



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

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

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

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

**And**

**Kyocera Document Solutions America, Inc.  
225 Sand Rd  
Fairfield, NJ 07004**

**Master Agreement Number: 140599**

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## 1. NASPO VALUEPOINT MASTER AGREEMENT OVERVIEW

### 1.1. Parties

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

### 1.2. Effective Date

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

### 1.3. Master Agreement Order of Precedence

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

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

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

### 1.4. Term of this Master Agreement

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

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

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

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

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

## 2. DEFINITIONS

The following terms shall be construed and interpreted as follows:

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

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

<b><i>Free on Board (FOB) Destination</i></b>	Contractor is responsible for transportation and handling charges and the sale does not occur until the Products arrive at the Purchasing Entity's specified location.
<b><i>Group</i></b>	The Device classification for the different types of Equipment in this Master Agreement. Groups are determined by the Devices primary functions and/or capabilities.
<b><i>Independent Contractor</i></b>	A natural person, business, or corporation that provides Products or Services to another entity under the terms specified in a contract. An employer-employee relationship does not exist.
<b><i>Initial Lease or Rental Term</i></b>	The length of time (i.e. 12, 18, 24, 36, 48, or 60 months) that a Purchasing Entity enters into a lease or rental agreement.
<b><i>Intellectual Property</i></b>	Any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
<b><i>Lead State</i></b>	The State that is centrally administering this Master Agreement.
<b><i>Lease</i></b>	<p>Per the Governmental Accounting Standards Board (GASB), a lease is defined as a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction.</p> <p>For the purposes of this Master Agreement, a Lease shall contain the following options:</p> <ol style="list-style-type: none"> <li>1. Short-Term Lease: Maximum possible term is 12 months, including any renewal or extension options.</li> <li>2. Straight Lease: A type of agreement in which ownership is not an option and the Total Monthly Payment amount remains firm throughout the Initial Term.</li> <li>3. Fair Market Value Lease (FMV): A lease in which the Purchasing Entity can either 1) Take title to the Equipment at the end of the Initial Lease Term by paying the residual value to Contractor, 2) Enter into a Renewal Term for the Equipment, or 3) Return the Equipment to Contractor at the end of the Initial Lease Term.</li> <li>4. \$1 Buyout Lease: A lease in which title to the Equipment will automatically pass from the Contractor to the Purchasing Entity at the end of the Initial Lease Term, and the Purchasing Entity will not be subject to additional payments in order to assume ownership.</li> </ol>
<b><i>Maintenance Agreement</i></b>	An agreement in which the Contractor provides monthly Service, parts, Supplies, and Preventative Maintenance on purchased, leased or rented Devices.
<b><i>Managed Print Services (MPS)</i></b>	The management, Service, and support of the Purchasing Entity's entire enterprise and output infrastructure of printed materials, with the objective of creating a solution that improves the print process and reduces the expense of printed material.
<b><i>Manufacturer</i></b>	A company that, as its primary business function, designs, assembles, and owns the trademark/patent and markets a Product. Also referred to as Contractor.

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



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

<b><i>Supplemental Documents</i></b>	Documents include, but are not limited to, lease agreements, rental agreements, Maintenance Agreements, and software or click-wrap agreements that are pertinent to the Products being offered.
<b><i>Supplies</i></b>	<u>Consumable</u> items that gets used up or are discarded once used, such as ink cartridges.
<b><i>Third Party</i></b>	Someone who may be indirectly involved but is not a principal party to an arrangement, contract, deal, lawsuit or transaction.
<b><i>Total Monthly Payment</i></b>	The Equipment portion of the payment, as well as any Service, Supplies or maintenance, and less any applicable taxes.
<b><i>Useful Life</i></b>	Period during which a Device is expected to be usable for the purpose in which it was manufactured.

### 3. NASPO VALUEPOINT PROGRAM PROVISIONS

#### 3.1. Price and Rate Guarantee Period

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

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

## **3.2. Participants and Scope**

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

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

### 3.3. Administrative Fees

- 3.3.1. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter.
- 3.3.2. The NASPO ValuePoint Administrative Fee is not negotiable.
- 3.3.3. The Contractor shall report on all actual Equipment sales, and on estimated Service and Supply sales. This method will no longer require the Contractor to capture the actual Service and Supply revenues that are billed to the customer each month.
- 3.3.4. Industry research has shown close to a 1:1 ratio between sales price on a piece of Equipment and the actual amount of Service and Supply costs required to operate that Equipment over its Useful Life. Therefore, to simplify the reporting process and remove the burden to capture the actual Service and Supply costs, the Contractor shall report as follows:
- a) **Purchased Equipment:** Contractor shall report the actual amount invoiced (less any taxes) for all Equipment sold under the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount equal to the invoice amount and identified as “Estimated Service and Supplies” providing the customer elects to enter into a Maintenance Agreement. Thus, in the Contractor’s Detailed Sales Report, for each item sold, there will be two-line items: one for the piece of Equipment, and one for the Estimated Service and Supplies. The amounts reflected for the Estimated Service and Supplies must be equal to the amount of the Equipment.
  - b) **Lease and Rental Equipment:** Contractor shall report sales according to the Purchased Equipment methodology described in §3.3.4(a), or they may report the actual amount invoiced (less any taxes) for the lease or rental during the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount equal to the invoice amount and identified as “Estimated Service and Supplies.” Thus, in the Contractor’s Detailed Sales Report, for each item leased or rented, there will be two-line items: one for the invoice amount to the customer for the Equipment, and one for the Estimated Service and Supplies. The amounts reflected for the Estimated Service and Supplies must be equal to the amount of the invoiced Equipment.
- 3.3.5. Some Participating States may require a fee be paid directly to the Participating State on sales made by Purchasing Entities within that state. For all such requests, the fee level, payment method, and schedule for such reports and payments will be incorporated into the Participating Addendum. The Contractor may adjust this Master Agreement pricing accordingly for sales made by Purchasing Entities within the jurisdiction of the Participating State requesting the additional fee.

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

The Contractor shall provide the following NASPO ValuePoint reports:

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

- c) Customer bill-to name and address;
- d) Contractor or Authorized Dealer Order number;
- e) Customer purchase order number;
- f) Customer number;
- g) Order type (e.g. sales Order, credit, return, upgrade);
- h) Purchase order date;
- i) Ship date;
- j) Invoice date and number;
- k) Product number and description
- l) List Price/MSRP;
- m) Contract Price;
- n) Quantity;
- o) Total Price;
- p) NASPO ValuePoint Admin Fee amount; and
- q) Dealer.

**3.4.3.** Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM or flash drive. Detailed sales reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is shown in **Exhibit E (NASPO ValuePoint Detailed Sales Reporting Template)**.

**3.4.4.** Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the Participating Addendum. Report data for employees should be limited to **ONLY** the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report.

**3.4.5.** Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with, and any PA roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

**3.4.6.** Timely submission of these reports is a material requirement of this Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

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

**3.5.1.** Contractor agrees to work cooperatively with NASPO ValuePoint personnel to ensure that Contractor's personnel will be educated regarding the provisions of this Master Agreement, as well as the competitive nature of NASPO ValuePoint procurements, the Participating Addendum process, and the manner in which Participating Entities can utilize this Master Agreement.

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

### 3.6. NASPO ValuePoint eMarket Center

- 3.6.1. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint customers to access a central online website to view and/or shop the Products and Services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.
- 3.6.2. The Contractor shall have visibility in the eMarket Center through one of the following no-cost options:
  - a) **Ordering Instructions**
    - i. The Contractor shall provide a link to their website, their Price list, their Dealer list, and any additional information they would like the customer to have in regards to placing Orders.

- ii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have thirty (30) days to provide NASPO ValuePoint with the Ordering Instructions.

**b) Hosted Catalog**

- i. The Contractor shall provide a list of its awarded Products and Services pricing via an electronic data file, in a format acceptable to JAGGAER.
- ii. In order to maintain the most up-to-date version of its Product offerings, the Contractor must submit electronic data to the eMarket Center no more than four (4) times per calendar year.
- iii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have fifteen (15) days to set up an enablement schedule with NASPO ValuePoint and JAGGAER. The schedule shall include future calls and milestone timeframes related to testing and go-live dates.
- iv. The Contractor shall have ninety (90) days from the receipt of written request, to provide the Hosted Catalog to NASPO ValuePoint.
- v. The Hosted Catalog must be strictly limited to the awarded Products and Services, and must contain the most current approved pricing, including applicable quantity discounts.
- vi. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
- vii. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although Suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating State or Entities if for example, the Participating State or Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating State or Entity has determined that they will not allow all awarded Products and Services under their Participating Addendum. SciQuest will deliver the appropriate contract files to the user viewing the catalog.

**c) Punch-Out Catalog**

- i. The Contractor shall provide its own online catalog, which must be capable of being integrated with the eMarket Center via Commerce eXtensible Markup Language (cXML).
- ii. The Contractor shall validate that its online catalog is current by providing a written update to the Lead State every four (4) months, verifying that they have audited the offered Products and Services pricing.
- iii. The Contractor shall have ninety (90) days from the receipt of the written request, to deliver the Punch-Out Catalog to NASPO ValuePoint.
- iv. The Punch-Out Catalog must be strictly limited to the awarded Products and Services, and must contain the most current approved pricing, including applicable quantity discounts.
- v. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
- vi. The site must also return detailed UNSPSC codes for each line item.



vii. Contractor shall provide e-Quote functionality to facilitate volume discounts.

viii. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. It is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating State or Entities if for example, the Participating State or Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating State or Entity has determined that they will not allow all awarded Products and Services under their Participating Addendum. JAGGAER will deliver the appropriate contract files to the user viewing the catalog.

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

- a) Any revisions to Product offerings (new Products, altered SKU's, etc.) must be pre-approved by the Lead State, and will be allowed once per month.
- b) Updated Product files are required by the 1<sup>st</sup> of the month and shall go into effect upon approval by the Lead State.
  - i. Files received after the 1<sup>st</sup> of the month may not be approved for up to thirty (30) days following submission.
  - ii. Errors in the Contractor's submitted files may delay the approval process.

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

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

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

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

### **3.6.6. UNSPSC Requirements**

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

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

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

**3.7. Right to Publish**

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

**3.8. Individual Customers**

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

**4. STATEMENT OF WORK**

**4.1. Overview**

**4.1.1.** Contractor guarantees a continuing supply and consistent quality of Equipment, Accessories, software, Supplies, and Services offered.

**4.1.2.** Contractor may not provide Products that have not been approved by the Lead State, with the exception of NSP items, as referenced in §4.3.9.

**4.1.3.** Contractor shall maintain compliance with all requirements of this Master Agreement throughout the duration of the Contract.

**4.1.4.** A Purchasing Entity that purchases, leases or rents Equipment may issue an Order, pursuant to the terms and conditions that are incorporated into this Master Agreement, and according to the requirements listed in their states' Participating Addendum, including, but not limited to, the issuance of Contractor's Supplemental Documents, which are attached as **Attachment A through Attachment I**. Each Participating State or Entity shall be responsible for negotiating the terms and conditions of each of the aforementioned Attachments.

**4.1.5.** Per Section 508 of the United States Workforce Rehabilitation Act of 1973, Contractor provides Devices under Group A, Group B, and Group D, which are accessible to people with disabilities.

**4.1.6. MPS:**

**a)** Contractor may provide MPS on Group A, Group B, Group C, and Group D.

**b)** Contract may provide MPS on Group E and Group F, providing the Purchasing Entity already owns the Equipment.

- c) Contractor may not provide MPS maintenance or repair Services on any Devices that are being leased or rented to a Purchasing Entity by another Manufacturer, unless they have a written agreement with the Manufacturer to do so.

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

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

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

### **4.2. Authorized Dealers**

- 4.2.1. Contractor may engage Authorized Dealers, who shall be Contractor's agent and Subcontractor for providing sales and support for the Products and/or Services purchased by the Purchasing Entity under this Master Agreement.
- 4.2.2. In the event Contractor elects to use Authorized Dealers in the performance of the specifications, Contractor shall serve as the primary Contractor, and shall be fully accountable to the Lead State for assuring that the Authorized Dealers comply with the terms and conditions of this Master Agreement, and shall be liable in the event that Authorized Dealers fail to comply with such terms and conditions.
- 4.2.3. Authorized Dealers shall be expected to stay current with Contractor's Products, pricing, Master Agreement, and Participating Addendum requirements.
- 4.2.4. Authorized Dealers shall have the ability to accept Orders from a Purchasing Entity and invoice them directly.
- 4.2.5. Contractor must disclose to the Lead State, a list of all Authorized Dealers that provide Products and/or Services, utilizing **Exhibit C (Authorized Dealers by State)**.
- 4.2.6. Contractor shall send notice to the Lead State, utilizing **Exhibit D (Authorized Dealer Form)** and the Authorized Dealers by State, within three (3) calendar days of engaging or removing a Dealer.
- 4.2.7. The Lead State reserves the right to deny the addition of any Authorized Dealer and will provide notification to the Contractor with justification as to why the decision was reached. In addition, it will be at the discretion of each Participating State or Entity as to whether they will utilize the Authorized Dealers as approved by the Lead State.
- 4.2.8. If an Authorized Dealer is performing unsatisfactorily, or is not in compliance with this Master Agreement, then it shall be at the discretion of the Lead State, upon recommendation from the Participating State, to either remove the Dealer from the Contract, or in the case of multiple branch locations in one state, or multiple states, remove them as a Dealer from the location in which they are not in compliance. Alternatively, the Contractor may investigate and consult with the Participating State and/or the Purchasing Entity as appropriate, and use commercially reasonable efforts to resolve the dispute.

### **4.3. Product Offerings**

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

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

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

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

**4.3.2. Device Configurations.** Contractor's Devices shall be equipped, at a minimum, with the following Accessories/capabilities:

- a) **Group A – MFD, A3**
  - i) New Power Filter;
  - ii) Duplex for Segment 3 and above;
  - iii) Standard paper drawer(s) equal to or greater than:
    - 1) One (1) paper supply for Segment 2;
    - 2) Two (2) paper drawers for Segments 3 and 4; and/or
    - 3) 2,000 sheet paper capacity for Segments 5 and above.
  - iv) Paper size capacity up to 11" x 17"; and
  - v) Bypass paper supply, if applicable for Segment.
- b) **Group B – MFD, A4**
  - i) New Power Filter;
  - ii) Bypass paper supply;
  - iii) Standard paper drawer(s) equal to or greater than:

- 1) One (1) paper supply for Segments 1 and 2;
- 2) Two (2) paper drawers for Segments 3 and 4; and/or
- 3) 2,000 sheet paper capacity for Segments 5 and above.
- iv) Paper size capacity up to 8 ½" x 14"; and
- v) Envelope adjustment capability.
- c) **Group D – Single-function Printers**
  - i) Must include an inkjet, light emitting diode (LED), or laser print engine;
  - ii) Standard paper drawer(s);
  - iii) Standard paper capacity; and
  - iv) Network connectivity.

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

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

**4.3.4. Device Exceptions**

- a) Group D will not be restricted to OEM, and do not have to be Private Labeled;
- b) 3D Printers may be offered by Contractor, and shall be priced based on a minimum discount of 53.40%;

- c) Digital Duplicators may be offered by Contractor, and shall be priced based on the minimum discount of the Segment in which the Device most closely relates (refer to the Group A Price List for Segment discounts on Base Units).

#### **4.3.5. Accessories**

- a) Contractor shall provide OEM and/or Third Party compatible Accessories that compliment or enhance the features of the Device.
- b) Contractor shall maintain a separate price list for Accessories for Base Units that have been discontinued. The pricing must be based on the same discount offered, per the 'Discount from MSRP' tab, on the applicable Group Price List.

#### **4.3.6. Software**

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

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

- a) Contractor shall offer OEM or compatible consumable for Supplies for Groups A, B, and D. These Supplies may be purchased as standalone items or included as part of a Maintenance Agreement. Under no circumstances may the Supplies, regardless of quantity, be financed, unless they are start-up Supplies. The Supplies that may be offered include, but are not limited to the following:
  - i) Toner;
  - ii) Staples;
  - iii) Imaging Drums;
  - iv) Fuser Kits;
  - v) Waste Toner Bottles;
  - vi) Ozone Filters;
  - vii) Rollers and Pads; and
  - viii) Maintenance Kits.
- b) Toner must be free of carcinogenic, mutagenic, or teratogenic substances.
- c) Contractor shall provide the Purchasing Entity with a method to return the empty toner cartridges at no additional charge.

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

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

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

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

#### **4.3.10. Emerging Technologies**

- a) Upon approval from the Lead State, Contractor may add new, related technology.
- b) Technology does not have to be restricted to OEM, nor does it have to be Private Labeled.

- c) Any new technology that a Contractor requests to add to their Price List must contain a full description of the Product, along with MSRP and pricing information, as well as an explanation/justification as to how the Product conforms to the requirements of this Master Agreement.
- d) Any new technology must be priced at a minimum discount of 12%.

#### **4.4. Service Offerings**

##### **4.4.1. Managed Print Services**

- a) Contractor shall provide the following:
  - i) **Free Initial Assessment** – which shall include the following:
    - 1) Document workflow
    - 2) Identification of Service, Supplies, and parts
    - 3) Current output
    - 4) Total Cost of Ownership (TCO)
    - 5) Employee to Device ratio
    - 6) Preliminary estimated cost savings
  - ii) **Implementation** – which shall consist of the following:
    - 1) Plan Development
    - 2) Hardware and Software Installation and Set-up
    - 3) Device Mapping
    - 4) IT Asset Registration
  - iii) **Remote Device Monitoring** – which shall include the following:
    - 1) Job Accounting
    - 2) Automated Meter Reads
    - 3) Automated Toner Replenishment
    - 4) Device Utilization Reporting
    - 5) Automated Failure Alerts
    - 6) Online Reporting
  - iv) **End-user Support** – which shall include the following:
    - 1) Training
    - 2) Help Desk Services
    - 3) Application Training Support
  - v) **Account Management** – which shall include the following:
    - 1) Reporting
    - 2) Invoicing
    - 3) Customer Business Reviews
    - 4) Annual Business Case Review



b) Contractor may also provide the following:

i) **Maintenance**

- 1) Preventative Maintenance
- 2) Service and Repair
- 3) On-site break/fix
- 4) Parts Management
- 5) Warranty Management

ii) **Ongoing Fleet Management and Optimization**

- 1) Consumable Spend
- 2) Continual Assessments
- 3) Green Initiatives
- 4) Add/Move/Change Services
- 5) Disaster Recovery

iii) **Cost Based Assessment**

- 1) Asset Mapping
- 2) End-user Survey
- 3) Detailed Recommendation
- 4) Analysis and Plan Design

c) All MPS engagements shall require the Contractor and Purchasing Entity to complete a detailed statement of work, as referenced in **Attachment H (Kyocera MPS Statement of Work)**, and it must be approved by both parties prior to the initiation of any engagement.

d) The free initial assessment shall not constitute a commitment on behalf of the Purchasing Entity. Upon request from a Purchasing Entity, Contractor must provide the assessment with the understanding that the Purchasing Entity is under no obligation to enter into an MPS engagement.

e) MPS pricing and billing options shall be flexible, as long as pricing doesn't exceed Master Agreement pricing, and the Purchasing Entity will drive the complexity of the solution required with a staged approach to implementation.

#### 4.4.2. **Maintenance Agreements**

a) **Pricing**

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

- vi) Contractor may charge flat rate fees for Services performed on any Accessories.
  - vii) Service Calls due to misuse, neglect or abuse shall not be covered by the Maintenance Agreement, and Contractor and Authorized Dealers may bill the Purchasing Entity at an hourly rate for Services rendered.
  - viii) **11"x17" impressions:** Shall be counted as two (2) clicks on Group A Devices.
  - ix) A two-sided document shall be counted as two (2) clicks.
  - x) Contractor must not charge for scans on any MFD.
  - xi) **Initial Term:**
    - 1) Pricing shall remain firm for the initial term of the Maintenance Agreement.
    - 2) For lease and rental Equipment, the Maintenance Agreement term is equal to the term of the lease or rental (i.e. 12, 18, 24, 36, 48 and 60 months).
    - 3) For purchased Equipment, the initial term is whatever period of time the Purchasing Entity elects, as long as it does not exceed 60 months.
  - xii) **Renewal Term:** If a Purchasing Entity wishes to renew a Maintenance Agreement for Equipment that was acquired under this Master Agreement, then the Contractor may negotiate new pricing. This pricing shall not exceed this Master Agreement pricing.
- b) Blended Rates**
- i) Contractor shall have the ability to blend the Service and Supply costs over a large Equipment fleet, and the Blended Rate must cover all units in the fleet.
  - ii) The Blended Rate must be divided between b&w and color.
  - iii) Contractor shall provide the Purchasing Entity with the Blended Rate calculation prior to Order placement.
  - iv) Utilizing a Blended Rate shall be at the discretion of the Participating State or Entity.
- c) Manual Meter Reads**
- i) Contractor may collect meter reads from a Purchasing Entity via electronic means.
  - ii) Meter reads may be submitted via the Contractor's online portal, or through e-mail, or facsimile.
  - iii) A Participating State or Entity may also elect, at their discretion, to submit meter reads through the Device.
- d) Customer Owned Equipment**
- i) Purchasing Entity's may elect to enter into a Maintenance Agreement for Equipment they already own, or Equipment they acquire through an up-front purchase.
  - ii) The Maintenance Agreement may be priced on a flat rate fee, which shall include parts, labor, Preventative Maintenance (if applicable) and Service calls. Supplies may or may not be included.
  - iii) The Maintenance Agreement shall not be subject to automatic renewals.
- e) Lease or Rental Equipment**
- i) Contractor shall be required to provide a Maintenance Agreement on all Equipment that is leased or rented by a Purchasing Entity.
  - ii) The Maintenance Agreement shall be priced based on a cost per click rate, or a monthly base charge.

#### 4.4.3. Service Requirements

- a) **Technicians.** All technicians shall be factory trained by the OEM and certified to Service the Devices.
- b) **Standard Service Levels.** Participating States and/or Entities shall negotiate their own Service Level Agreement (SLA) with the Contractor. The SLA, must, at a minimum, adhere to the following requirements:
  - i) **End-User Training**
    - 1) An initial, no charge, on-site, one-hour training session for each Device, must be offered by Contractor for all non-desktop Products placed at each Purchasing Entity's location. For drop-shipped or desktop Products, Contractor shall offer an initial, one-hour, no charge, web-based, or on-line training session.
    - 2) Technical support training shall also be included in the initial, no charge training, and will include network connectivity and print driver installation. This training will be in addition to the one-hour of free training for Device operation.
    - 3) If Purchasing Entity elects to exercise the training option, then Contractor shall provide the training within ten (10) Business Days of Purchasing Entity's request.
    - 4) Contractor shall offer additional on-site, one-hour training sessions for a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity prior to Order placement.
    - 5) Contractor must provide on-site or off-site operational training to designated Purchasing Entity personnel, until the personnel are able to operate the Equipment independently. Pricing for operational training shall be based on a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity prior to Order placement.
    - 6) Contractor shall provide Product literature, user-manuals, and access to on-line resources, if available, at no charge to the Purchasing Entity.
    - 7) Contractor shall provide a toll-free end-user technical support number that Purchasing Entities can utilize for everyday minor troubleshooting. A Purchasing Entity must be able to obtain assistance during Normal Business Hours.
    - 8) Contractor shall provide phone/technical support within two (2) hours of Purchasing Entity's request for assistance.
  - ii) **Preventative Maintenance.** Contractor shall perform all Preventative Maintenance Services at the Manufacturer's suggested intervals, or as specified in an Order. Preventative Maintenance shall not be a requirement on desktop Devices.
  - iii) **Equipment Performance**
    - 1) Equipment Downtime shall be calculated from the time a service call is placed with Contractor or with Dealer's dispatch department until the time the technician completes the repair.
    - 2) Equipment Downtime due to lack of consumable Supplies is not acceptable.
    - 3) Contractor shall guarantee that the fleet of Devices for each Purchasing Entity will be operational at least 96% of the time, during Normal Business Hours.
    - 4) If any fleet of Devices fails to perform at the operation level specified in §4.4.3(b)(iii)(3) then §4.11.11 shall apply.

- 5) Contractor must provide daily communication to the Purchasing Entity regarding inoperable Equipment, including updates regarding resolution timeframe, and any parts, Accessories, or Devices on back-order.
- iv) **Loaner Equipment.** If any Device is inoperable for two (2) Business Days, due to Equipment malfunction, as reasonably determined by Contractor, then Contractor shall provide the Purchasing Entity with:
- 1) A loaner Device of similar speed and capabilities until such time as the inoperable Device(s) are now operable; or
  - 2) Provide the Purchasing Entity with off-site manned production capabilities to accomplish the work of the unit that is inoperable at the sole expense of the Contractor. Such costs shall be limited to the cost of production (Service and Supplies), Equipment, labor, and transportation to and from the off-site production facility and the Purchasing Entity location.
- v) **Repair Parts**
- 1) Contractor shall guarantee the availability of repair parts for a minimum of five (5) years after the Purchasing Entity's Acceptance of any Device.
  - 2) All Device components, spare parts, application software, and ancillary Equipment that is supplied under this Master Agreement, must conform to Manufacturer specifications.
  - 3) Contractor shall be responsible for ensuring that any repair parts are operable and installed in accordance with Manufacturer specifications.
  - 4) Repair parts may be new, reconditioned, reprocessed or recovered.
- vi) **Replacement Equipment**
- 1) If Purchasing Entity is not satisfied with any Device, Contractor will, at Purchasing Entity's written request, replace it without charge with an equivalent unit or, upon mutual agreement with the Purchasing Entity, with a Device of comparable features and capabilities.
  - 2) Prior to installing a substitute Device, Contractor will be allowed thirty (30) days to remedy any quality or reliability issues.
- vii) **Service Zones**
- 1) Unless otherwise specified in a Participating Addendum, Contractor shall adhere to the following Service Call Response Times based on the distance that their Service Base Location is from the Purchasing Entity:

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

- 2) Repair or replacement of parts and/or Devices shall occur within four (4) Business Days of Contractor arriving at Purchasing Entity's location, with the following exception:
  - If Contractor is drop-shipping a new Device to replace a defective Device, then Purchasing Entity must receive the new Device within three (3) Business Days.

- 3) Contractor may charge different rates according to each Service zone.

**viii) Service Logs**

- 1) Contractors shall maintain a Service log which describes the maintenance and repair Services provided for each Device.
- 2) A no-cost copy of Service logs/reports must be provided to the Purchasing Entity or Participating State or Entity, within five (5) Business Days of the request.

**ix) Equipment Relocation**

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

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

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

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

**c) Meter Read Invoicing**

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

**d) Service Level Calculations**

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

**e) Reporting.** Contractor shall provide periodic reporting to all Purchasing Entities upon request. The reports shall be provided on a quarterly basis, or at the discretion of the Participating State or Entity.

- i) The report shall include the following:
  - 1) Up-time percentage (%) per fleet of Devices;
  - 2) Number of Service Calls placed;
  - 3) Response Time per Device;
  - 4) Dates that Preventative Maintenance was performed, if applicable;
  - 5) Hours of end-user training performed; and
  - 6) Estimated end of Useful Life per Device, based on current usage.
- ii) The report may include, but not be limited to, the following:
  - 1) Location of Devices;
  - 2) Click usage per Device; and
  - 3) EPEAT certification level of each Device.

**4.4.4. Software Subscriptions**

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

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

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

<b>Financial Vehicle</b>	<b>Standard Terms Offered</b>
Purchase	N/A
Fair Market Value Lease	12, 18, 24, 36, 48 and 60 months
\$1 Buyout Lease	
Straight Lease	
Cancellable Rental	12, 18, 24, 36 and 48 months
Short-Term Lease	12 months

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

**4.5.3. Equipment Trade-In**

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

**4.5.4. Lease and Rental Rates**

- a) Contractor shall include an estimated property tax amount in their lease and rental rates.
- b) The rate for any lease or rental shall remain fixed throughout the Initial Lease or Rental Term.
- c) Equipment Payments for Renewal Terms shall never exceed Master Agreement pricing.
- d) If a Purchasing Entity enters into a Renewal Term, then the Equipment Payment will be subject to the lease and rental rates listed in the most recent Price List(s) posted on the NASPO ValuePoint website.
- e) Contractor may update lease and rental rates on a quarterly basis to allow for changes in the financial market. The rates must be indexed against the US Daily Treasury Yield Curve Rates, or something similar, and must be the rate in effect at the end of each calendar quarter. Refer to <https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield> for additional information.
- f) On a quarterly basis, Contractor may update the personal property tax uplift on lease and rental rates based on the participation of states not listed in the RFP, or a change in the property tax assessed by a states that are listed in the RFP.
- g) Contractor shall offer Coterminal lease and rental rates to any Purchasing Entity wishing to add Products to an existing lease or rental agreement.

**4.5.5. Leasing and Rental Overview**

- a) All lease and rental programs must remain with the Contractor or Authorized Dealers through an in-house leasing program, or through the financial branch or subsidiary of the Contractor. In addition, Contractor and their Authorized Dealers may use Third Party leasing companies, but all billing must be invoiced in the name of the Contractor or their Authorized Dealer, and all contractual obligations shall remain with the Contractor.

- b) A Purchasing Entity may lease or rent Equipment pursuant to the terms and conditions identified herein.
- c) Lease and rental agreements shall not be subject to automatic renewals.
- d) In the event that the term of a lease or rental agreement extends beyond the term of the Participating Addendum, the terms and conditions of this Master Agreement and Participating Addendum shall continue to apply.
- e) A lease or rental agreement issued prior to the termination of this Master Agreement and Participating Addendum, shall survive the termination of this Master Agreement and the Participating Addendum.
- f) With the exception of a \$1 Buyout Lease arrangement, or unless exercising the purchase option on an FMV Lease, a Purchasing Entity shall return the Equipment at the end of the Initial Lease or Rental Term, or at the end of the Renewal Lease or Rental Term, or the Contractor may pick the Equipment up, without any further financial obligations to the Purchasing Entity.
- g) Equipment pickups must be performed within thirty (30) calendar days of the end of the Initial or Renewal Term.
- h) Equipment returns must be performed within thirty (30) calendar days after the Contractor or Authorized Dealer provides return shipping instructions to the Purchasing Entity.
- i) Contractor shall be responsible for all Product pickup and return costs.
- j) The maximum term on any Initial Lease Term shall be 60 months, with the exception of Short-Term Leases, which shall have a maximum term of 12 months.
- k) The length of a Renewal Term shall be at the discretion of the Participating State or Entity, but at no time shall the Renewal Term exceed the Useful Life of the Equipment.
- l) All Renewal Terms shall be billed on a monthly basis.

#### **4.5.6. Leasing and Rental Options**

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

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48 or 60 months.
- ii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
  - 1) Exercise their purchase option;
  - 2) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
  - 3) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

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

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48 or 60 months.
- ii) Upon the expiration of the Initial Lease Term, the Contractor shall provide title to the Equipment to the Purchasing Entity, or as otherwise determined in a Participating



Addendum, and the Purchasing Entity shall not be subject to any additional expense in order to assume possession of the Equipment.

**c) Straight Lease**

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48 or 60 months.
- ii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
  - 1) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
  - 2) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

**d) Cancellable Rental**

- i) A Purchasing Entity shall have the option to enter into an Initial Rental Term of 12, 18, 24, 36 or 48 months, at the discretion of the Participating State or Entity.
- ii) A Purchasing Entity shall have the option to cancel the rental at any time throughout the term of the agreement, by providing the Contractor with a thirty (30) day prior written notice.
- iii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
  - 1) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
  - 2) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

**e) Short-Term Lease**

- i) A Purchasing Entity shall have the option to enter into a maximum lease term of 12 months.
  - 1) Upon the expiration of the lease term, a Purchasing Entity shall return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

**4.5.7. Leasing and Rental Terms and Conditions**

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

- i) Purchasing Entity is responsible for risk of loss to the Products while the Products are in the Purchasing Entity's possession. Purchasing Entity shall be relieved of all risks of loss or damage to the Products during periods of transportation and de-installation.
- ii) Contractor or Authorized Dealer must notify a Purchasing Entity, in writing, of their End of Term (EOT) options at least sixty (60) to ninety (90) days prior to the end of any Initial Lease or Rental Term. Such notification may include, but not be limited to, the following:
  - 1) Any acquisition or return options, based on the type of lease or rental agreement;
  - 2) Any renewal options, if applicable; and/or
  - 3) Hard drive removal and surrender cost, if applicable.
- iii) If a Purchasing Entity desires to exercise a purchase, renewal, or return of the Equipment, it shall give Contractor at least thirty (30) days written notice prior to the expiration of such lease or rental term. Notwithstanding anything to the contrary, if Purchasing Entity fails to notify Contractor of its intent with respect to the exercise of a purchase, renewal,

or return of the Equipment, the Initial Lease or Rental Term shall be terminated on the date as stated in the Order and removal of the Product will be mutually arranged, unless otherwise specified in a Participating State or Entity's Participating Addendum.

- iv) If Purchasing Entity does not exercise the purchase or renewal option, it will immediately make the Product available to Contractor in as good of condition as when Purchasing Entity received it, except for ordinary wear and tear.
  
- b) **Payment.** The first scheduled payment (as specified in the applicable Order), will be due following the Acceptance of the Products, or such later date as Contractor may designate. The remaining payments will be due on the same day of each subsequent month, unless otherwise specified in the applicable Order.
  
- c) **Buyout to Keep Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Keep option on an FMV or \$1 Buyout Lease.
  
- d) **Buyout to Return Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Return option on an FMV, \$1 Buyout or Straight Lease, and return the Equipment to the Contractor in good working condition (ordinary wear and tear excepted).
  
- e) **Equipment Upgrade or Downgrade.** A Purchasing Entity may do an Equipment Upgrade or Downgrade on a lease or rental at any time throughout the term of the lease or rental agreement. The Purchasing Entity and the Contractor shall negotiate the price of the Equipment Upgrade or Downgrade, but at no time shall the total cost of the Equipment Upgrade or Downgrade be less than the remaining stream of Equipment Payments.
  
- f) **Non-appropriation of Funds.** The continuation of any lease or rental agreement will be subject to, and contingent upon, sufficient funds being made available by the Participating State Legislature and/or federal sources. The Purchasing Entity may terminate any such lease or rental agreement, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Purchasing Entity's funding sources are not available.
  
- g) **Assignment**
  - i) Purchasing Entity has no right to sell, transfer, encumber, sublet or assign the Product or any lease or rental agreement without Contractor's prior written consent (which consent shall not be unreasonably withheld).
  
  - ii) Purchasing Entity agrees that Contractor may not sell or assign any portion of Contractor's interests in the Product and/or these Lease or Rental Terms or any Order for leases or rentals, without notice to Purchasing Entity even if less than all the payments have been assigned. In that event, the assignee (the "Assignee") will have such rights as Contractor assigns to them, but none of Contractor's obligations (Contractor will keep those obligations) and the rights of the Assignee will not be subject to any claims, defenses or set offs that Purchasing Entity may have against Contractor.
  
  - iii) No assignment to an Assignee will release Contractor from any obligations Contractor may have to Purchasing Entity.
  
- h) **Early Termination Charges**
  - i) Except in the case of Non-appropriation of funds, FMV, \$1 Buyout, Straight and Short-Term Leases shall be subject to an early termination charge, and shall involve the return of the Equipment (in good working condition; ordinary wear and tear excepted) by the

Purchasing Entity to the Contractor. With respect to the Equipment, the termination charge shall not exceed the balance of remaining Equipment Payments (including any current and past due amounts), and with respect to Service or maintenance obligations, the termination charge shall not exceed four (4) months of the Service and Supply base charge or twenty-five percent (25%) of the remaining Maintenance Agreement term, whichever is less.

- ii) Cancellable Rentals shall not exceed a termination charge of three (3) months of Total Monthly Payments, or as otherwise agreed to by the Participating State or Entity.
- i) **Default.** Each of the following is a “default” under these lease and rental terms:
  - i) Purchasing Entity fails to pay any payment or any other amount within forty-five (45) days (or as otherwise agreed to in a Participating Addendum) of its due date;
  - ii) Any representation or warranty made by Purchasing Entity in these lease or rental terms is false or incorrect and Purchasing Entity does not perform any of its obligations under these lease or rental terms, and this failure continues for forty-five (45) days (or as otherwise agreed to in a Participating Addendum) after Contractor has notified Purchasing Entity;
  - iii) Purchasing Entity or any guarantor makes an assignment for the benefit of creditors;
  - iv) Any guarantor dies, stops doing business as a going concern, or transfers all or substantially all of such guarantor’s assets; or
  - v) Purchasing Entity stops doing business as a going concern or transfers all or substantially all of Purchasing Entity’s assets.
- j) **Remedies.** If a Purchasing Entity defaults on a rental or lease agreement, then Contractor, in addition to, or in lieu of, the remedies set forth in this Master Agreement, and Participating Addendum, may do one or more of the following:
  - i) Cancel or terminate any or all Orders, and/or any or all other agreements that Contractor has entered into with Purchasing Entity;
  - ii) Require Purchasing Entity to immediately pay to Contractor, as compensation for loss of Contractor’s bargain and not as a penalty, a sum equal to:
    - 1) All past due payments and all other amounts payable under the lease or rental agreement;
    - 2) All unpaid payments for the remainder of the lease or rental term, discounted at a rate equal to three percent (3%) per year to the date of default; and
    - 3) Require Purchasing Entity to deliver the Product to Contractor per mutual arrangements.

#### **4.6. Security Requirements**

##### **4.6.1. Network and Data Security**

- a) Devices may be configured to include a variety of data security features. The set-up of such features shall be at the discretion of the Purchasing Entity, and all costs associated with their implementation must be conveyed by Contractor prior to Order placement.
- b) Contractor will not be permitted to download, transfer, or access print data stored on the Device in either hard drive or chip memory. Only system management accessibility will be allowed.

- c) Contractor shall ensure that delivery and performance of all Services shall adhere to the requirements and standards as outlined in each Participating State or Entity's Participating Addendum.
- 4.6.2. Sensitive Information.** Sensitive information that is contained in any Legacy Equipment or applications shall be encrypted if practical. In addition, sensitive data will be encrypted in all newly developed applications. Since sensitive information is subjective, it shall be defined by each Participating State or Entity in their Participating Addendum.
- 4.6.3. Data Breach.** Contractor shall have an incident response process that follows National Institute of Standards and Technology (NIST) standards as referenced in Special Publication 800-61, Revision 2 (available at <http://dx.doi.org/10.6028/NIST.SP.800-61r2>) and includes, at a minimum, breach detection, breach notification, and breach response.
- 4.6.4. Authentication and Access**
- a) Any network connected Device must offer authentication for all features via LDAP and/or Windows AD, as well as the ability to disable authentication for any or all features.
  - b) Any network connected Device must have the ability to connect via Dynamic Host Configuration Protocol (DHCP) or Static IP address.
  - c) The credential information for any remote authentication method may not be maintained within the Device's memory.
  - d) Access to the Device's administrative functions must be password protected per the Participating State or Entity requirements, and the default settings must be changed at the time of Equipment installation.
- 4.6.5. Hard Drive Removal and Surrender**
- a) Contractor shall ensure that all hard drive data is cleansed and purged (if capable) from the Device at the end of its Useful Life, or when any hard drive leaves the Purchasing Entity's possession; or
  - b) At the Participating State or Entity's discretion, Contractor shall remove the hard drive from the applicable Device and provide the Purchasing Entity with custody of the hard drive before the Device is removed from the Purchasing Entity's location, moved to another location, or any other disposition of the Device. The Purchasing Entity shall then be responsible for securely erasing or destroying the hard drive.
  - c) If Contractor takes possession of any Device at the Purchasing Entity's location, then they shall also remove any ink, toner, and associated Supplies (drum, fuser, etc.) and dispose of them in accordance with applicable law, as well as environmental, and health considerations, or as otherwise specified in a Participating Addendum.
  - d) Hard drive sanitation shall be at no expense to the Purchasing Entity; however, Contractor may charge the Purchasing Entity a fee if the Purchasing Entity elects to keep the hard drive in their possession. Contractor must disclose the price for removal and surrender of the hard drive, prior to Order placement.
  - e) If the hard drive is not removable, or the Device does not contain a hard drive, then Contractor must convey this to the Purchasing Entity at the time of Order placement. In the case of a non-removable hard drive, §4.6.5(a) shall apply.

- f) If a Contractor is removing another Manufacturer's Equipment, they are not permitted to remove the hard drive. Only the Manufacturer or their Authorized Dealer shall remove hard drives in their own Devices. Contractor shall work with the Manufacturer to ensure the requirements pursuant to this Subsection are met to the best of their abilities.

**4.7. Equipment Demonstration Requirements**

- 4.7.1. Contractor must offer trial or demonstration Equipment for Group A and Group B, and if requested by the Purchasing Entity, Group D.
- 4.7.2. Trial or demonstration Equipment may be new or used; however, no used, Remanufactured, or Refurbished Devices shall be converted to a purchase, lease, or rental.
- 4.7.3. At the discretion of the Participating State or Entity, and upon request by a Purchasing Entity, showroom Equipment for Groups A and B may be converted to a purchase, lease, or rental providing the following conditions are met:
  - a) The meter count on Group A and Group B Devices does not exceed 10,000 copies total (i.e. b&w and color combined);
  - b) The Device must be discounted by at least 5% off of this Master Agreement pricing for that same Device; and
  - c) The Purchasing Entity and the Contractor indicate on the Order that the Device is a showroom model.
- 4.7.4. Any trial or demonstration period shall not exceed thirty (30) calendar days.

**4.8. Shipping and Delivery Requirements**

- 4.8.1. All Orders, regardless of quantity, shall be delivered to the Purchasing Entity within thirty (30) calendar days after Contractor receipt of Order, unless otherwise specified by a Purchasing Entity.
- 4.8.2. Software related to the Device must be installed within five (5) Business Days of the Device installation, or as otherwise stated in an Order.
- 4.8.3. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. The minimum shipment amount, if any, will be found in the special terms and conditions. Any Order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.
- 4.8.4. Responsibility and liability for loss or damage shall transfer to the Purchasing Entity upon delivery of the Product, except as to material defects, fraud and Contractor's warranty obligations, which shall remain with the Contractor.
- 4.8.5. All deliveries shall be made during Normal Business Hours, which may vary for each Purchasing Entity of each Participating State.
- 4.8.6. It shall be the responsibility of the Contractor to be aware of the delivery days and receiving hours for each Purchasing Entity.
- 4.8.7. The Purchasing Entity shall not be responsible for any additional charges, should the Contractor fail to observe specific delivery days and receiving hours.
- 4.8.8. The delivery days and delivery hours shall be established by the Purchasing Entity at the time of Order placement.

- 4.8.9. All deliveries, with the exception of drop-shipped or desktop Products, shall be made to the interior location specified by the Purchasing Entity. Specific delivery instructions will be noted on the Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.
- 4.8.10. Products shall be packaged and labeled so as to satisfy all legal and commercial requirements applicable for use by any Purchasing Entity, and shall include, without limitation and if applicable, OSHA material safety data sheets, and shall conform to all statements made on the label.
- 4.8.11. Packages that cannot be clearly identified may be refused and/or returned at no cost to the Purchasing Entity.
- 4.8.12. **Laws and Regulations.** Any and all Products and Services offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

#### **4.9. Equipment Installation Requirements**

- 4.9.1. Prior to Order acceptance, Contractor must advise Purchasing Entity of any specialized installation and site requirements for the delivery and installation of Device. This information should include, but is not limited to, the following:
  - a) Air conditioning;
  - b) Electrical;
  - c) Special grounding;
  - d) Cabling;
  - e) Space;
  - f) Humidity and temperature limits; and
  - g) Other considerations critical to the installation.
- 4.9.2. The Purchasing Entity shall be responsible for furnishing and installing any special wiring or dedicated lines.
- 4.9.3. Network installation shall include configuration of the Device for the proper network protocols, and installation of the appropriate print drivers on up to five (5) computers per Device, or as otherwise specified in a Participating Addendum.
- 4.9.4. If applicable, all Devices must be set-up with Preventative Maintenance notifications turned on, and with the most environmentally responsible defaults enabled, including Energy Star saving settings.
- 4.9.5. Contractor may charge for excessive installation requirements, including rigging, access alterations, and access to non-ground floors via stairs. Any such excessive installation charges must be quoted to the Purchasing Entity prior to the signature of any Order, and shall be based on the actual expenditures of Contractor or Authorized Dealer. In addition, Contractor may charge for expedited shipping.
- 4.9.6. Contractor or Authorized Dealers shall affix a label or a decal to the Device at the time of installation which shows the name, address, and telephone number of Contractor or Authorized Dealer responsible for warranty Service of the Equipment.

**4.9.7.** Contractor shall clean-up and remove all debris and rubbish resulting from their work as required by the Purchasing Entity. Upon completion of the work, the premises shall be left in good repair and in an orderly, neat, clean, and unobstructed condition.

**4.10. Inspection and Acceptance**

**4.10.1.** All Products are subject to inspection at reasonable times and places before Acceptance.

**4.10.2.** If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option:

- a) Declare Contractor to be in breach and terminate the Order;
- b) Demand replacement Product from Contractor at no additional cost to Purchasing Entity; or,
- c) Continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met.

**4.10.3.** Purchasing Entity shall confirm delivery, installation and Acceptance of all Products covered by each purchase, lease, or rental Order, by signing a Delivery and Acceptance Certificate (D&A), as referenced in **Exhibit B (Sample D&A Certificate)**, which shows Acceptance of the Product(s) and allows Contractor to invoice for the Product(s).

**4.10.4.** Purchasing Entity agrees to sign and return the D&A to Contractor (which, at mutual agreement, may be done electronically) within five (5) Business Days after any Product is installed, or as otherwise stated in a Participating Addendum.

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

**4.10.6. Transfer of Title**

- a) Contractor shall have exclusive title to the Products being delivered and the Products shall be free and clear of all liens, encumbrances, and security interests. Title to the Device shall only pass to the Purchasing Entity upon:
  - i) Purchasing Entity up-front purchase of the Device;
  - ii) Purchasing Entity exercising the purchase option at the end of a Fair Market Value Lease;
  - iii) Upon expiration of a Purchasing Entity's \$1 Buyout Lease; or
  - iv) Purchasing Entity has secured Third Party financing and payment is being made directly to the Contractor by the Purchasing Entity.
- b) Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this

software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

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

#### **4.11. Warranty Requirements**

**4.11.1.** The Warranty period shall begin upon Acceptance of the Products, and shall be for a minimum of ninety (90) days for purchase, lease and rental Equipment.

**4.11.2.** Devices that are sold under this Master Agreement will come with the standard features as published on the Manufacturers website, and will not deviate from the stated specifications.

**4.11.3.** Products shall be in good working order, free from any defects in material and workmanship, and fit for the ordinary purposes they are intended to serve.

**4.11.4.** If defects are identified, per mutual agreement of Contractor and the Purchasing Entity, Contractor's obligations shall be limited solely to the repair or replacement of Products proven to be defective upon inspection.

**4.11.5.** Replacement of Products shall be on a like-for-like basis and shall be at no cost to the Purchasing Entity.

**4.11.6.** Repair of defective parts and/or Devices shall be at no cost to the Purchasing Entity.

**4.11.7.** Upon significant failure of a Product, the warranty period shall commence again for the same amount of time as specified in §4.11.1. Significant failure shall be determined by the Participating State.

**4.11.8.** Contractor warranty obligations shall not apply if:

- a) Product is installed, wired, modified, altered, or serviced by anyone other than Contractor and/or their Authorized Dealer;
- b) If a defective or non-Contractor authorized Accessory, Supply, software, or part is attached to, or used in the Device; and
- c) The Device is relocated to any place where Contractor Services are not available.

**4.11.9.** Contractor agrees to perform its Services in a professional manner, consistent with applicable industry standards.

**4.11.10.** It will be at the discretion of each Participating State or Entity to negotiate additional warranty requirements with the Contractor.

#### **4.11.11. Lemon Clause**

- a) This clause shall apply to all Devices that are purchased, leased, or rented under this Master Agreement.



- b) This clause shall not apply if Supplies are used in the Devices that were not manufactured, provided, or authorized by the Contractor.
- c) The application period is thirty-six (36) months from the date of Acceptance.
- d) This clause shall take precedence over any other warranty or Services clauses associated with this Master Agreement, or as specified by a Participating State or Entity in their Participating Addendum.
- e) A Purchasing Entity must maintain an uninterrupted Maintenance Agreement on all purchased Devices in order for this clause to apply past the initial ninety (90) day warranty.
- f) Any Device that fails (except due to operator error) to function in accordance with the Manufacturer's published performance specifications, four (4) times in any four (4) week period and/or is subject to recurring related problems, shall be replaced with a like-for-like Device that meets or exceeds the requirements of the original Device, at no cost to the Purchasing Entity.

#### 4.12. Customer Service

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

## **5. ADMINISTRATION OF ORDERS**

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

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

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

**5.1.20.** Contractor shall ensure they have a process in place for resolving disputed invoices, issuing refunds and/or credit, and addressing over-payments as well as Product returns. This process shall be conveyed to the Participating State or Entity and modified accordingly. In all instances of dispute resolution, the Purchasing Entity may contact the Participating State Contract Administrator, or the Lead State for assistance in resolving the dispute.

**5.2. Payment**

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

**6. GENERAL PROVISIONS**

**6.1. Insurance**

**6.1.1.** Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option; result in termination of its Participating Addendum.

**6.1.2.** Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering premises operations, Independent Contractors, Products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence, \$2 million general aggregate, \$2 million Products and completed operations aggregate and \$50,000 and any one fire. If any aggregate limit is reduced below \$2,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Participating Entity, a certificate or other document satisfactory to the Participating Entity, showing compliance with this provision.
- b) Cyber Liability covering claims and losses with respect to network, internet (Cloud) or other data disclosure risks (such as data breaches, releases of Confidential Information, unauthorized access/use of information, and identity theft) with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- c) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- d) Automobile Liability covering any auto (including owned, hired and non-owned), with a minimum limit of \$1,000,000 each accident combined single limit.

**6.1.3.** Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.

**6.1.4.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that:

- a) Names the Participating States identified in the Request for Proposal as additional insured's, and;

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

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

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

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

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

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

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

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

**6.3.1. Confidentiality.** Contractor acknowledges that it and its employees or Authorized Dealers may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity's or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed

confidential obtained by Contractor or its employees or Authorized Dealers in the performance of this Master Agreement, including, but not necessarily limited to:

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

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

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

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

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

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

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

**6.5. Public Information**

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

**6.6. Assignment/Subcontracts**

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

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

**6.7. Changes in Contractor Representation**

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

**6.8. Independent Contractor**

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

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

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

**6.9. Force Majeure**

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

**6.10. Defaults and Remedies**

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

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

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

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

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

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

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



**6.11. Waiver of Breach**

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or an Order.

**6.12. Debarment**

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

**6.13. Indemnification**

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

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

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

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

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

expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**6.14. No Waiver of Sovereign Immunity**

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

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

**6.15. Governing Law and Venue**

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

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

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

**6.16. Assignment of Antitrust Rights**

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

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

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

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

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

<p><b>CONTRACTOR</b> Kyocera Document Solutions America, Inc.</p> <p>By: _____ Title: _____</p> <p>By: <u>Edward Benfechi</u> *Signature</p> <p>Date: <u>8/15/19</u></p>	<p><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Personnel &amp; Administration State Purchasing &amp; Contracts Office Kara Veitch, Executive Director</p> <p>By: <u>John Chapman</u> John Chapman, State Purchasing Manager</p> <p>Date: <u>20 Aug 2019</u></p>
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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

<p><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By: <u>Charles W. Balen</u></p> <p>Date: <u>8/21/19</u></p>
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## **EXHIBIT A, PRICE LISTS**

**Price List (posted as separate file)**

**EXHIBIT B, SAMPLE D&A CERTIFICATE**

**NASPO VALUEPOINT MASTER AGREEMENT NO. 140599  
AND THE STATE OF Insert Name of Participating State PARTICIPATING  
ADDENDUM NO.  
WITH Kyocera Document Solutions America, Inc.**

To: Insert Name of Contractor or Authorized Dealer

Pursuant to the provisions of the Master Agreement and Participating Addendum, Purchasing Entity hereby certifies and warrants that (a) all Equipment described in the Order has been delivered and installed; (b) Purchasing Entity has inspected the Equipment, and all such testing as it deems necessary has been performed by Purchasing Entity and/or Contractor to the Satisfaction of Purchasing Entity; and (c) Purchasing Entity accepts the Equipment for all purposes of the Order.

**Insert name of Purchasing Entity**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT C, AUTHORIZED DEALERS BY STATE**

**Kyocera Dealer List (posted as separate file)**

## EXHIBIT D, AUTHORIZED DEALER FORM

**Manufacturer Name:** \_\_\_\_\_

(Check one)

- The Dealer listed below is authorized to provide Products and Services in accordance with the NASPO ValuePoint Copiers and Managed Print Services Master Agreement.
- The Dealer listed below will no longer provide Products and Services under the NASPO ValuePoint Copiers and Managed Print Services Master Agreement for the following reason:

State(s) Serviced by Dealer:	
Dealer Name:	
Address:	
Phone (include Toll-Free, if available):	
Contact Person(s):	
Email Address:	
FEIN:	

Signed: \_\_\_\_\_  
(Contractor Representative)

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Authorized Dealer Representative)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Print First and Last Name of Authorized Dealer Representative)

# EXHIBIT E, NASPO VALUEPOINT DETAILED SALES REPORTING TEMPLATE



NASPO ValuePoint  
Detailed Sales Repo



# ATTACHMENT A, KYOCERA MASTER LEASE AGREEMENT TERMS AND CONDITONS

**LESSEE:** \_\_\_\_\_

## **Master Lease Agreement**

This Master Lease Agreement ("Agreement") is dated as of this

\_\_\_\_\_, 20\_\_\_\_, and is by and between Kyocera Document Solutions America, Inc., 1111 Old Eagle School Road, Wayne, Pennsylvania 19087 ("Lessor") (and as supplier and manufacturer the "Supplier") and the Lessee identified above ("Lessee").

The words "you" and "your" refer to the "Lessee" and the words "we", "us" and "our" refer to the Lessor. Please read your copy of this Agreement carefully and feel free to ask us any questions you may have about it. Assignee is the Third Party leasing company billing and collecting in the name of the Lessor, allowed under NASPO ValuePoint Master Agreement Terms and Conditions, Section 4.5.6 (a) ("Assignee") to which payments are assigned.

**1. LEASE:** This Agreement establishes the general terms and conditions under which we may from time to time lease Equipment (as hereinafter defined) to you. The terms of this Agreement shall be deemed to form a part of each Schedule (the form of which is attached hereto as Exhibit A) executed by you and us which references this Agreement. "Equipment" shall mean all items of equipment described in any Schedule. You may issue Purchase Orders that incorporate by reference this Master Lease Agreement and if so incorporated by reference, each such Purchase Order will constitute a Schedule for the purposes of this Master Lease Agreement. Each Schedule shall constitute a separate Lease Agreement ("Lease") incorporating all of the terms of this Agreement. In the event of a conflict between the provisions of the Lease and the provisions of this Agreement, the provisions of the Lease shall prevail, providing they do not conflict with the language in the Master Agreement in which case, the Master Agreement language shall prevail.

**2. TERM AND RENT:** This Agreement shall become effective upon acceptance and execution by us and shall remain effective at least until the expiration of the last Lease term under any Schedule. Each Lease is effective on the date that it is accepted and signed by us, and the term of each Lease begins on that date or any later date that we designate (the "Commencement Date") and continues thereafter for the number of months indicated on the Lease. Lease Payments will be due as invoiced by us until the balance of the Lease Payments and any additional Lease Payments or expenses chargeable to you under the Lease are paid in full. Your obligation to pay the Lease Payments and other Lease obligations are absolute and unconditional and are not subject to cancellation, reduction, setoff or counterclaim. All payments will be made to us at the above address we indicate in writing. **THIS AGREEMENT AND ALL LEASES ARE NON-CANCELABLE** except as specified under the NASPO ValuePoint Master Agreement Terms and Conditions Non-appropriations of Funds Section 4.5.7(f) and Section 4.5.7(h)(i). The amount of each Lease Payment is based on the supplier's best estimate of the Equipment cost including (if applicable), any installation, other related costs and estimated sales or use tax, and per the pricing in the NASPO ValuePoint Master Agreement.

**3. LATE CHARGES/DOCUMENTATION FEES:** If a Lease Payment is not made within 15 days of the due date, you will pay us, a late charge of 1% of the payment or an amount only to the extent permitted by law.

**4. DELIVERY AND ACCEPTANCE:** The costs of delivery and installation of the Equipment are included in the cost of the Equipment. If requested, you will sign a separate Equipment delivery and acceptance certificate.

**5. SELECTION OF EQUIPMENT/DISCLAIMER OF WARRANTIES:** You have selected the Equipment and the Supplier. Assignee is not the Supplier of the Equipment and we or our Assignee are leasing the Equipment to you "AS-IS" under this Agreement. We or our Assignee **MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE** under this Lease. We and our Assignee transfer to you for the term of a Lease all warranties, if any, made by the Supplier. **YOU ALSO ACKNOWLEDGE THAT NO ONE IS AUTHORIZED TO WAIVE OR CHANGE ANY TERM, PROVISION OR CONDITION OF THIS AGREEMENT OR ANY LEASE AND EXCEPT FOR THE SUPPLIER WARRANTIES, MAKE ANY REPRESENTATION OR WARRANTY ABOUT A LEASE OR THE EQUIPMENT. WE SHALL NOT BE LIABLE FOR ANY DELAYS IN MAKING DELIVERIES OR REPAIRS NOR IN ANY EVENT FOR SPECIAL, RESULTING OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT OCCASIONED BY ANY BREACH OF WARRANTY OR REPRESENTATION OR RESULTING FROM THE USE OR PERFORMANCE OF THE EQUIPMENT. YOUR OBLIGATION TO PAY IN FULL ANY AMOUNT DUE UNDER A LEASE WILL NOT BE AFFECTED BY ANY DISPUTE, CLAIM, COUNTERCLAIM, DEFENSE OR OTHER RIGHT WHICH YOU MAY**

**HAVE OR ASSERT AGAINST THE SUPPLIER.**

**6. TITLE, PERSONAL PROPERTY, and LOCATION AND INSPECTION:** Unless you have a \$1.00 purchase option, we will have title to the Equipment. If you have a \$1.00 purchase option and/or the Lease is deemed to be a security agreement, you grant us a security interest in the Equipment and all proceeds thereof. You have the right to use the Equipment for the full Lease term provided you comply with the terms and conditions of the Lease. Although the Equipment may become attached to real estate, it remains personal property and you agree not to permit a lien to be placed upon the Equipment or to remove the Equipment without our prior written consent. If we feel it is necessary, you agree to provide us with waivers of interest or liens, from anyone claiming any interest in the real estate on which any item of Equipment is located. We also have the right, at reasonable times, to inspect the Equipment.

**7. USE, MAINTENANCE AND REPAIR:** You are required, at your own cost and expense, to keep the Equipment in good repair, condition and working order, except for ordinary wear and tear, and you will supply all parts and servicing required. All replacement parts used or installed and repairs made to the Equipment will become our property. You may, with our prior written consent, make modifications to the Equipment; provided such modifications do not reduce the value or usefulness of the Equipment or result in the loss of any warranty or any certification necessary for the maintenance of the Equipment and such modifications must be easily removable without causing damage to the Equipment. Before returning the Equipment, you agree to remove such modifications and restore the Equipment to its original condition. If you fail to remove such modifications, we are deemed the owner of such modifications. **IN THE EVENT THE LEASE PAYMENTS INCLUDE THE COST OF MAINTENANCE AND/OR SERVICE BEING PROVIDED BY THE SUPPLIER YOU ACKNOWLEDGE THAT OUR ASSIGNEE IS NOT RESPONSIBLE FOR PROVIDING ANY REQUIRED MAINTENANCE AND/OR SERVICE FOR THE EQUIPMENT. YOU WILL MAKE ALL CLAIMS FOR SERVICE AND/OR MAINTENANCE SOLELY TO THE SUPPLIER AND SUCH CLAIMS WILL NOT AFFECT YOUR OBLIGATION TO MAKE ALL REQUIRED LEASE PAYMENTS.**

**8. ASSIGNMENT:** YOU AGREE NOT TO TRANSFER, SELL, SUBLEASE, ASSIGN, PLEDGE OR ENCUMBER EITHER THE EQUIPMENT OR ANY RIGHTS UNDER THIS AGREEMENT AND ANY LEASE WITHOUT OUR PRIOR WRITTEN CONSENT (WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD). You agree that we may not sell, assign or transfer any Lease without notice to you, and if we do, the new owner or assignee will have the same rights and benefits that we now have but will not have to perform any of our obligations and that the rights of the new owner or assignee will not be subject to any claims, defenses, or set-offs that you may have against us. Any such assignment, sale or transfer of a Lease or the Equipment will not relieve us of our obligations to you under the Lease.

**9. REDELIVERY AND RENEWAL:** Upon at least sixty (60) days but not more than ninety (90) days prior to the expiration of the Lease term, we shall advise you of the end of the Lease term options available to you in writing (email will be sufficient for a writing). Provided you have given thirty (30) days written notice, you shall exercise your option to i) purchase the Equipment, ii) renew the Lease on a month to month basis, or iii) return (or make available) the Equipment to us in good repair, condition and working order, ordinary wear and tear excepted. If you fail to notify us, you will immediately make the Equipment available to us, in as good repair, condition and working order, ordinary wear and tear excepted.

**10. LOSS OR DAMAGE:** You are responsible for the risk of loss or destruction of, or damage to the Equipment while the Equipment is in your possession. No such loss or damage relieves you from any obligation under a Lease. You agree to promptly notify us in writing of any loss or destruction or damage to the Equipment and you will, at our option, (a) repair the Equipment to good condition and working order, (b) replace the Equipment with like Equipment in good repair, condition and working order, acceptable to us and transfer clear title to such replacement Equipment to us, such Equipment shall be subject to the Lease and be deemed the Equipment, or (c) pay to us the present value of the total of all unpaid Lease Payments for the full Lease term, plus the estimated fair market value of the Equipment at the end of the originally scheduled Lease term or any End of Lease Option price stated on the Lease ("Residual"), with the accelerated Lease Payments and the Residual discounted at the lesser of (a) a per annum interest rate equivalent to that of a U.S. Treasury constant maturity obligation (as reported by the U.S. Treasury Department) that would have a repayment term equal to the remaining Lease term, all as reasonably determined by us, or (b) 3% per annum (the "Present Value Rate"), whereupon the Lease shall terminate. All proceeds of insurance received by us as a result of such loss or damage will be applied, where applicable, toward the replacement or repair of the Equipment or the payment of your obligations.

**11. INDEMNITY:** We are not responsible for any losses or injuries caused by the installation or use of the

Equipment. You agree to reimburse us for and to defend us against any claim for losses or injuries caused by the Equipment. This indemnity will continue even after the termination of this Agreement and the Leases.

**12. TAXES:** You agree to pay all license and registration fees, sale and use taxes, personal property taxes and all other taxes and charges, relating to the ownership, leasing, rental, sale, purchase, possession or use of the Equipment, unless a valid tax exempt certificate can be provided and is in full force and effect. If we are required to file and pay property tax, you agree to either (a) reimburse us for all personal property and other similar taxes and governmental charges associated with ownership, possession, or use of the Equipment when billed by jurisdictions; or (b) remit to us each billing period a pro-rated equivalent of such taxes and governmental charges not to exceed 0.363% of the Equipment cost per month as part of the Lease Payment. You agree that if we pay any taxes or charges on your behalf, you will reimburse us for all such payments and will pay us interest and a late charge (as calculated in Section 3) on such payments with the next Lease Payment plus a fee for our collecting and administering any taxes, assessments or fees and remitting them to the appropriate authorities. Further, to the extent permitted by applicable law, you will indemnify us upon demand and on a net after tax basis against the loss (including recapture) of or inability to claim, or if we shall suffer a disallowance or deferral of, as determined in good faith by us, any Equipment ownership, or Lease-related, federal and/or state income tax benefits anticipated by us at the Commencement Date resulting from any of your acts or omissions or any inaccuracy of any statements or information provided by you. This indemnity will continue even after the termination of this Agreement and the Leases.

### **13. RESERVED.**

**14. DEFAULT:** You are in default of this Agreement and any Lease if any of the following occurs: a) you fail to pay any Lease Payment or other sum within forty-five (45) days of when due; b) you breach any representation warranty or other obligation under this Agreement and this failure continues for forty-five (45) days after we notify you of default; c) any guarantor dies, stops doing business as a going concern or transfers all or substantially all of such guarantor's assets, make an assignment for the benefit of creditors and/or you become insolvent or unable to pay your debts when due; you stop doing business as a going concern; you merge, consolidate, transfer all or substantially all of your assets; you make an assignment for the benefit of creditors or you undergo a substantial deterioration in your financial condition; or d) you, voluntarily file or have filed against you involuntarily, a petition for liquidation, reorganization, adjustment of debt or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator is appointed for you or it or a substantial part of your or its assets.

**15. REMEDIES:** We have the following remedies if a default should occur: a) Upon written notice, declare the entire balance of the unpaid Lease Payments for the full term immediately due and payable and you agree to compensate us, not as a penalty, by paying, the sum of: (i) all past due and current Lease Payments (or other periodic payments) and charges due under this Agreement and any Schedule; (ii) the present value of all remaining Lease Payments (or other periodic payments) and charges for the remainder of the term of such Lease, discounted at the rate of four percent (4%) per annum (or the lowest rate permitted by law, whichever is higher); and (iii) the present value (at the same discount rate as specified in clause (ii) above) of the amount of any purchase option with respect to the Equipment or, if none is specified, our anticipated value of the Equipment at the end of the initial term of such Lease (or any renewal thereof); and with respect to any software) immediately terminate your right to use the software including the disabling (on-site or by remote communication) of any software; (ii) demand the immediate return and obtain possession of the software and re-license the software at a public or private sale; and/or (iii) cause the software supplier to terminate the software license, support and other services under the software license); b) Charge you overdue account charges up to a maximum rate of one percent (1%) per month from the date of default until paid, but in no event more than the maximum rate permitted by law; and c) Require that you return the Equipment to us and in the event you fail to return the Equipment, enter upon the premises peaceably with or without legal process where the Equipment is located and repossess the Equipment. Such return or repossession of the Equipment will not constitute a termination of a Lease unless we expressly notify you in writing. In the event the Equipment is returned or repossessed by us and unless we have terminated the Lease, we will sell or re-rent the Equipment to any persons with any terms we determine, at one or more public or private sales, with or without notice to you, and apply the net proceeds after deducting the costs and expenses of such sale or re-rent, to your obligations with you remaining liable for any deficiency and with any excess being retained by us. The credit for any sums to be received by us from any such rental shall be discounted to the date of the agreement at six percent (6%) per year. You are also required to pay (i) all expenses incurred by us in connection with the enforcement of any remedies, including all expenses of repossessing, storing, repairing and selling the Equipment, and (ii) reasonable attorneys' fees. You agree that any delay or failure to enforce our rights under this Agreement or any Lease does not prevent us from enforcing any rights at a later time.

**16. PURCHASE OPTION:** Upon expiration of the Lease term, provided you are not in default, you shall have the option to purchase all but not less than all of the Equipment on the terms as indicated in the End of Lease Options checked off on the Lease. We will use our reasonable judgment to determine the Equipment's fair market value for all FMV purchase options which shall be based on the Equipment remaining in place. Should you decide to return the Equipment at end of the contracted term, you will be provided return instructions and the Equipment will be returned to us at no expense to you.

**17. RESERVED.**

**18. WARRANTY OF BUSINESS PURPOSE:** You warrant and represent that the Equipment will be used for business purposes, and not for personal, family or household purposes.

**19. UCC FILINGS AND FINANCIAL STATEMENTS:** You authorize us to file a financing statement with respect to the Equipment signed by us where permitted by the Uniform Commercial Code ("UCC") and grant us the right to sign such financing statement on your behalf. The filing of a financing statement is not to be construed as evidence that any security interest was intended to be created, but only to give public notice of our ownership of the Equipment. If a Lease is deemed at any time to be one intended as security then you grant us a security interest in the Equipment and the proceeds from the sale, rent or other disposition of the Equipment. If we feel it is necessary, you agree to submit financial statements (audited if available) on a quarterly basis.

**20. NOTICE:** Written notices will be deemed to have been given when delivered personally, via e-mail or deposited in the United States mail, postage prepaid, addressed to the recipient at its address above or at any other address subsequently provided in writing.

**21. UCC — ARTICLE 2A PROVISIONS:** You agree that each Lease is a Finance Lease as that term is defined in Article 2A of the UCC. You acknowledge that we have given you the name of the Supplier of the Equipment. We hereby notify you that you may have rights under the contract with the Supplier and you may contact the Supplier for a description of any rights or warranties that you may have under this supply contract. You also waive any and all rights and remedies granted you under Sections 2A-508 through 2A-522 of the UCC including, but not limited to: the right to repudiate the Lease and reject the Equipment; the right to cancel the Lease; the right to revoke acceptance of the Lease; the right to grant a security interest in the Equipment in your possession and control for any reason; or the right to recover damages for any breach of warranty.

**22. CHOICE OF LAW:** This Agreement and each Lease was made in the Commonwealth of Pennsylvania (by us having countersigned them in Wayne, Pennsylvania); and they are to be performed in the Commonwealth of Pennsylvania by reason of the Lease Payments you are required to pay us in Pennsylvania. This Agreement and each Lease shall in all respects be interpreted and all transactions subject to this Agreement and each Lease and all rights and liabilities of the parties under this Agreement and each Lease shall be determined and governed as to their validity, interpretation, enforcement and effect by the laws of the state of the Lessee, except for local filing requirements. You consent to and agree that non-exclusive jurisdiction, personal or otherwise, over you and the Equipment shall be with the State or Federal Courts in such state solely at our option with respect to any provision of this Agreement or any Lease. **YOU ALSO IRREVOCABLY WAIVE YOUR RIGHT TO A TRIAL BY JURY.**

**23. SEVERABILITY; WAIVERS:** No agreements or understandings are binding on the parties unless set forth in writing and signed by the parties. Any provision of this Agreement and each Lease which for any reason may be held unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective without invalidating the remaining provisions of this Agreement and each Lease.

**24. FACSIMILE DOCUMENTATION:** You agree, upon our request, to submit the original of this Agreement and any schedules to the Lessor via overnight courier the same day of the facsimile or other electronic transmission of the signed Agreement and such schedules. Both parties agree that this Agreement and any schedules signed by you, whether manually or electronically, and submitted to us by facsimile or other electronic transmission shall, upon execution by us (manually or electronically, as applicable), be binding upon the parties. This lease may be executed in counterparts and any facsimile, photographic and/or other electronic transmission of this lease which has been manually or electronically signed by you when manually or electronically countersigned by us or attached to our original signature counterpart and/or in our possession shall constitute the sole original chattel paper as defined in the UCC for all purposes (including any enforcement action under paragraph 22) and will be admissible as legal evidence thereof. Both parties waive the right to challenge in court the authenticity of a faxed, photographic, or other electronically transmitted or electronically signed copy of this Agreement and any schedule.

**25. NON-APPROPRIATION:** (Applicable only if the Lessee is a State or political subdivision of a State) You are obligated only to pay such Lease Payments under any Schedule to this Agreement as may lawfully been made from funds budgeted and appropriated for that purpose during your then current fiscal year. In the event you have requested and sufficient funds shall not be appropriated or are not otherwise legally available to pay the Lease Payments required to be paid in the next fiscal year, the Schedule shall be deemed to be terminated at the end of the current fiscal year. You agree to deliver written notice to us of such termination of at least 30 days prior to the end of the current fiscal year but failure to give such notice shall not extend the Lease Schedule term beyond the current fiscal year. If a Schedule is terminated in accordance with this Section, you agree, at our cost and expense, to peaceably deliver the Equipment to us at the location or locations specified by us.

# ATTACHMENT B, KYOCERA MASTER LEASE AGREEMENT SCHEDULE

LEASE COMMENCEMENT DATE \_\_\_\_\_ LEASE NUMBER \_\_\_\_\_ SCHEDULE NO. \_\_\_\_\_

This Master Lease Agreement Schedule is entered into pursuant to and incorporates the terms and conditions of that certain Master Lease Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ ("Agreement") by and between Kyocera Document Solutions America, Inc. ("Lessor") and \_\_\_\_\_ ("Lessee").

<b>LESSEE</b>	Full Legal Name _____ DBA Name (If Any) _____	
	Billing Address _____	Phone Number _____
	City _____ County _____ State _____	Zip Code _____
	Send Invoice to Attention of _____	

<b>VENDOR</b>	Vendor Name _____ Address _____	
	City _____ County _____ State _____	Zip Code _____
	Name of Sales Rep _____ Phone Number _____	

<b>EQUIPMENT INFORMATION</b>	Equipment Location (if not same as above) _____		
	City _____ County _____ State _____ Zip _____		
	Quantity	Model Number	Description (Attach Schedule if Necessary)

<b>PAYMENT INFORMATION</b>	Number of Lease Payments	Lease Payment (PLUS)	Sales Tax	(EQUALS)	Total Lease Payment
		+		=	
		+		=	
		+		=	
		+		=	
		+		=	
Term of Lease in Months _____					
Payment Frequency: <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Other _____					
End of Lease Option: <input type="checkbox"/> FMV <input type="checkbox"/> 10% <input type="checkbox"/> \$1 <input type="checkbox"/> Other _____					
End of Lease Purchase Option shall be FMV unless another option is selected.					

<b>FIRST PAYMENT</b>	Security Deposit (PLUS)	First Lease Payment (PLUS)	Other	(EQUALS)	Total Payment Enclosed
	+	+		=	
*Make check payable to Lessor					

<b>LESSEE SIGNATURE</b>	YOU AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THE AGREEMENT, AND IN ANY ATTACHMENTS TO THE SAME, ALL OF WHICH ARE INCORPORATED INTO AND BECOME PART OF THIS SCHEDULE. YOU ACKNOWLEDGE TO HAVE READ AND AGREE TO ALL THE TERMS AND CONDITIONS AND UNDERSTAND THAT THIS IS A NON-CANCELABLE AGREEMENT FOR THE FULL TERM SHOWN ABOVE. YOU AGREE THAT A FACSIMILE COPY OF THIS DOCUMENT WITH FACSIMILE SIGNATURES MAY BE TREATED AS AN ORIGINAL AND WILL BE ADMISSIBLE AS EVIDENCE IN A COURT OF LAW	
	Signature X _____ <small>(PLACE MUST BE SIGNED BY AUTHORIZED CORPORATE OFFICER, PARTNER OR PROPRIETOR)</small>	
	Print Name _____	
	Title _____	Date _____
	Legal Name of Corporation or Partnership _____	

<b>ACCEPTED BY LESSOR</b>	Signature X _____	
	Title _____	Date _____
	Legal Name of Corporation or Partnership _____	

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## ATTACHMENT C, KYOCERA LEASE AGREEMENT TERMS AND CONDITIONS

**1. Lease:** You (the "Lessee" "you" or "your") agree to lease from Kyocera Document Solutions America, Inc. (the "Lessor" and as supplier and manufacturer, the "Supplier", "we" or "our" our "us") the Equipment listed above and on any attached schedule (the "Lease"). Assignee is the Third Party leasing company billing and collecting in the name of the Lessor, allowed under NASPO ValuePoint Master Agreement Terms and Conditions, Section 4.5.5(a) ("Assignee") to which payments are assigned. If a payment is not made within 45 days of the due date, you will pay us a late charge of 1% of the payment but only to the extent permitted by law. YOU AGREE THAT NO ONE IS AUTHORIZED TO WAIVE OR CHANGE ANY LEASE TERM OR PROVISION.

**2. Term:** This Lease is effective on the date that it is accepted and signed by us, and the term of this Lease begins on that date or any later date that we designate (the "Commencement Date") and continues thereafter for the number of months indicated above. Lease payments are due as invoiced by us. Your obligations are absolute, unconditional, and are not subject to cancellation, reduction, setoff or counterclaim except as specified in the NASPO ValuePoint Master Agreement Section 4.5.7(h)(i).

**3. Title:** Unless you have a \$1.00 purchase option, we will have title to the Equipment. If you have a \$1.00 purchase option and/or the Lease is deemed to be a security agreement, you grant us a security interest in the Equipment and all proceeds thereof. You authorize us to file Uniform Commercial Code ("UCC") financing statements on the Equipment.

**4. Equipment Use, Maintenance and Warranties:** Assignee is not the Supplier of the Equipment and We or our Assignee are leasing the Equipment to you "AS-IS". WE or our Assignee MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. We and our Assignee transfer to you any Supplier warranties. You are required at your cost to keep the Equipment in good working condition and to pay for all supplies and repairs. The Lease Payments set forth above do not include the cost of maintenance, service, and/or supplies ("Service"), unless indicated in the above "Payment Information" box. Notwithstanding anything to the contrary, however, you agree that the Assignee is not responsible for providing such Service for the Equipment and you will make all claims related to Service to the Supplier. No one may alter the terms of this Lease or make any promises or arrangements that alter our rights or your obligations under this Lease. You agree that you are expressly assuming any risks arising from such Supplier's inability to deliver such Service, under any circumstance, including, without limitation, such Supplier's financial condition or its inability to repair or service the Equipment. You agree that any claims related to Service will not impact your obligation to pay all Lease payments when due.

**5. Assignment:** You agree not to transfer, sell, sublease, assign, pledge or encumber either the Equipment or any rights under this Lease without our prior written consent (which consent shall not be unreasonably withheld). You agree that we may not sell, assign, or transfer the Lease without notice to you, and if we do, the new owner will have the same rights and benefits we now have and will not have to perform any of our obligations and the rights of the new owner will not be subject to any claims, defenses, or setoffs that you may have against us or any supplier.

**6. Risk of Loss** You are responsible for providing protection of the Equipment from damage, destruction or loss of any kind. If the Equipment is damaged, destroyed or lost, you agree to continue to pay the amounts due and to become due hereunder without setoff or defense. We are not responsible for any losses or injuries caused by the Equipment and you will reimburse us and defend us against any such claims. This indemnity will continue after the termination of this Lease.

**7. Taxes:** You agree to pay when due all taxes (including, without limit, sales, use, and personal property) and charges in connection with ownership, lease and use of the Equipment unless a valid tax exempt certificate can be provided and is in full force and effect. If we are required to file and pay property tax, you agree to either (a) reimburse us for all personal property and other similar taxes and governmental charges associated with ownership, possession, or use of the Equipment when billed by jurisdictions; or (b) remit to us each billing period a pro-rated equivalent of such taxes and governmental charges not to exceed 0.363% of the cost of the Equipment per month as part of the Lease Payment. We may charge you a processing fee for administering property tax filings. You will indemnify us on an after-tax basis against the loss or unavailability of any tax benefits anticipated at the Commencement Date arising out of your acts or omissions. This indemnity will continue even after the

termination of this Lease.

**8. Default and Remedies:** You are in default on this Lease if: a) you fail to pay a Lease payment or any other amount within forty-five (45) days of when due; or b) you breach any other obligation under the Lease and this failure continues for forty-five (45) days after we notify you of default. If you are in default on the Lease we may: (i) declare the entire balance of unpaid Lease payments for the full Lease term immediately due and payable to us and you agree to compensate us, not as a penalty, by paying, the sum of: (i) all past due and current Lease Payments (or other periodic payments) and charges due under this Agreement and any Schedule; (ii) the present value of all remaining Lease Payments (or other periodic payments) and charges for the remainder of the term of such Lease, discounted at the rate of four percent (4%) per annum (or the lowest rate permitted by law, whichever is higher); and (iii) the present value (at the same discount rate as specified in clause (ii) above) of the amount of any purchase option with respect to the Equipment or, if none is specified, our anticipated value of the Equipment at the end of the initial term of such Lease (or any renewal thereof); and with respect to any software) immediately terminate your right to use the software including the disabling (on-site or by remote communication) of any software; (ii) demand the immediate return and obtain possession of the software and re-license the software at a public or private sale; and/or (iii) cause the software supplier to terminate the software license, support and other services under the software license); (iv) charge you overdue account charges up to the maximum rate of one percent (1%) per month from the date of default until paid, but in no event more than the maximum rate permitted by law; and (v) require that you immediately return the Equipment to us or we may peaceably repossess it. Any return or repossession will not be considered a termination or cancellation of the Lease. If the Equipment is returned or repossessed we will sell or re-rent the Equipment at terms we determine, at one or more public or private sales, with or without notice to you, and apply the net proceeds (after deducting any related expenses) to your obligations. You remain liable for any deficiency with any excess being retained by us. You agree that if notice of sale is required by law to be given, 10 days' notice will constitute reasonable notice. You are also required to pay (i) all expenses incurred by us in connection with enforcement of any remedies, including all expenses of repossessing, storing, repairing, and selling the Equipment, and (ii) reasonable attorney's fees.

**9. End of Lease, Return, Purchase Option, and Renewal:** Upon at least 60 days but not more than 90 days prior to the expiration of the initial lease term (or any renewal term), WE shall advise you of the end of the Lease term options available to you in writing (email will be sufficient for writing). Provided you have given thirty (30) days written notice, you shall exercise your option to i) purchase the Equipment, ii) renew the Lease on a month to month basis, or iii) return (or make available) the Equipment to us in good repair, condition and working order, ordinary wear and tear excepted. If you fail to notify us, you will immediately make the Equipment available to us, in good repair, condition and working order, ordinary wear and tear excepted. Should you decide to return the Equipment at the end of the contracted term, you will be provided return instructions and the Equipment will be returned to us at no expense to you.

**10. Miscellaneous:** You agree that the Lease is a Finance Lease as defined in Article 2A of the Uniform Commercial Code ("UCC"). You acknowledge that we have given you the Equipment supplier's name. We hereby notify you that you may have rights under the supplier's contract and may contact the supplier for a description of these rights. You agree that we are authorized, without notice to you, to supply missing information or correct obvious errors in the Lease. **This Lease was made in Pennsylvania ("PA"); is deemed to be performed in PA and shall be governed and construed in accordance with the laws of state of the Lessee. You consent to the non-exclusive jurisdiction, personal or otherwise, in any State or Federal Courts in such state and waive trial by jury.** You agree (i) to waive any and all rights and remedies granted to you under UCC Section 2A-508 through 2A-522, (ii) that the Equipment will only be used for business purposes and not for personal, family, or household use, and will not be moved from the above location without our consent, and (iii) this Lease may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of this Lease by you when manually countersigned by us or attached to our original signature counterpart and/or in our possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. At our option, we may require a manual signature. We may inspect the Equipment during the Lease term. We shall not be liable to you for indirect, special, or consequential damages. No failure to act shall be deemed a waiver of any rights hereunder.



## **ATTACHMENT D, KYOCERA STRAIGHT LEASE AGREEMENT TERMS AND CONDITIONS**

Please read YOUR copy of this Lease Agreement carefully and feel free to ask US any questions YOU may have about it. Words "YOU" and "YOUR" refer to the "Customer" and the words "WE", "US" and "OUR" refer to Kyocera Document Solutions America, Inc. (the "Company" and as supplier and manufacturer, the "Supplier"). Assignee is the Third Party leasing company billing and collecting in the name of the Lessor allowed under NASPO ValuePoint Master Agreement Terms and Conditions, Section 4.5.5 (a) ("Assignee") to which payments are assigned.

**1. LEASE:** WE agree to lease to YOU and YOU agree to lease from US, the equipment listed above on any attached schedule, including all replacement parts, repairs, additions and accessories ("Equipment").

**2. TERM:** This Lease Agreement is effective on the date that it is accepted and signed by US, and the term of this Lease Agreement begins on that date or any later date that WE designate (the "Commencement Date") and continues thereafter for the number of months indicated above. Your obligation to pay the Lease Payments and YOUR other Lease Agreement obligations are absolute and unconditional and are not subject to cancellation, reduction, setoff or counterclaim except as specified under the NASPO ValuePoint Master Agreement Section 4.5.7 (h) (i). All payments will be made to US at the address indicated or any other place WE indicate in writing. THIS AGREEMENT IS NON-CANCELABLE. The amount of each Lease Payment is based on the supplier's best estimate of the Equipment cost including (if applicable), any installation, other related costs and estimated sales or use tax.

**3. LATE CHARGES/DOCUMENTATION FEES:** If a Lease Payment is not made within 45 days of the due date, YOU will pay US, a late charge of 1% of the payment but only to the extent permitted by law.

**4. DELIVERY AND ACCEPTANCE:** The costs of delivery and installation of the Equipment are included in the cost of the Equipment. If requested, YOU will sign a separate Equipment delivery and acceptance certificate.

**5. USE, MAINTENANCE, REPAIR, SUPPLIES AND WARRANTIES:** YOU have selected the Equipment and the Supplier. Assignee is not the Supplier of the Equipment and WE or our Assignee are leasing the Equipment to YOU "AS-IS". WE OR OUR ASSIGNEE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE and our Assignee transfer to YOU for the term of this Lease Agreement all warranties, if any, made by the Supplier. YOU ALSO ACKNOWLEDGE THAT NO ONE IS AUTHORIZED TO WAIVE OR CHANGE ANY TERM, PROVISION OR CONDITION OF THIS LEASE AGREEMENT AND EXCEPT FOR THE SUPPLIER WARRANTIES, MAKE ANY REPRESENTATION OR WARRANTY ABOUT THIS LEASE AGREEMENT OR THE EQUIPMENT. WE SHALL NOT BE LIABLE FOR ANY DELAYS IN MAKING DELIVERIES OR REPAIRS NOR IN ANY EVENT FOR SPECIAL, RESULTING OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT OCCASIONED BY ANY BREACH OF WARRANTY OR REPRESENTATION OR RESULTING FROM THE USE OR PERFORMANCE OF THE EQUIPMENT. YOUR OBLIGATION TO PAY IN FULL ANY AMOUNT DUE UNDER THE LEASE AGREEMENT WILL NOT BE AFFECTED BY ANY DISPUTE, CLAIM, COUNTERCLAIM, DEFENSE OR OTHER RIGHT WHICH YOU MAY HAVE OR ASSERT AGAINST THE SUPPLIER.

**6. TITLE, PERSONAL PROPERTY, and LOCATION AND INSPECTION:** WE will have title to the Equipment. If the Lease Agreement is deemed to be a security agreement, YOU grant US a security interest in the Equipment and all proceeds thereof. YOU have the right to use the Equipment for the full Lease Agreement term provided YOU comply with the terms and conditions of this Lease Agreement. Although the Equipment may become attached to real estate, it remains personal property and YOU agree not to permit a lien to be placed upon the Equipment or to remove the Equipment without OUR prior written consent. If WE feel it is necessary, YOU agree to provide US with waivers of interest or lien, from anyone claiming any interest in the real estate on which any item of Equipment is located. WE also have the right, at reasonable times, to inspect the Equipment.

**7. MAINTENANCE:** YOU are required, at YOUR own cost and expense, to keep the Equipment in good repair, condition and working order, except for ordinary wear and tear, and YOU will supply all parts and servicing required. All replacement parts used or installed and repairs made to the Equipment will become OUR property. YOU may, with OUR prior written consent, make modifications to the Equipment, provided such modifications do not reduce the value or usefulness of the Equipment or result in the loss of any warranty or any certification

necessary for the maintenance of the Equipment and such modifications must be easily removable without causing damage to the Equipment. Before returning the Equipment, YOU agree to remove such modifications and restore the Equipment to its original condition. If YOU fail to remove such modifications, WE are deemed the owner of such modifications. IN THE EVENT THE LEASE PAYMENTS INCLUDE THE COST OF MAINTENANCE AND/OR SERVICE BEING PROVIDED BY THE SUPPLIER, YOU ACKNOWLEDGE THAT OUR ASSIGNEE IS NOT RESPONSIBLE FOR PROVIDING ANY REQUIRED MAINTENANCE AND/OR SERVICE FOR THE EQUIPMENT. YOU WILL MAKE ALL CLAIMS FOR SERVICE AND/OR MAINTENANCE SOLELY TO THE SUPPLIER AND SUCH CLAIMS WILL NOT AFFECT YOUR OBLIGATION TO MAKE ALL REQUIRED LEASE PAYMENTS.

**8. ASSIGNMENT:** YOU AGREE NOT TO TRANSFER, SELL, LEASE, ASSIGN, PLEDGE OR ENCUMBER. EITHER THE EQUIPMENT OR ANY RIGHTS UNDER THIS LEASE AGREEMENT WITHOUT OUR PRIOR WRITTEN CONSENT (WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD). YOU agree that WE may not sell, assign or transfer this Lease Agreement without notice to you and if WE do, the new owner will have the same rights and benefits that WE now have and will not have to perform any of OUR obligations and that the rights of the new owner will not be subject to any claims, defenses, or set-offs that YOU may have against US. Any such assignment, sale or transfer of this Lease Agreement or the Equipment will not relieve US of OUR obligations to YOU under this Lease Agreement.

**9. REDELIVERY AND RENEWAL:** Upon at least sixty (60) but not more than ninety (90) days prior to the expiration of the Lease term, WE shall advise YOU, in writing (email will be sufficient for a writing) of YOUR options at the end of the Lease term. Provided YOU have given thirty (30) days written notice, you shall exercise your option to i) renew the Lease Agreement on a month to month basis, or ii) return (or make available) the Equipment to us in good repair, condition and working order, ordinary wear and tear excepted. If YOU do fail to notify US, YOU will immediately make the Equipment available to us, in good repair, condition and working order, ordinary wear and tear excepted. Should you decide to return the Equipment at end of the contracted term, you will be provided return instructions and the Equipment will be returned to us at no expense to you.

**10. LOSS OR DAMAGE:** YOU are responsible for the risk of loss or destruction of, or damage to the Equipment. No such loss or damage relieves YOU from any obligation under this Lease Agreement. YOU agree to promptly notify US in writing of any loss or destruction or damage to the Equipment and YOU will, at OUR option, a) repair the Equipment to good condition and working order, b) replace the Equipment with like Equipment in good repair, condition and working order, acceptable to US and transfer clear title to such replacement Equipment to US, such Equipment shall be subject to this Lease Agreement and be deemed the Equipment, or c) pay to US the present value of the total of all unpaid Lease Payments for the full Lease Agreement term plus the estimated fair market value of the Equipment at the end of the originally scheduled Lease Agreement term ("Residual"), with the accelerated Lease Payments and the Residual discounted at the lesser of (a) a per annum interest rate equivalent to that of a U.S. Treasury constant maturity obligation (as reported by the U.S. Treasury Department) that would have a repayment term equal to the remaining Lease Agreement term, all as reasonably determined by US, or (b) 3% per annum (the "Present Value Rate"), whereupon this Lease Agreement shall terminate. All proceeds of insurance received by US as a result of such loss or damage will be applied, where applicable, toward the replacement or repair of the Equipment or the payment of YOUR obligations.

**11. INDEMNITY:** WE are not responsible for any losses or injuries caused by the installation or use of the Equipment. YOU agree to reimburse US for and to defend US against any claim for losses or injuries caused by the Equipment. This indemnity will continue even after the termination of this Lease Agreement.

**12. TAXES:** YOU agree to pay all license and registration fees, sale and use taxes, personal property taxes and all other taxes and charges, relating to the ownership, lease, sale, purchase, possession or use of the Equipment, unless a valid tax exempt certificate can be provided and is in full force and effect, as part of the Lease Payment or as billed by US. If we are required to file and pay personal property tax, you agree to either (a) reimburse us for all personal property and other similar taxes and governmental charges associated with the ownership, possessing, or use of the Equipment when billed by jurisdictions; or (b) remit to us each billing period a pro-rated equivalent of such taxes and governmental charges not to exceed 0.363% of the cost of Equipment per month as part of the Lease Payment. YOU agree that if WE pay any taxes or charges on YOUR behalf, YOU will reimburse US for all such payments and will pay US interest and a late charge (as calculated in Section 3) on such payments with the next Lease Payment, plus a fee for OUR collecting and administering any taxes, assessments or fees and remitting them to the appropriate authorities.

**13. RESERVED.**

**14. DEFAULT:** YOU are in default of this Lease Agreement if any of the following occurs: a) YOU fail to pay any Lease Payment or other sum within forty-five (45) days of when due; b) YOU breach any representation, warranty or other obligation under this Lease Agreement with US and this failure continues for forty-five (45) days after we notify you of default; c) any guarantor dies, YOU become insolvent or unable to pay YOUR debts when due; YOU stop doing business as a going concern; YOU merge, consolidate, transfer all or substantially all of YOUR assets; YOU make an assignment for the benefit of creditors or YOU undergo a substantial deterioration in YOUR financial condition; or (d) YOU voluntarily file or have filed against YOU involuntarily, a petition for liquidation, reorganization, adjustment of debt or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator will be appointed for it or a substantial part of its assets.

**15. REMEDIES:** WE have the following remedies if a default should occur: a) Upon written notice, declare the entire balance of the unpaid Lease Payments for the full term immediately due and payable and you agree to compensate us, not as a penalty, by paying, the sum of: (i) all past due and current Lease Payments (or other periodic payments) and charges due under this Agreement and any Schedule; (ii) the present value of all remaining Lease Payments (or other periodic payments) and charges for the remainder of the term of such Lease, discounted at the rate of four percent (4%) per annum (or the lowest rate permitted by law, whichever is higher); and (iii) the present value (at the same discount rate as specified in clause (ii) above) of the amount of any purchase option with respect to the Equipment or, if none is specified, our anticipated value of the Equipment at the end of the initial term of such Lease (or any renewal thereof); and with respect to any software) immediately terminate your right to use the software including the disabling (on-site or by remote communication) of any software; (iv) demand the immediate return and obtain possession of the software and re-license the software at a public or private sale; and/or (v) cause the software supplier to terminate the software license, support and other services under the software license); b) Charge YOU overdue account charges up to a maximum rate of one percent (1%) per month from the date of default until paid, but in no event more than the maximum rate permitted by law; and c) Require that YOU return the Equipment to US and in the event YOU fail to return the Equipment, enter upon the premises peaceably with or without legal process where the Equipment is located and repossess the Equipment. Such return or repossession of the Equipment will not constitute a termination of this Lease Agreement unless WE expressly notify YOU in writing. In the event the Equipment is returned or repossessed by US and unless WE have terminated this Lease Agreement, WE will sell or re-lease the Equipment to any persons with any terms WE determine, at one or more public or private sales, with or without notice to YOU, and apply the net proceeds deducting the costs and expenses of such sale or re-lease to YOUR obligations with YOU remaining liable for any deficiency and with any excess being retained by US. The credit for any sums to be received by US from any such lease shall be discounted to the date of the agreement at six percent (6%) per year. YOU are also required to pay (i) all expenses incurred by US in connection with the enforcement of any remedies, including all expenses of repossessing, storing, repairing and selling the Equipment, and (ii) reasonable attorneys' fees. YOU agree that any delay or failure to enforce OUR rights under this Lease Agreement does not prevent US from enforcing any rights at a later time.

**16. RESERVED.**

**17. RESERVED.**

**18. WARRANTIES:** YOU warrant and represent that the Equipment will be used for business purposes, and not for personal, family or household purposes.

**19. UCC FILINGS AND FINANCIAL STATEMENTS:** YOU authorize US to file a Uniform Commercial Code ("UCC") financing statement with respect to the Equipment signed by US where permitted by the UCC and grant US the right to sign such financing statement on YOUR behalf. The filing of a financing statement is not to be construed as evidence that any security interest was intended to be created, but only to give public notice of OUR ownership of the Equipment. If WE feel it is necessary, YOU agree to submit financial statements (audited if available) on a quarterly basis.

**20. NOTICE:** Written notices will be deemed to have been given when delivered personally, sent via e-mail or deposited in the United States mail, postage prepaid, addressed to the recipient at its address above or at any other address subsequently provided in writing.

**21. UCC - ARTICLE 2A PROVISIONS:** YOU agree that this Lease Agreement is a Finance Lease as that term is defined in Article 2A of the UCC. YOU acknowledge that WE have given YOU the name of the Supplier of the Equipment. WE hereby notify YOU that YOU may have rights under the contract with the Supplier and YOU may

contact the Supplier for a description of any rights or warranties that YOU may have under this supply contract. YOU also waive any and all rights and remedies granted YOU under Sections 2A-508 through 2A-522 of the UCC including, but not limited to: the right to repudiate the Lease Agreement and reject the Equipment; the right to cancel the Lease Agreement; the right to revoke acceptance of the Lease Agreement; the right to grant a security interest in the Equipment in YOUR possession and control for any reason; or the right to recover damages for any breach of warranty.

**22. CHOICE OF LAW:** This Lease Agreement was made in the Commonwealth of Pennsylvania (by US having countersigned it in Wayne, Pennsylvania); and it is to be performed in the Commonwealth of Pennsylvania by reason of the Lease Payments YOU are required to pay US in Pennsylvania. This Lease Agreement shall in all respects be interpreted and all transactions subject to this Lease Agreement and all rights and liabilities of the parties under the Lease Agreement shall be determined and governed as to their validity, interpretation, enforcement and effect by the laws of the state of the Customer except for local filing requirements. YOU consent to and agree that non-exclusive jurisdiction, personal or otherwise, over YOU and the Equipment shall be with the State or Federal Courts of such state solely at OUR option with respect to any provision of this Lease Agreement. **YOU ALSO IRREVOCABLY WAIVE YOUR RIGHT TO TRIAL BY JURY.**

**23. SEVERABILITY; WAIVERS:** No agreements or understandings are binding on the parties unless set forth in writing and signed by the parties. Any provision of this Lease Agreement which for any reason may be held unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective without invalidating the remaining provisions of this Lease Agreement.

**24. ELECTRONIC DOCUMENTATION:** You agree, upon our request, to submit the original of this Lease Agreement to the Company via overnight courier the same day of the facsimile or other electronic transmission of the signed Agreement. Both parties agree that this Lease Agreement signed by you, whether manually or electronically, and submitted to us by facsimile or other electronic transmission shall, upon execution by us (manually or electronically, as applicable), be binding upon the parties. This lease may be executed in counterparts and any facsimile, photographic and/or other electronic transmission of this lease which has been manually or electronically signed by you when manually or electronically countersigned by us or attached to our original signature counterpart and/or in our possession shall constitute the sole original chattel paper as defined in the UCC for all purposes (including any enforcement action under paragraph 11) and will be admissible as legal evidence thereof. Both parties waive the right to challenge in court the authenticity of a faxed, photographic, or other electronically transmitted or electronically signed copy of this Agreement and any schedule.

## ATTACHMENT E, KYOCERA CANCELLABLE RENTAL AGREEMENT TERMS AND CONDITIONS

Please read YOUR copy of this Rental Agreement carefully and feel free to ask US any questions YOU may have about it. Words "YOU" and "YOUR" refer to the "Customer" and the words "WE", "US" and "OUR" refer to Kyocera Document Solutions America, Inc. (the "Company" and as supplier and manufacturer, the "Supplier").

**1. RENTAL:** WE agree to rent to YOU and YOU agree to rent from US, the equipment listed above (and on any attached schedule) including all replacement parts, repairs, additions and accessories ("Equipment") on the terms and conditions of this Rental Agreement and on any attached schedule.

**2. TERM:** This Rental Agreement is effective on the date that it is accepted and signed by US, and the term of this Rental Agreement begins on that date or any later date that WE designate (the "Commencement Date") and continues thereafter for the number of months indicated above. All payments will be made to US at the above address or any other place WE indicate in writing. YOU SHALL HAVE THE OPTION TO CANCEL THE RENTAL AT ANYTIME THROUGH THE TERM OF THIS AGREEMENT BY PROVIDING US WITH THIRTY (30) DAY PRIOR WRITTEN NOTICE.

**3. LATE CHARGES/DOCUMENTATION FEES:** If a Rental Payment is not made within 45 days of the due date, YOU will pay US, a late charge of 1% of the payment but only to the extent permitted by law.

**4. DELIVERY AND ACCEPTANCE:** The costs of delivery and installation of the Equipment are included in the cost of the Equipment. If requested, YOU will sign a separate Equipment delivery and acceptance certificate.

**5. USE, MAINTENANCE, REPAIR, SUPPLIES AND WARRANTIES:** Assignee is not the Supplier of the Equipment and WE or our Assignee are renting the Equipment to YOU "AS-IS". WE OR OUR ASSIGNEE MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE AND OUR ASSIGNEE transfer to YOU for the term of this Rental Agreement all warranties, if any, made by the Supplier. YOU ALSO ACKNOWLEDGE THAT NO ONE IS AUTHORIZED TO WAIVE OR CHANGE ANY TERM, PROVISION OR CONDITION OF THIS RENTAL AGREEMENT AND EXCEPT FOR THE SUPPLIER WARRANTIES, MAKE ANY REPRESENTATION OR WARRANTY ABOUT THIS RENTAL AGREEMENT OR THE EQUIPMENT. WE SHALL NOT BE LIABLE FOR ANY DELAYS IN MAKING DELIVERIES OR REPAIRS NOR IN ANY EVENT FOR SPECIAL, RESULTING OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT OCCASIONED BY ANY BREACH OF WARRANTY OR REPRESENTATION OR RESULTING FROM THE USE OR PERFORMANCE OF THE EQUIPMENT.

**6. TITLE, PERSONAL PROPERTY, and LOCATION AND INSPECTION:** WE will have title to the Equipment. If the Rental Agreement is deemed to be a security agreement, YOU grant US a security interest in the Equipment and all proceeds thereof. YOU have the right to use the Equipment for the full Rental Agreement term provided YOU comply with the terms and conditions of this Rental Agreement. Although the Equipment may become attached to real estate, it remains personal property and YOU agree not to permit a lien to be placed upon the Equipment or to remove the Equipment without OUR prior written consent. If WE feel it is necessary, YOU agree to provide US with waivers of interest or lien, from anyone claiming any interest in the real estate on which any item of Equipment is located. WE also have the right, at reasonable times, to inspect the Equipment.

**7. MAINTENANCE:** YOU are required to keep the Equipment in good repair, condition and working order, except for ordinary wear and tear. All replacement parts used or installed and repairs made to the Equipment will become OUR property. YOU may, with OUR prior written consent, make modifications to the Equipment, provided such modifications do not reduce the value or usefulness of the Equipment or result in the loss of any warranty or any certification necessary for the maintenance of the Equipment and such modifications must be easily removable without causing damage to the Equipment. Before returning the Equipment, YOU agree to remove such modifications and restore the Equipment to its original condition. If YOU fail to remove such modifications, WE are deemed the owner of such modifications. YOU WILL MAKE ALL CLAIMS FOR SERVICE AND/OR MAINTENANCE SOLELY TO THE SUPPLIER. AND SUCH CLAIMS WILL NOT AFFECT YOUR OBLIGATION TO MAKE ALL REQUIRED RENTAL PAYMENTS.

**8. ASSIGNMENT:** YOU AGREE NOT TO TRANSFER, SELL, RENT, ASSIGN, PLEDGE OR ENCUMBER EITHER THE EQUIPMENT OR ANY RIGHTS UNDER THIS RENTAL AGREEMENT WITHOUT OUR PRIOR WRITTEN

CONSENT (WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD). YOU agree that WE may not sell, assign or transfer this Rental Agreement without notice to you and if WE do, the new owner will have the same rights and benefits that WE now have and will not have to perform any of OUR obligations and that the rights of the new owner will not be subject to any claims, defenses, or set-offs that YOU may have against US. Any such assignment, sale or transfer of this Rental Agreement or the Equipment will not relieve US of OUR obligations to YOU under this Rental Agreement.

**9. REDELIVERY AND RENEWAL:** Provided YOU have given thirty (30) days written notice, you shall exercise your option to i) renew the Rental Agreement on a month to month basis, or ii) return (or make available) the Equipment to us in good repair, condition and working order, ordinary wear and tear excepted. If YOU do fail to notify US, YOU will immediately make the Equipment available to us, in good repair, condition and working order, ordinary wear and tear excepted.

**10. LOSS OR DAMAGE:** YOU are responsible for the risk of loss or destruction of, or damage to the Equipment. No such loss or damage relieves YOU from any obligation under this Rental Agreement. YOU agree to promptly notify US in writing of any loss or destruction or damage to the Equipment and YOU will, at OUR option, a) repair the Equipment to good condition and working order, b) replace the Equipment with like Equipment in good repair, condition and working order, acceptable to US and transfer clear title to such replacement Equipment to US, such Equipment shall be subject to this Rental Agreement and be deemed the Equipment, or c) pay to US the present value of the total of all unpaid Rental Payments for the full Rental Agreement term plus the estimated fair market value of the Equipment at the end of the originally scheduled Rental Agreement term with the accelerated Rental Payments and the Residual discounted at the lesser of (a) a per annum interest rate equivalent to that of a U.S. Treasury constant maturity obligation (as reported by the U.S. Treasury Department) that would have a repayment term equal to the remaining Rental Agreement term, all as reasonably determined by US, or (b) 3% per annum (the "Present Value Rate"), whereupon this Rental Agreement shall terminate. All proceeds of insurance received by US as a result of such loss or damage will be applied, where applicable, toward the replacement or repair of the Equipment or the payment of YOUR obligations.

**11. INDEMNITY:** WE are not responsible for any losses or injuries caused by the installation or use of the Equipment. YOU agree to reimburse US for and to defend US against any claim for losses or injuries caused by the Equipment. This indemnity will continue even after the termination of this Rental Agreement.

**12. TAXES:** YOU agree to pay all license and registration fees, sale and use taxes, personal property taxes and all other taxes and charges, relating to the ownership, rental, sale, purchase, possession or use of the Equipment, unless a valid tax exempt certificate can be provided and is in full force and effect, as part of the Rental Payment or as billed by US. If we are required to file and pay personal property tax, you agree to either (a) reimburse us for all personal property and other similar taxes and governmental charges associated with the ownership, possessing, or use of the Equipment when billed by jurisdictions; or (b) remit to us each billing period a pro-rated equivalent of such taxes and governmental charges not to exceed 0.363% of the cost of Equipment per month as part of the Rental Payment. YOU agree that if WE pay any taxes or charges on YOUR behalf, YOU will reimburse US for all such payments and will pay US interest and a late charge (as calculated in Section 3) on such payments with the next Rental Payment, plus a fee for OUR collecting and administering any taxes, assessments or fees and remitting them to the appropriate authorities.

**13. RENTAL PROVISIONS:** Cancellable Rentals shall not exceed a termination charge of three (3) months of Total Monthly Payments.

**14. DEFAULT:** YOU are in default of this Rental Agreement if any of the following occurs: a) YOU fail to pay any Rental Payment or other sum within forty-five (45) days of when due; b) YOU breach any representation, warranty or other obligation under this Rental Agreement with US and this failure continues for forty-five (45) days after we notify you of default; c) YOU merge, consolidate, transfer all or substantially all of YOUR assets; d) YOU make an assignment for the benefit of creditors; or (e) YOU voluntarily file or have filed against YOU involuntarily, a petition for liquidation, reorganization, adjustment of debt or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator will be appointed for it or a substantial part of its assets.

**15. REMEDIES:** WE have the following remedies if a default should occur: a) Charge you overdue account charges up to a maximum rate of one percent (1%) per month from the date of default until paid, but in no event more than the maximum permitted by law; b) Charge YOU a return-check or non-sufficient funds charge ("NSF Charge") to reimburse US for the time and expense incurred with respect to a check that is returned for any reason including

non-sufficient or uncollected funds, such NSF Charge is stipulated and liquidated at \$25.00; and c) Reposes the Equipment or Require that YOU return the Equipment to US and in the event YOU fail to return the Equipment, enter upon the premises peaceably with or without legal process where the Equipment is located and repossess the Equipment. Such return or repossession of the Equipment will constitute a termination of this Rental Agreement. YOU are also required to pay (i) all expenses incurred by US in connection with the enforcement of any remedies, including all expenses of repossessing, storing, repairing and selling the Equipment, and (ii) reasonable attorneys' fees. YOU agree that any delay or failure to enforce OUR rights under this Rental Agreement does not prevent US from enforcing any rights at a later time.

**16. RESERVED.**

**17. RESERVED.**

**18. WARRANTIES:** YOU warrant and represent that the Equipment will be used for business purposes, and not for personal, family or household purposes.

**19. UCC FILINGS AND FINANCIAL STATEMENTS:** YOU authorize US to file a Uniform Commercial Code ("UCC") financing statement with respect to the Equipment signed by US where permitted by the UCC and grant US the right to sign such financing statement on YOUR behalf. The filing of a financing statement is not to be construed as evidence that any security interest was intended to be created, but only to give public notice of OUR ownership of the Equipment. If WE feel it is necessary, YOU agree to submit financial statements (audited if available) on a quarterly basis.

**20. NOTICE:** Written notices will be deemed to have been given when delivered personally or deposited in the United States mail, postage prepaid, addressed to the recipient at its address above or at any other address subsequently provided in writing.

**21 RESERVED.**

**22. CHOICE OF LAW:** This Rental Agreement was made in the Commonwealth of Pennsylvania (by US having countersigned it in Wayne, Pennsylvania); and it is to be performed in the Commonwealth of Pennsylvania by reason of the Rental Payments YOU are required to pay US in Pennsylvania. This Rental Agreement shall in all respects be interpreted and all transactions subject to this Rental Agreement and all rights and liabilities of the parties under the Rental Agreement shall be determined and governed as to their validity, interpretation, enforcement and effect by the laws of the state of the Customer except for local filing requirements. YOU consent to and agree that non-exclusive jurisdiction, personal or otherwise, over YOU and the Equipment shall by with the State of Federal Courts in such state solely at OUR option with respect to any provision of this Rental Agreement. YOU ALSO IRREVOCABLY WAIVE YOU RIGHT TO TRIAL BY JURY.

**23. SEVERABILITY; WAIVERS:** No agreements or understandings are binding on the parties unless set forth in writing and signed by the parties. Any provision of this Rental Agreement which for any reason may be held unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective without invalidating the remaining provisions of this Rental Agreement.

## ATTACHMENT F, KYOCERA COTERMINOUS ADDENDUM

WHEREAS, Lessor, Creditor, or Lender as applicable ("Creditor") and the above described Lessee, Debtor, or Borrower as applicable ("Debtor") have determined that it is to their mutual benefit to make certain additions to the above described Lease or Contract ("Contract").

NOW, THEREFORE, for good and valuable consideration, intending to be legally bound and pursuant to the Terms and Conditions of the Contract, it is hereby agreed as follows:

1. The above described items of additional equipment ("Additional Equipment") are added to the Equipment in the Contract.
2. Creditor hereby leases, rents, or finances (as applicable) the Additional Equipment to the Debtor (jointly and severally, if more than one) pursuant to the above described additional monthly payment ("Additional Monthly Payment") and for the above described number of monthly payments.
3. Creditor shall invoice Debtor for the Additional Monthly Payment and sales tax (if applicable) for the Additional Equipment. The first Additional Monthly Payment is due on the date the Additional Equipment is delivered to Debtor and subsequent payments are due on the same day of each month thereafter which will continue for the above described term.
4. The amount of each Additional Monthly Payment is based on the supplier's best estimate of the cost of the Additional Equipment including (if applicable) installation and other related costs and the estimated sales or use tax.
5. If Debtor has not accepted the Additional Equipment in all respects for the purpose of this Addendum within 30 days from the date Debtor's credit was approved by Creditor, Debtor authorizes Creditor to reduce the number and increase the amount of Additional Monthly Payments to be made by Debtor to maintain the rate of return reflected by the above described payment schedule and to reflect that the termination date of the Addendum coincides with the termination date of the Contract.
6. Debtor agrees to pay all adjusted Additional Monthly Payments as and when due under this Addendum.
7. Debtor will be charged a returned-check or non-sufficient funds charge ("NSF Charge") to reimburse Creditor for the time and expense incurred with respect to a check that is returned for any reason including non-sufficient or uncollected funds, such NSF Charge is stipulated and liquidated at \$25.00.
8. Debtor agrees to pay Creditor a fee of \$\_\_\_\_\_ to reimburse Creditor's documentation cost.
9. Debtor agrees that Creditor may combine the Additional Monthly Payment and sales tax with the current Contract payment and invoice Debtor for the combined payment.
10. It is expressly agreed by the parties that this Addendum is supplemental to the Contract which is by reference made a part hereof, and all the Terms and Conditions and provisions thereof, unless specifically modified herein, are to apply to this Addendum and are made a part of this Addendum as though they were expressly rewritten, incorporated and included herein.
11. In the event of any conflict, inconsistency or incongruity between the provisions of this Addendum and any of the provisions of the Lease or Schedule, the provisions of this Addendum shall in all respects govern and control.

YOU AGREE THAT THIS CONTRACT MAY BE EXECUTED IN COUNTERPARTS AND ANY FACSIMILE, PHOTOGRAPHIC OR OTHER ELECTRONIC TRANSMISSION AND/OR ELECTRONIC SIGNING OF THIS CONTRACT BY YOU WHEN MANUALLY COUNTERSIGNED BY US OR ATTACHED TO OUR ORIGINAL SIGNATURE COUNTERPART AND/OR IN OUR POSSESSION SHALL CONSTITUTE THE SOLE ORIGINAL CHATTEL PAPER AS DEFINED IN THE UCC FOR ALL PURPOSES AND WILL BE ADMISSIBLE AS LEGAL EVIDENCE THEREOF. AT OUR OPTION, WE MAY REQUIRE A MANUAL SIGNATURE.



# ATTACHMENT G, KYOCERA SERVICE MAINTENANCE AGREEMENT



**National/Government Account Program**  
 225 Sand Road  
 Fairfield, NJ 07004-0008  
 Phone: (973) 461-4297  
 Fax: (973) 882-4411

## SERVICE MAINTENANCE AGREEMENT

<b>BILL TO LOCATION:</b>	<b>SERVICE LOCATION:</b>
Customer's Name:	Customer's Name:
Address:	Address:
City, State, Zip:	City, State, Zip:
E-mail:	Phone:
<input type="checkbox"/> <b>MFP/PRINTERS ALL INCLUSIVE MAINTENANCE: (INCLUDES SUPPLIES)</b> Color and Black & White Devices. Includes Labor, Parts, Drums Toner. ( Does not include Paper or Staples)	Fax:
<input type="checkbox"/> <b>MFP/PRINTER ALL INCLUSIVE MAINTENANCE: (NO SUPPLIES INCLUDED)</b> Color and Black & White Devices. Includes Labor, Parts & Drums only.	Key Operator:
<input type="checkbox"/> <b>PRINTER MAINTENANCE PLAN:</b> Includes all Parts & Labor. Maintenance Kits & Paper are not included.	E-mail:
<input type="checkbox"/> <b>OTHER PLAN (w/ explanation):</b>	Servicing Dealer/KDA Branch:
	<b>Billing Type:</b>
	<input type="checkbox"/> Quarterly Billing/Overage Plan <input type="checkbox"/> Monthly Billing/Overage Plan
	Install Date: ____/____/____
	Contract Start Date: ____/____/____
	Contract End Date: ____/____/____ (After the end date, contracts will be renewed on same billing program.)

(For future acquisitions of contracted products under a KDA National Account Pricing Agreement please attached list of models and service rates.)

PRODUCTS (Model Number)	SERIAL NUMBER	MINIMUM CHARGE	YEARLY/MONTHLY COPIES INCLUDED	EXCESS COPY CHARGES	STARTING METER READING

\* PLEASE INCLUDE TAX WHERE APPLICABLE. \* THIS AGREEMENT SHALL BE SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE SIDE.

CUSTOMER'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_ KYOCERA SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

PRINTED NAME & TITLE OF PERSON SIGNING \_\_\_\_\_ PRINTED NAME & TITLE OF PERSON SIGNING \_\_\_\_\_

**NOT VALID UNTIL PAID IN FULL AND SIGNED BY AN AUTHORIZED KYOCERA REPRESENTATIVE**

## Maintenance Agreement Terms and Conditions

1. Kyocera Document Solutions America, Inc. or an Authorized Kyocera Dealer (both referred to herein as "KDA") will provide full maintenance service for the copiers, printers, multi-functional machines and related accessories (referred to as "Products") described on the front of this Agreement. KDA will provide preventative maintenance calls in conjunction with regular or emergency service calls for the Products.
2. On a monthly Billing Plan the Customer is billed each month with a Minimum Charge and an Excess Copy Charge based upon the number of copies made on the Products. Unless specifically stated on the front of this Agreement, paper, and staples, are excluded.
3. Some Products may be connected to an automatic meter reading device which will report the number of copies made each year on an Annual Billing Plan or each month on a Monthly Billing Plan and upon which invoices will be based. If an automatic meter reading device is not installed or fails to report properly, Customer shall provide KDA by telephone with the actual meter reading on the last business day of each one-year period on an Annual Billing Plan or each calendar month on a Monthly Billing Plan. KDA may estimate the number of copies used if such reading is not received by KDA. The estimated Copy Charge shall be adjusted upon receipt of actual meter reading.
4. If toner and toner disposal tanks are elected to be included in the service provided under the Agreement, KDA will provide KDA brand toner and toner disposal tanks to the customer, based upon normal yield. If Customer's usage of supplies exceeds the normal yields for the copier being serviced by more than 15%, KDA will invoice and Customer agree to pay, for the excess supplies at KDA's Master Agreement pricing. Any toner in storage at the Customer location is the property of KDA and KDA's representative may take an inventory periodically during normal business hours, at KDA's discretion.
5. Service calls under this Agreement will be made by KDA during KDA's normal business hours. Customer must provide adequate space for operation and maintenance of the Products and reasonable storage space for supplies to be used with the Products. Customer agrees to provide for the Products adequate electricity (including if necessary a dedicated 220v/20 amp wall outlet of 110v/15 amp or 20 amp wall outlet based on electrical wiring specification of Products), non-dedicated analog telephone line for an automatic meter reading device (with proper connection such as RJ-11 telephone connector) within seven feet of copier. The telephone line must not have any special features, such as "call waiting" and must be capable of making an outside long distance call.
6. During the term of this Agreement, KDA will provide without charge, replacement parts for parts which have been worn or broken through normal use. All other parts furnished will be billed to Customer at KDA's published parts prices in effect at the time such parts are sold.
7. If any Product is moved to a location which is significantly further from KDA servicing location than the original location, KDA may elect to discontinue the service and refund the Maintenance Agreement price, or service the Equipment based on the Service Zone requirements, as outlined in the Master Agreement.
8. This Agreement will not apply to service made necessary by accident, misuse, abuse, neglect, theft, riot, vandalism, electrical power failure, power surges, low or high voltage in the electrical line, fire, water or other casualty, or to repair made necessary as a result of either service by personnel other than KDA personnel or the used of supplies or parts not meeting KDA's published specifications. KDA will charge customer for repairs and parts, due to the foregoing, at the prices per the Master Agreement, when such service work is performed.
9. When service work beyond the scope of this Agreement is required, KDA will submit a cost estimate for such service work. If such service work is authorized by the Customer, a separate invoice will be rendered.
10. This Agreement covers only the Products listed on the front of this Agreement and does not include any Products, equipment or accessories not listed.
11. This Agreement may not be assigned by the Customer.
12. This Agreement does not include applicable taxes. All taxes levied or imposed, now or hereafter, by any government authority shall be timely paid by the Customer.
13. If Customer defaults in any payments under this Agreement, then KDA shall be entitled to all expenses of collection, including reasonable attorney's fees, whether or not suit is brought, plus an interest and finance charge of 1% per month or the maximum allowed by law, whichever is less, on the unpaid balance.
14. This Agreement shall be deemed to accurately represent the intent of the parties, notwithstanding any variance with the terms and conditions of any order submitted by the Customer in respect to KDA's service, or any oral representative made by any KDA representative.
15. This Agreement shall remain in full force and effect for successive Coverage Periods, but may be terminated at any time after the initial Coverage Period by either party on thirty (30) days prior written notice to the other party. The Maintenance Agreement price for the new period may be increased to reflect the age of the equipment or increased costs to KDA, but at no time shall exceed Master Agreement pricing. Customer's obligation to pay all charges which have accrued shall survive any termination of this Agreement. KDA reserves the right not to renew this Agreement for specific Products if in KDA's sole discretion it believes a Product service overhaul is required.

## ATTACHMENT H, KYOCERA MPS STATEMENT OF WORK



Kyocera MPS  
Statement of Work.do

## ATTACHMENT I, KYOCERA SOFTWARE FINANCE AGREEMENT

- 1. Agreement:** You ("Obligor") agree to pay us ("Payee"), pursuant to this Agreement, the installment payments identified above for the System (defined as the equipment ("Equipment"), software ("Software") and the right to receive consulting, maintenance and other related services (collectively, "Support") listed above). Obligor is deemed to have unconditionally and irrevocably accepted the System on the date Obligor signs the delivery and acceptance certificate (the "Commencement Date"). The Agreement starts on the Commencement Date and the installment payments ("Payments") shall be payable in arrears beginning on the Commencement Date or any later date designated by Payee and thereafter until all amounts are fully paid. OBLIGOR'S OBLIGATION TO PAY ALL PAYMENTS AND ANY OTHER SUMS DUE HEREUNDER SHALL BE ABSOLUTE, UNCONDITIONAL AND NONREFUNDABLE, AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, SETOFF, DEFENSE, CLAIM, COUNTERCLAIM, INTERRUPTION, DEFERMENT OR RECOUPMENT, FOR ANY REASON WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY CLAIM THAT ANY SUPPLIER OR LICENSOR FAILED TO PERFORM, OR HAS BREACHED ANY OF ITS REPRESENTATIONS OR WARRANTIES OR COVENANTS, UNDER ANY SOFTWARE AGREEMENT OR THE EXPIRATION, REVOCATION OR TERMINATION IN WHOLE OR IN PART OF ANY SOFTWARE AGREEMENT FOR ANY REASON OR ANY LICENSE OR THE LICENSES GRANTED UNDER ANY SOFTWARE AGREEMENT AND/OR ANY RELATED MAINTENANCE, SUPPORT AND/OR OTHER SERVICES AGREEMENT HAVE BEEN REVOKED OR OTHERWISE TERMINATED FOR ANY REASON. Accordingly, in the event of any breach or default under any Software Agreement, Obligor's sole remedy shall be against the licensor ("Licensor") under the Software Agreement. Obligor acknowledges and agrees that the License fee(s) ("License Fee") specified in Software Agreement was fully earned by Licensor when the Licensed Software was delivered and that the fee for Services ("Service Fee"), if any, specified in any Software Agreement will be fully earned in advance on the applicable payment due date set forth in the Software Agreement; provided, however, that Obligor may still pursue any warranty claims against Licensor (but not against Payee or any Assignee (defined below)) in accordance with the terms and conditions of the Software Agreement. Obligor will pay Payee a late charge of 1% of the payment, on any payment not made within 45 days of the due date, but only to the extent permitted by law.
- 2. Ownership:** Obligor owns the System and grants Payee a security interest in the System and all proceeds thereof.
- 3. Warranty Disclaimer; Use and Maintenance:** PAYEE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OF THE DESIGN OR CONDITION OF THE LICENSED SOFTWARE, ITS DURABILITY, OR NONINFRINGEMENT, THE QUALITY OF THE SERVICES OR THE MATERIAL OR WORKMANSHIP OF THE LICENSED SOFTWARE, OR THE CONFORMITY OF THE LICENSED SOFTWARE OR SERVICES TO THE PROVISIONS OR SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO, AND PAYEE HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES. To the extent made to Payee, we transfer to Obligor any manufacturer or provider warranties for the System. Obligor is required at Obligor's cost to keep the System in good working condition and to pay for all supplies and repairs. If the System includes the cost of Support provided by a third party, Obligor agrees that Payee is not responsible to provide the Support and Obligor will make all Support claims against the third party.
- 4. Assignment:** Obligor may not transfer, sell, sublease, sublicense, assign, pledge hypothecate or otherwise transfer, dispose of or relinquish possession or control of or encumber either the System or any rights herein without our prior written consent (which consent shall not be unreasonably withheld). Obligor acknowledges and agrees that Payee and any Assignee may not sell, grant a security interest in, assign or otherwise transfer (collectively "Transfer"), in whole or in part, this Agreement or any of its interests, rights or obligations with respect thereto, including without limitation any or all Payments and other sums due or to become due hereunder, to such third party as Payee or such Assignee, as applicable, in its discretion may select (each Payee transferee or assignee, together with any subsequent transferees or assignees, herein referred to as "Assignee") without notice to Obligor. Each Assignee shall have, to the extent provided in any Transfer document, Payee's rights, powers, privileges and remedies with respect thereto, but shall not be obligated to Obligor to observe or perform any duty, covenant or condition required to be observed or performed by Payee or any Licensor or Supplier. No Transfer shall relieve Payee from any of its obligations to Obligor. OBLIGOR SHALL NOT ASSERT AGAINST ASSIGNEE ANY CLAIMS, DEFENSE, COUNTERCLAIM OR SETOFF THAT

OBLIGOR MAY AT ANY TIME HAVE AGAINST PAYEE OR ANY SUPPLIER OR LICENSOR. Obligor shall pay Payee, or Assignee, as applicable, all amounts due and payable under this Agreement, but shall pursue any claims under any Software Agreement against only Licensor. Obligor agrees that, upon receipt of notice from Payee, or Assignee, as applicable, (i) it shall be bound by such Transfer, (ii) Payments shall be made to Assignee, (iii) Obligor shall promptly comply with, and (if requested) acknowledge in writing, such instructions, (iv) Assignee shall have and be entitled to exercise any and all rights and remedies of Payee hereunder, and (v) all references herein to Payee shall include Assignee. Unless a default has occurred and is continuing, neither Payee nor its Assignees will interfere with Obligor's quiet enjoyment or use of the Licensed Software in accordance with the Software Agreement's terms and conditions.

5. **Risk of Loss:** Obligor is responsible for all System risk of loss and damage and if any loss or damage occurs Obligor is nonetheless required to satisfy all of Obligor's obligations hereunder. Payee is not responsible for any losses or injuries caused by the System and Obligor will reimburse Payee and defend Payee against any such claims. This indemnity will survive termination hereof.
6. **Taxes:** Obligor is responsible for and agrees to pay when due, either directly or as reimbursement to Payee, and indemnify Payee against, all taxes (i.e., sales, use and personal property taxes) and charges in connection with the purchase, ownership and use of the System except for taxes or charges included in the Total Financed Amount unless a valid tax exempt certificate can be provided and is in full force and effect.
7. **Default and Remedies:** Obligor is in default under this Agreement if: (i) Obligor fails to pay any amount within forty-five (45) days of when due; (ii) any representation or warranty made by Obligor proves to be false in any material respect when made; (iii) a material breach by Obligor of any provision of this Agreement (other than a breach covered by (i) above) where Obligor fails to correct such breach within forty-five (45) days of its receipt of written notice thereof; (iv) an event of default occurs and is continuing under any other related agreement, including, without limitation, the Software Agreement, after the giving of any required notice and the expiration of any applicable cure period; or (v) Obligor shall commit an act of bankruptcy or become or be adjudicated insolvent or bankrupt or make an assignment for the benefit of creditors or become unable or admit in writing its inability to pay its debts as they become due, or a trustee receiver or liquidator shall be appointed for Obligor, or for a substantial part of its property, with or without its consent, or bankruptcy, arrangement, reorganization, composition, readjustment, liquidation, insolvency, dissolution or similar proceedings under any present or future statute, law or regulation shall be instituted by or against Obligor, Obligor shall file an answer admitting the material allegations of a petition filed against it in any such proceeding, or Obligor shall cease doing business as a going concern, or Obligor shall, without Payee's prior consent, sell, transfer, pledge or otherwise dispose of all or any substantial part of its assets, or consolidate or merge with any other entity. If Obligor is in default Payee may: (i) declare the entire balance of unpaid payments for the full term immediately due and payable to Payee and you agree to compensate us, not as a penalty, by paying, the sum of: (a) all past due and current amounts due (or other periodic payments) and charges due under this Agreement; (b) the present value of all remaining amounts due (or other periodic payments) and charges for the remainder of the term of this Agreement, discounted at the rate of four percent (4%) per annum (or the lowest rate permitted by law, whichever is higher); and (c) the present value (at the same discount rate as specified in clause, and with respect to any Software) immediately terminate your right to use the Software including the disabling (on-site or by remote communication) of any Software; (d) demand the immediate return and obtain possession of the Software and re-license the Software at a public or private sale; and/or (e) cause the Software supplier to terminate the Software license, support and other services under the Software license); (ii) charge you overdue account charges up to a maximum rate of one percent (1%) per month from the date of default until paid, but in no event more than the maximum rate permitted by law; (iii) require that Obligor immediately return the System to Payee or Payee may peaceably repossess it if Obligor fails to return it to Payee, (iv) cause any Software or Support provider to terminate, as applicable, all of Obligor's rights to use or have available, as applicable, any or all of any or all Software and/or Support and/or (v) pursue any rights or remedies available at law or in equity. Any return or repossession will not be considered a termination or cancellation of this Agreement. If the System is returned or repossessed Payee will sell, rent or otherwise dispose of the System at terms Payee determines, at one or more public or private sales, with or without notice to Obligor, and apply the net proceeds (after deducting any related expenses) to Obligor's obligations. Obligor remains liable for any deficiency with any excess being retained by Payee. All remedies are cumulative and not exclusive. Except as expressly provided herein, Obligor hereby waives grace, demand, presentment for payment, notice of non-payment, protest and notice of protest, notice of dishonor or default, notice of intent to accelerate, notice of acceleration and diligence in collecting and bringing of lawsuit and/or other enforcement action. To the extent permitted by law, Obligor agrees that neither Payee nor any Assignee nor Licensor shall be required to license, lease, transfer or use any Licensed Software in mitigation of any damages resulting from Obligor's default.

8. **Representations, Warranties and Covenants:** Obligor represents and warrants to Payee, and any Assignee, as applicable, that (a) the Obligor is duly organized, validly existing and in good standing under the applicable laws of its jurisdiction of organization; (b) this Agreement is a genuine, legal, valid and binding obligation of Obligor, enforceable against Obligor in accordance with its terms, subject to applicable bankruptcy and other similar laws affecting creditor's rights generally, and the execution, delivery and performance of this Agreement will not violate or create a default under any law (including any applicable usury law, regulation, judgment, order, instrument, agreement or charter document binding on Obligor or its property; (c) this Agreement has been duly authorized, executed by Obligor's duly authorized representative(s), and delivered and (e) any and all financial information furnished to Payee, and any Assignee, as applicable, by Obligor is and will be true and correct in all material respects and prepared in accordance with generally accepted accounting principles. Obligor acknowledges that (a) it has independently ordered the Licensed Software and Services, if any, from Licensor based on its own judgment, and expressly disclaims any reliance upon statements made to Obligor by Payee or any Assignee, if any, with respect to such Licensed Software and, if any, Services; and (b) this Agreement is separate and distinct from the Software Agreement with Licensor, and the terms and conditions of such Software Agreement are not incorporated into nor made a part hereof.
9. **Miscellaneous:** This Agreement shall be governed and construed in accordance with the laws of state of Lessee. **OBLIGOR CONSENTS TO JURISDICTION, PERSONAL OR OTHERWISE, IN ANY STATE OR FEDERAL COURT IN SUCH STATE. OBLIGOR AND PAYEE HEREBY WAIVE A TRIAL BY JURY IN ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT.** Obligor agrees that the System will only be used for business purposes and not for personal, family or household use. Obligor agrees that this Agreement may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of this Agreement by Obligor when manually countersigned by Payee or attached to Payee's original signature counterpart and/or in Payee's possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. At Payee's option, Payee may require a manual signature. Payee may inspect the System during the Agreement term. This Agreement constitutes the complete and exclusive agreement of Obligor and Payee with respect to the subject matter hereof and supersedes all prior oral or written understandings, including, without limitation any inconsistent terms set forth in the Software Agreement. No term or provision of this Agreement may be amended, waived, discharged, or terminated except by a written instrument signed by Obligor and Payee, or, as applicable, Assignee thereof. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect and in no way will be affected, impaired or invalidated. This Agreement has been entered into in connection with a Software License, Services and Maintenance Agreement (as amended, extended or replaced from time to time, each a "Software Agreement") between Obligor and Licensor. The terms of the Software Agreement remain unchanged and in full force and effect, except as otherwise provided for herein. In the event that Licensed Software from Licensor does not perform as warranted or in the event of any other dispute or default under the Software Agreement, Obligor shall be entitled to pursue against the Licensor all of Obligor's rights and remedies arising under the Software Agreement, and nothing in this Agreement shall diminish or waive any rights and remedies which Obligor may have against Licensor under the Software Agreement. All obligations under this Agreement shall survive any termination of the licenses and Services relating to the Licensed Software. **IN NO EVENT SHALL PAYEE OR ASSIGNEE HAVE ANY LIABILITY, NOR SHALL OBLIGOR HAVE ANY REMEDY AGAINST PAYEE OR OBLIGOR, FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER FORESEEABLE OR NOT, FOR ANY LOSS OF PROFITS OR SAVINGS, LOSS OF USE OR ANY OTHER COMMERCIAL LOSS. OBLIGOR ACKNOWLEDGES THAT PAYEE AND/OR ASSIGNEE DID NOT (i) SELECT, MANUFACTURE, DISTRIBUTE OR LICENSE THE LICENSED SOFTWARE COVERED BY THE SOFTWARE AGREEMENT, NOR (ii) SELECT NOR PROVIDE OR AGREE TO PROVIDE THE SERVICES THEREUNDER AND THE OBLIGOR HAS MADE THE SELECTION OF SUCH SOFTWARE AND SERVICES BASED UPON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE ON STATEMENTS MADE BY ASSIGNEE OR ITS AGENTS.** Obligor agrees to execute and deliver any instrument, furnish any information or perform any other act reasonably necessary or convenient to carry out the provisions of this Agreement.

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