification. Customer may designate up to the number of End Users under Customer's account, which corresponds to the number of Cloud User purchased by Customer, and Customer may provide and assign unique passwords and user names to each authorized End User for each Cloud User purchased. Customer acknowledges and agrees that Customer is prohibited from sharing passwords and/or End User names with unauthorized users and that Customer will be responsible for the confidentiality and use of Customer's (including its employees') passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. Xerox will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer agrees to notify Xerox immediately if Customer becomes aware of any loss, theft, or unauthorized use of any of Customer's passwords, user names, and/or account number.

6.5 Third-Party Software. Customer agrees to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by Xerox. Until notified otherwise by Xerox, Customer agrees to use software that supports the Secure Socket Layer (SSL) protocol or other protocols accepted by Xerox and to follow logon procedures for services that support such protocols. Customer acknowledges that Xerox is not responsible for notifying Customer of any Upgrades, Updates, fixes or enhancements to any such third party software or for any compromise of data transmitted across computer networks not owned or operated by Xerox or telecommunications facilities, including, but not limited to, the Internet.

6.6 Transmission of Data and Data Protection. Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Service. Customer expressly consents to Xerox's interception and storage of Electronic

Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Xerox. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the internet, network communications facilities, telephone, or other electronic means. Customer agrees that Xerox is not responsible for any Electronic Communications and/or Customer Data, which are lost, altered, intercepted, or stored without authorization during the transmission of any data whatsoever across networks not owned and/or operated by Xerox. To the extent that either Party processes any personal data under this SOW on behalf of the other Party (or End User), it shall do so in accordance with the applicable law that gives effect to Directive 95/46 EC and the local laws implementing this Directive ("Privacy Laws"). Customer represents and warrants that Customer has been given or has obtained all consents of subjects of personal data (including End Users) as may be required by applicable Privacy Laws for the purposes of Xerox processing personal data under this SOW.

6.7 Support Services. Xerox will provide the Support Services as set forth in **Exhibit D** attached hereto. Xerox will make commercially reasonable efforts to promote Customer's successful utilization of the Service, including but not limited to providing Customer with user guides and online help, as well as optional and "for fee" training classes.

6.8 Proprietary Rights. Customer acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that content or information presented to Customer through the Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws.

6.9 Trademark Information. All service marks, trademarks, trade names, trade dress and other indicia of source used herein and otherwise by Xerox (collectively called the "**Marks**") are proprietary to Xerox or their respective owners that have granted Xerox the right and license to use such Marks. Customer does not receive any trademark rights or any other rights in or to the Marks. Xerox and Xerox DocuShare are proprietary Marks of Xerox Corporation. All other trademarks/trade names are the property of their respective owners and are used by permission

7. TERMINATION:

7.1 Termination for Non-Payment. Xerox reserves the right to terminate Customer's access and/or use of the Service and this SOW if Customer has failed to pay in accordance with the payment provisions of the Agreement. Customer agrees that Xerox shall not be liable to Customer or to any third party for any suspension of the Service resulting from Customer's nonpayment of fees as described in this Section 7.1.

7.2 Termination for Ongoing Harm. Customer agrees that Xerox may with reasonably contemporaneous telephonic notice to Customer, immediately terminate this SOW if Xerox reasonably concludes that Customer use of the Service is causing immediate and ongoing harm to Xerox or others. Customer agrees that Xerox shall not be liable to Customer or to any third party for any termination of the Service under such circumstances as described in this Section 7.2.

7.3 If this SOW is terminated by Xerox for Customer's material breach, Customer is obligated to Xerox for Early Termination Fees outlined under Section 5 above.

7.4 Handling of Customer Data In The Event of Termination. In the event that this SOW expires or is terminated in accordance with the terms of the Agreement and this SOW, Xerox will grant Customer temporary limited access of not more than thirty (30) days to the Service for the sole purpose of permitting Customer to retrieve Customer Data, provided that Customer has paid in full all good faith undisputed amounts owed to Xerox. Should Customer require assistance, Xerox can provide reasonable assistance to Customer to transfer Customer Data from the Customer Hosted Site to another environment specified by the Customer. Such assistance shall be provided at Xerox's time and materials rates, per the NASPO

ValuePoint Master Agreement. Customer acknowledges and agrees that following termination of Customer's account and/or use of the Service, Xerox may, after such thirty (30) day period to retrieve Customer Data, immediately deactivate Customer's account and shall be able to delete Customer's account and related Customer Data. Customer further agrees that Xerox shall not be liable to Customer or to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that Xerox is in compliance with the terms of this Section 7.4.

7.5 Data Retention. Subject to Section 7.4, Xerox shall not be responsible for retaining any Customer Data after expiration or termination of this SOW. All Customer Data is deleted from the servers used to provide the Service and from back-ups during scheduled back-up rotations after expiration or termination of this SOW. Xerox shall not restore, provide any storage media, or send out any data pertaining to Customer's account or this SOW.

8. MODIFICATION TO OR DISCONTINUATION OF THE SERVICE: Xerox reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof). In the event that Xerox modifies the Service in a manner that removes or disables a feature or functionality on which Customer materially relies, Xerox, at Customer's request, shall use commercially reasonable efforts to substantially restore such functionality to Customer. In the event that Xerox is unable to substantially restore such functionality, Customer shall have the right to terminate the SOW without payment of any ETCs for Cloud User as set forth in Section 5 above. Customer acknowledges that Xerox reserves the right to discontinue offering the Service at the conclusion of Customer's then current Initial Term or Renewal Term. Customer agrees that Xerox shall not be liable to Customer or to any third party for any modification of the Service as described in this Section 8.

9. Warranties.

9.1 By Customer. Customer represents and warrants that Customer shall not permit any authorized user of the Customer Hosted Site to:

(1) upload any material to the Customer Hosted Site that is the intellectual property of any third party without the prior written consent of such third party. Such intellectual property shall include any patented, trademarked, copyrighted, or trade secret material (whether or not such trade secret material can be patented, trademarked or copyrighted);

(2) perform any illegal acts through the use of the Customer Hosted Site and/or maintain any information including, but not limited to digital images, which may be deemed to be illegal by reason of such material being present on the Customer Hosted Site;

(3) publish or transmit any material in violation of any federal, state, local or foreign statute, rule or regulation in any jurisdiction which may assert personal jurisdiction over an authorized user of the Customer Hosted Site;

(4) upload any information to the Customer Hosted Site which, by reason of such material being accessible on the Internet, the Customer shall be required to have or maintain any license or permit in a jurisdiction unless the Customer shall then have such license or permit in any such jurisdiction;

(5) upload any content, materials advertising or provide any services that are inaccurate or infringe on or violate any applicable law, regulation or right of a third party, including without limitation, export laws, or any proprietary, contract or privacy right;

(6) maintain any sexually explicit material at any time in any general public areas or in any restricted access areas unless the Customer has obtained the user's acceptance of terms and conditions to which Xerox has given its prior written approval to the Customer as being acceptable to Xerox.

9.2. By Xerox. Xerox warrants during the Term of this SOW that Xerox will use commercially reasonable efforts to ensure that Customer's Data will be safeguarded and maintained accurately. Xerox also warrants that it will, at a minimum, utilize and maintain security and backup procedures as listed in **Exhibit C** hereto (and hereby incorporated by reference) to protect Customer Data. In the event of a breach of this provision, Xerox will use commercially reasonable efforts to correct the Customer's Data or restore the Customer's Data within three (3) business days. In the event Xerox is unable to correct or restore

Customer's Data as provided in this Section 9.2, Customer's sole and exclusive remedy shall be it may, at its option, terminate the SOW and ETCs for Cloud User as set forth in Section 5 shall not be due.

10. DISCLAIMER OF WARRANTIES: EXCEPT AS STATED IN SECTION 9 ABOVE AND IN THE AGREEMENT, XEROX DOES NOT REPRESENT OR WARRANT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS STATED IN SECTION 9 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

11. SERVICE LEVELS: Beginning ninety (90) days after the Commencement Date of Service, Xerox shall maintain, annually, on a full calendar year basis, 99.5% Uptime, excluding Scheduled Maintenance and Emergency Maintenance, where:

1. **Commencement Date of Service** means the date that the Xerox has provisioned the Service.
2. **Emergency Maintenance** - means any maintenance that: **(a)** in Xerox's sole discretion, is necessary to ensure the safety, security, and **stability** to the Xerox Private Cloud or Xerox datacenter and **(b)** of which Customer is notified.
3. **Scheduled Maintenance** - means the regularly scheduled Saturday night maintenance window of 10:00pm **Mountain** time until 2:00 am **Mountain** time Sunday morning.
4. **Uptime** – means period of time that the Service is functional, and assumes Customer has connectivity to the Service. The Uptime calculation excludes any lack of Customer connectivity to the Service caused by intermediate network or Customer intranet **dysfunction**.

12. RESERVED

13. SOW EXHIBITS:

- Exhibit A Service Configuration Selected by Customer
- Exhibit B Professional Services
- Exhibit C Security
- Exhibit D Support Services
- Exhibit E Registration Data
- Exhibit F Copy of Online Web Portal Terms and Conditions of Use

14. EFFECT OF THIS SOW: The terms and conditions of this SOW apply only to the provision of the Service and do not affect, amend, or modify any of the provision of services under any other Order under the Agreement. In particular, in the event of any failure by Xerox to perform under this SOW, such failure shall not be considered a failure or breach under any provision of any other Order or the Agreement.

EXHIBIT A: SERVICE CONFIGURATION

As set forth in the Order associated with this SOW, the Xerox® DocuShare® Private Cloud Services include the following deliverables:

DocuShare Cloud Platform

1. General access for 50 Cloud Users
 1. Account & Content Administrators
 2. View only Users
 3. View, add, & manage users
2. Content Rules Manager
3. Mobile Access
4. 1 TB Storage; additional storage space may be added for an additional cost
5. Up to 5 million documents; provided the storage space limit above is not met.

Support and Maintenance Services

1. Support services
 1. Basic site administrative support
 2. Available via phone, web, email
2. Infrastructure management services
 1. 24x7 management & monitoring
 2. Data encryption
 3. Data Backup & redundancy

Professional Services

1. Platform provisioning & implementation
2. Standard initial site configuration
3. Quick Start Training
 1. Account & content administrator training
 2. "Train-the-trainer" end user training

EXHIBIT B: PROFESSIONAL SERVICES

Project Scope

This Exhibit B identifies the roles Xerox and the Customer will play in the project for the installation, configuration, testing, and training on the planned DocuShare solution. The project will involve regularly scheduled conference calls prior to the actual deployment. These meetings will focus on determining the detailed configuration settings for the DocuShare site and defining Customer responsibilities in relation to this project.

In Scope:

1. Develop and document an agreed deployment plan defining steps, responsibilities, and roles for the installation procedure
2. Development of an overall Project Plan and Schedule
3. Development of a Test Plan

Planning:

1. Develop a deployment plan to guide the execution of the detailed steps of this project; review with the Customer for approval and buy-in
2. Develop a Test Plan germane to the specific requirements

Project / Platform Preparation:

1. General project requirements gathering and refinement for the production DocuShare Server
2. Platform requirements analysis and recommendations
3. Guide the Customer in the implementation and configuration of the new server environment

Server Installation and Configuration:

1. Provision the DocuShare Private Cloud Service platform
2. Configure the new DocuShare Cloud platform in a manner consistent with the current on premise server and the Customer's requirements per this SOW

Production Migration:

1. Migrate and upgrade the variable data contents of the Customer's existing DocuShare server to the new cloud service including document contents and database
2. Deploy a web browser based "drag and drop" multi-file upload capability to the DocuShare Cloud Service
3. Validate and test the proper configuration and operation of the migrated system
4. Support and assist the Customer in their efforts to test and validate the new platform
5. Remediate issues and bugs as they are detected

Cutover:

1. Support the Customer in the reassignment of production identity to the new server, cutting over access and use from old to new.
2. Services will be provided during two consecutive weekend days, 16 hours maximum, to complete the production migration.
3. Provide URL access to the DocuShare cloud service

Training:

1. Deliver refresher DocuShare administrator and end user train-the-trainer courses

Project Management:

1. Planning, tracking and communication of all project activities and status

Notes:

1. Services will be delivered as off-site (remote) services only. Please refer to the "Customer Responsibilities" section for requirements to support remote access and training delivery
2. Unless otherwise noted, all services described above will be provided during normal business hours (8am-5pm Monday-Friday in the local time zone).
3. No accommodation is made in this SOW for any special effort to support the integration of external systems (databases, imaging/capture solutions, printing solutions, etc.) other than that discussed above as "In Scope".

Out of Scope:

1. Acquisition, installation and configuration of server hardware, operating systems, enterprise database management software, and storage or , MFP or Scanner hardware
2. Integration of DocuShare with any external applications or systems other than those described above as "In Scope"
3. VPN access to the DocuShare® Private Cloud Service is not included

Customer Responsibilities

The Customer is responsible for the following actions, which are necessary to ensure Xerox's effective delivery of the services described in this SOW within a timely manner:

1. Provide a single point-of-contact (typically the Project Sponsor or Project Manager) with authority to work with Xerox to confirm the project objectives and the solution design who is fluent in the English language
2. Provide access to key Customer IT resources during the project
3. Provide access to key Customer personnel with knowledge of the current environment and business processes
4. Coordinate/facilitate communication between Xerox personnel and Customer personnel who support this effort
5. Provide any required network connections from the cloud server location to the workstation installations
6. Support/participate in all installation activities as required. Xerox recommends that the DocuShare system administrator is involved for the majority of the time spent during the configuration stages
7. Perform the upgrade of individual Customer workstation software such as DocuShare Drive & Windows Client, or other workstation software.
8. The Customer will not share any software code or confidential intellectual property belonging to the Customer or any other company with Xerox or its employees or contractors

Remote Projects:

1. Provide / enable remote access to all servers and Customer systems involved in this project, including administrative accounts

Project Assumptions and Risk - Project Assumptions

This proposal is based upon the following assumptions:

1. The information provided to Xerox prior to the development of this SOW is accurate
2. Xerox will have at least four (4) weeks from Order acceptance, , to staff and begin the proposed project
3. Any customizations of the DocuShare web user interface implemented through VDF or other API-based changes which need to be migrated forward to DocuShare 6.x.x will be covered under the assumptions stated in the "In Scope" Section.

Project Risks

The identified risks to the project schedule or costs are:

1. Availability of Customer staff to participate in the project
2. Availability and configuration of new production hardware
3. Availability of remote access

EXHIBIT C: SECURITY

Security Overview

Xerox security strategy is to protect Customer data at multiple levels, which includes data security, data integrity, data privacy, and physical security. Xerox currently uses products by Oracle, Cisco Systems, Trend Micro, Symantec, GFI LanGuard, Critical Watch, Network Associates and other premier security products and services.

To facilitate the privacy, security, and availability of Customer data and transactions, Xerox employs the following technologies in delivering its service.

- Secure Data Center
- Encrypted User Authentication
- Internet Firewalls
- Network Address Translation and Proxy Services and Servers
- Secure Socket Layer Data Encryption (SSL)
- Redundant, Highly Available Routers and Switches
- Redundant, Highly Available, and Secure Web, File, Application, and Data Base Servers
- Redundant, Highly Available Power Management
- Highly Available Data Access via redundant circuits and carriers
- Regularly Scheduled Backups, Offsite Storage, and Site Replication
- Hardened Servers and Operating Systems
- Regular Vulnerability Scanning

Data Center Security

Xerox's production systems are located in private Xerox data center facilities. Production web, application, file, and database servers along with network equipment are monitored and protected. Xerox data center access is monitored by video surveillance and controlled by the use of card readers, biometric scanners and on site security personnel. Access requires pre-approval along with document and photo validation.

Network Security

Xerox's network is continuously monitored and protected by redundant firewalls. Firewall logs are reviewed on a regular basis. Network logging and tracking are enabled.

Data Security and Availability

Xerox's uses 256-bit domestic and 128-bit international SSL encryption to protect the Customer's data as it leaves our site. Xerox uses ssh encryption via RSA (ssh1) and OSA (sstl2) public keys for communication between services. Oracle databases are protected by firewalls against unauthorized usage.

Data is stored on highly redundant storage systems. The Data Base servers are configured in either RAID 10, RAID 5, or RAID 1 (mirror) configuration as required. The storage solution has its own redundancy and is configured for cluster failover.

Secure Application Access

Xerox's users access the application using password authentication encrypted via SSL. The robust design of the application controls and limits access to Customer specific data.

System Security

Xerox uses tightly controlled passwords on its servers and network equipment. Xerox limits access to production systems to authorized personnel only. Passwords are changed on a regular basis. Security Updates to the operating systems are tracked and updated as necessary during standard maintenance windows.

System Reliability

Xerox designs the application and infrastructure as a tightly integrated solution, leveraging high availability and redundant computer platforms, storage arrays, and enterprise network cloud infrastructures. Virtual servers are imaged via snapshots, backed up, and replicated to the disaster recovery site.

Infrastructure Support

Xerox has in place an expert team to provide 24x7 services for cloud, server, network management, monitoring, backups, and system maintenance.

Data Storage

Customer data is stored on a server that is configured with RAID 10, RAID 5, or RAID 1 (mirror) redundancy. In the event of a disk failure, the Customer will not experience an interruption of service. In addition to the server configured with RAID 10, RAID 5, or RAID 1 data is also stored on a storage solution that has its own built in redundancy, thus providing an extra layer of data protection.

EXHIBIT D: SUPPORT SERVICES

These Support Services terms (the Support Terms) shall govern Xerox provision of Support Services to you (Customer).

1. DEFINITIONS

In these Support Terms, capitalized terms not defined herein shall have the definition given such term in the SOW:

“**Authorized Contacts**” means the named Customer employees or authorized agents who: **(i)** have sufficient technical expertise, training and/or experience with the Service to perform the Customer’s obligations under these Support Terms, **(ii)** are responsible for all communications with Xerox regarding these Support Terms, including case submission and Incident submissions; and **(iii)** who are authorized by Customer to request and receive Support Services for the Service on behalf of the Customer.

“**Business Days**” are Monday to Friday during Normal Support Hours, excluding Xerox company holidays.

“**Customer Support**” means any support relating to calls from Customer’s Authorized Contacts. The support levels are defined as follows:

“Level 1”:

1. Initial contact with Customer via telephone, support request web-form, or email.
2. Validates Customer entitlement for support
3. Gathers description of Customer support request and issue.
4. Checks the support knowledge base for possible solutions and provides appropriate solutions to the Customer.
5. Escalates issue to Level 2 (Note: Level 2 person may be the same support representative)

“Level 2”:

1. Works with Customer to investigate the issue, gather additional troubleshooting data.
2. Uses Web conferencing/Remote Access to observe issue while the Customer replicates the issue.
3. Uses Web Conferencing/remote Access to guide the Customer in additional troubleshooting, resolving the issue, or implementing a work-around solution.
4. Replicates issue for further troubleshooting.
5. Level 2 support representative is the owner of the Customer’s case. Level 2 is also the primary contact between support and the Customer until the issue is resolved.
6. Escalates issue to Level 3 if required

“Level 3”:

1. Works with Level 2 to develop possible solutions or a work around to issues that cannot be resolved by level 2 in a timely manner.
2. Level 3 acts as liaison to Engineering (Level 4) and engages engineering for additional troubleshooting help.
3. Works with engineering on developing possible work-around solutions, hot fixes, and patches.

“Level 4”:

1. Software engineers and solution developers work with Level 3 to resolve high severity issues.
2. Provides additional troubleshooting skills and tools to gather DEBUG information from the DocuShare Server.
3. Develops work-around solutions, hot fixes, and patches required to resolve Customer submitted Incidents.

“First Level Support” means any support relating to calls from Customer’s Authorized Contacts.

“Helpdesk Support” means point of contact resources that directly provide Authorized Contacts with information, troubleshooting help and guidance related to the Service.

“Incident” means a single support question or reproducible failure of the Service to substantially conform to the functions and/or specifications as described in User Guides and submitted by an Authorized Contact.

“Normal Support Hours” are 8:00 am, to 8:00 p.m. U.S Eastern time on Business Days.

“Severity Level” means the Severity Levels 1-3 as defined below:

“Severity Level I (Critical)” means Service is not operational and/or there is a critical loss of capability. Customer is unable to run a critical application, Service has frequency of failure precludes production use and critical job/data integrity defect.

“Severity Level 2 (Significant)” means Service is operational, but production capability is severely degraded. Customer is unable to run a major application. Service has failure requiring frequent operation intervention to maintain productivity and/or Service experience non-critical integrity defect.

“Severity Level 3 (Less Significant)” means Service is operational, but is moderately degraded and has no significant impact to performance. Customer is unable to run a minor application or Service has occasional failure requiring operational intervention, or non-critical product feature or function does not work

“Support Services” means any activity rendered by Xerox in response to service requests made by the Authorized Contact.

“Test Case” means Customers instructions that allow Xerox to reproduce an Incident.

2. SCOPE OF THE SUPPORT TERMS

2.1 Subject to the terms contained herein, Xerox shall address all Incidents that may arise from Customer’s use of the Service in accordance with Sections 3 and 4 below.

2.2 Xerox shall not have any obligation to provide Support Services with respect to any: **(a)** adaptations, configurations or modifications of the Service made by the Customer or any third party; **(b)** Helpdesk Support, which may be provided by Customer to escalate issues to the Customer’s Authorized Contact; or **(c)** any items excluded pursuant to Section 4.

2.3 Xerox may offer additional professional services to help resolve issues that fall outside the scope of the Support Services. Any such additional professional services shall be provided under a separate agreement and shall be subject to the SOW and Xerox's rates, per the NASPO ValuePoint Master Agreement MPS Price List.

3. INCIDENT SUBMISSION

3.1 All Incidents must be made to Xerox by the Authorized Contact(s). The primary method for a Customer to submit an Incident is via email or telephone. The Customer may substitute Authorized Contact(s) from time to time by giving Xerox prior written notice, including the relevant contact information for any new Authorized Contact.

3.2 All Incident submissions must if applicable, include the following:

- (a) Customer's identification number that Xerox shall provide to the Customer soon after the Effective Date of these Support Terms
- (b) A reproducible Test Case that demonstrates the specific usage that causes the Incident being submitted.
- (c) A full description of the Incident and expected results such as the exact steps that led to the problem, the content of error message(s) displayed, and problem reproducibility.
- (d) Any special circumstances surrounding the discovery of the Incident.

3.3 Severity Levels. Xerox will work with Customer and will assign the appropriate severity level to all Incidents according to the Severity Level definitions. Severity Levels are assigned to allow prioritization of incoming Incidents. Xerox may reclassify Incidents based on the current impact on the Service and business operations as described in the Severity Level definitions.

3.4 Xerox's Obligations. Xerox will make available Support Services access during Normal Support Hours for the Customer to submit Incidents and receive assistance. On receipt of an Incident, Xerox shall establish whether there is an Incident for which the Customer is entitled to Support Services under these Support Terms and, if so, shall:

- (a) Confirm receipt of the Incident and notify Customer of the Incident case number that both Parties must then use in any communications about the Incident.
- (b) Work with Customer to set a severity level for the Incident based on the criteria set forth herein.
- (c) Analyze the Incident and verify the existence of the problem
- (d) Give the Customer direction and assistance in resolving the Incident pursuant to the terms described herein.

3.5 Customer's Obligations. Xerox's obligation to provide Support Services under these Support Terms are conditioned upon the Customer: (a) having valid access to the Service, (b) providing Xerox with all reasonable assistance and providing Xerox with data, information, and materials that are reasonably necessary, (c) procuring, installing, and maintaining all equipment, telephone lines, communication interfaces, and other hardware and software necessary to access the Service, (d) providing Helpdesk Support as required to escalate issues to the Customer's Authorized Contact; and (e) providing appropriate contact information for all Authorized Contacts(s).

4. EXCLUSIONS FROM SUPPORT SERVICES

Xerox will not be required to correct any Incident caused by (i) integration of any feature, program, or device to the Service or any part thereof; (ii) any non-conformance caused by unauthorized misuse, alteration, modification, or enhancement of the Service; or (iii) use of the Service that is not in compliance with this SOW

EXHIBIT E: REGISTRATION DATA

Customer:

Contact for billing

Name:
Title:
Phone:
Email:
Physical Address:

Contact for contracts

Name:
Title:
Phone:
Email:
Physical Address:

Authorized Contacts for System Administration

Xerox communicates service availability and coordinates any downtime for maintenance with the Authorized Contact(s) for System Administration

Primary Contact for System Administration

Name:
Title:
Phone:
Email:

Secondary Contact for System Administration

Name:
Title:
Phone:
Email:

Authorized Contacts for Helpdesk (if different from system administration contacts)

All submissions of Incidents must be made to Xerox by the Authorized Contact(s) for Helpdesk.

Primary Contact for Helpdesk

Name:
Title:
Phone:
Email:

Secondary Contact for Helpdesk

Name:
Title:
Phone:
Email:

EXHIBIT F: XEROX TERMS AND CONDITIONS OF USE

The following terms and conditions of use are displayed on the web portal provided for the Service.

Xerox Corporation provides Customers with an online DocuShare application and any Updates, Upgrades and patches that augment or enhance the current business application (the "Services"). The use of this site is governed by the terms and conditions set forth below. Please read them carefully. Your use of this site indicates Your acceptance of these terms and conditions on behalf of yourself, Your employer on whose behalf you are using this site (if applicable) and the entity that has provided you with access and the opportunity to use this site and the Services. You agree that you will only use this site for purposes directly related to your current employment and as limited by the entity that has provided you with access and the opportunity to use this site and the Services. Xerox reserves the right to make modifications, alterations or Updates to this site and these Terms and Conditions at any time and without notice to users. You accept the affirmative obligation to periodically review whether or not these Terms and Conditions have changed, and Your continued use of this site shall be deemed an acceptance and agreement to be bound by such modifications, alternations or Updates.

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2. Your violation of any of the terms and conditions contained in these *Xerox Terms and Conditions of Use*, as amended from time to time;
3. Viruses, worms, Trojan horses and other forms of harmful code that are not detected or removed using Xerox standard virus detection procedures;
4. Criminal acts, public authorities acting with actual or apparent authority, authority of law, local disputes, civil commotions, war, national or local disruptions in electronic and transportation networks, failures of internet service providers, weather phenomena, strikes, acts of terrorism, natural disasters, and disruption or failure of communication and information systems;
5. Loss, or omissions of any person or entity other than Xerox, including our compliance with verbal or written instructions from You, the User, the recipient or persons claiming to represent You, User or recipient;
6. Our failure to notify You of any delay, loss or damage in connection with Your printed products or any inaccuracy in such notice;
7. Our provision of advice, assistance, or guidance on this site does not constitute acceptance of liability.
8. Performance of any Services will not cause us to be deemed Your, or anyone's, agent for any purpose.

Order Acceptance

Verification of information may be required prior to the acceptance of any order.

Termination

In the event that Xerox learns of, or has reasonable grounds to suspect, that activity in violation of these Terms and Conditions has occurred, we can suspend or terminate any order or Your access to our services without notice and refuse to authorize its future use. Repeated violations of these Terms and Conditions will result in immediate termination. In addition, Xerox reserves the right to discontinue the Services at any time without reason or advance notice to You.

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