

NASPO ValuePoint
PARTICIPATING ADDENDUM



COPIERS & MANAGED PRINT SERVICES
Led by the State of Colorado

Master Agreement #: **140595**

Contractor: **CANON U.S.A., INC.**

Participating State: **STATE OF WISCONSIN**

The following products and services are included in this contract portfolio:

- Group A – MFD, A3
- Group B – MFD, A4
- Group C – Production Equipment
- Group E – Large/Wide Format Equipment
- Group F – Scanners
- Supplies
- Software
- Accessories for Discontinued Base Units

Master Agreement Terms and Conditions:

Scope: This addendum covers the *NASPO ValuePoint Master Agreement for Copiers and Managed Print Services* led by the State of Colorado for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

1. Scope: This addendum covers the *NASPO ValuePoint Master Agreement for Copiers and Managed Print Services* led by the State of Colorado for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

Purchases under Group D (Printers), Managed Print Services, stand-alone software are NOT authorized under this Participating Addendum. Software installation Services shall be restricted to the installation and support of the approved Software list and the Equipment on the contract. Any Software installation Services in excess of \$50,000 must be approved in writing by the State of Wisconsin Department of Administration. The following items were excluded from the original solicitation: cameras, interactive white boards, micrographic equipment and overhead projectors.

2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of *Wisconsin*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

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3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Dave Rothouser
Address:	One Canon Park, Melville, NY, 11747
Telephone:	631-330-5443
Email:	ISGBIDADMIN@CUSA.CANON.COM

Participating Entity

Name:	Susanne Matschull
Address:	101 E. Wilson Street, 6 th Floor
Telephone:	608-266-9796
Fax:	
Email:	Susanne.matschull@wisconsin.gov

4. Participating State Modifications or Additions to The Master Agreement: Modifications or additions apply only to actions and relationships within the Participating State.

Participating State must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

- 4.1 Definitions:** For purposes of this Agreement, the following terms shall have the meanings defined below. Any other capitalized terms in this Participating Addendum not otherwise defined in this Participating Addendum shall have the meanings as the defined terms provided in the Master Agreement.

“Authorized Dealer” means dealers authorized by Canon to sell Canon products as shown on the dedicated website. Authorized Dealers are approved to provide sales and service support under this Agreement. The Authorized Dealer’s participation will be in accordance with the terms and conditions set forth in this Participating Addendum and the aforementioned Master Agreement.

“Business Day” means any day on which the Contracting Agency is open for business.

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“Confidential Information” means all tangible and intangible information and materials being disclosed in connection with this Contract, in any form or medium without regard to whether the information is owned by the State or by a third party, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) Proprietary Information; (iii) non-public information related to the State’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information expressly designated as confidential in writing by the State. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law.

“Contracted Personnel” means a Contractor’s employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor to render Services under this Contract.

“Contracting Agency” means the Agency entering into this Contract on behalf of the State.

“Day” means calendar day unless otherwise specified in this Contract.

“Deliverables” mean the tangible work product originally created in the performance of the Contractor Services and required to be delivered pursuant to mutually agreed Statements of Work.

“Personally Identifiable Information” means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security number; (b) the individual’s driver’s license number or state identification number; (c) the number of the individual’s financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account; (d) the individual’s DNA profile; or (e) the individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

“Proprietary Information” means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

- a. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- b. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

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“Properly-submitted Invoice” is one that is submitted in accordance with instructions contained on the State’s Purchase Order, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.

“Subcontractor(s)” means Contractor’s Authorized Dealers and subcontractors used in the delivery of Contractor Services and excludes Cloud Hosting Providers.

“State Information” means data, technical information, and materials that, originate with the State, or are developed, or prepared, or provided by the State or which Contractor obtains or gathers from the State in the performance of this Agreement, including, but not limited to, reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion or format. State Information also includes those Deliverables owned by the State pursuant to Section 3.6(b) and (c).

4.2 Governing Law; Venue: This Participating Addendum and its amendments and exhibit thereto, shall be governed by Wisconsin Law. Venue for all legal proceedings arising out of the Participating Addendum, or breach thereof, shall be in the State or federal court with competent jurisdiction in Dane County, Wisconsin. In the event that any provision of this Participating Addendum is contrary to Wisconsin law, such provision shall be null and void. The Contractor shall at all times comply with and observe all applicable federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this Participating Addendum and which in any manner affect the work or its conduct.

4.3 Order of Precedence:

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

4.4 Usage Reports: The manufacturer must submit electronic reports on a quarterly basis and one annual summary report on all sales, including service/maintenance, made against this Participating Addendum to the Participating Entity primary contact listed in Section 8 or designee.

- a. Reports must include the reporting listed in Attachment P of the RFP. The column denoting the “Customer Type” shall indicate either “State” or “Municipality.”
- b. The report file format shall be Microsoft Excel compatible format and shall easily be sorted for various data and inclusion into a pivot table.

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- c. The quarterly reports will be filed using the schedule in Section f below. The annual report shall contain all data within the quarterly reports and include an annual sum total with any additional description notes.
- d. Such reports shall retain the same format throughout the life of the contract unless mutually agreed upon.
- e. The Contractor agrees to provide additional reports if requested by the State of Wisconsin in a format and frequency as mutually agreed upon by both parties.
- f.

<u>Period End</u>	<u>Report Received By</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

The annual summary report is provided after four (4) quarters of data is collected from the start of the Participating Addendum.

4.5 Service Level Agreement (SLA) Report:

- a. The Contractor must submit SLA metrics reports on a quarterly basis to the Participating State primary contact or designee.
- b. The Contractor must submit, upon request of the Purchasing Entity, SLA metrics reports on a quarterly basis to the Purchasing Entity.
- c. SLA reports must include reporting on each SLA and credit listed in Exhibit A. If no credit was required, such shall be indicated.
- d. Such reports shall retain the same format throughout the life of the Participating Addendum unless mutually agreed upon.
- e. The report file format shall be Microsoft Excel compatible format and shall easily be sorted for various data and inclusion into a pivot table.
- f. The quarterly reports will be filed using the schedule in Section f below. The annual SLA shall contain all data within the quarterly reports and include an annual sum total with any additional description notes.
- g.

<u>Period End</u>	<u>Report Received By</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

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The annual SLA report is provided after four (4) quarters of data is collected from the start of the Participating Addendum.

4.6 Hard Drive: With respect to any Canon manufactured Products which contain a hard drive, the options for hard drive security are as set forth in Section 4.6.5 of the Master Agreement. If desired, Purchasing Entity may engage Contractor to perform hard drive services, and the PO shall detail the service.

- a. **Hard Drive Replacement Service.** Under this option, a Contractor service technician can remove and replace the hard drive from the applicable Product (set forth on a PO) and provide Purchasing Entity with custody of the old hard drive before the Product is removed from the Purchasing Entity's location, moved to another department or any other disposition of the Product. The cost for the Hard Drive Replacement Service is \$350 per device.

The Purchasing Entity and Contractor shall agree prior to hard drive handling what the Purchasing Entity needs are.

4.7 Trial or Demonstration of Device or Equipment: In addition to Section 4.8 of the solicitation, a written agreement between the Purchasing Entity and the Contractor shall occur prior to any trial or demonstration.

4.8 Contractor's Representation: Contractor warrants that qualified personnel shall provide Contractor Services in a workmanlike manner. Contractor shall not enter any agreement with a third party that it knows might abridge any rights of the State under this Agreement. Contractor shall serve as the prime contractor under this Agreement for the Contractor Services. Should Contractor engage any Subcontractor(s) to deliver Contractor Services pursuant to an SOW under this Agreement, the Contractor shall be legally responsible for the performance and payment of the Subcontractor(s). Subject to any applicable terms of use, trade rules and practices applicable to the Cloud Hosting Services and any software provided under a SOW, the Participating Entity is not agreeing to and is not responsible for any terms and conditions with third parties. Names of any third-party Subcontractors of Contractor may appear for purposes of convenience in this Agreement and shall not limit Contractor's obligations hereunder. Contractor shall retain responsibility for functional and technical expertise as needed in order to incorporate any work by third party Subcontractor(s) in the delivery of Contractor Services.

- a. **Intellectual Property.** Contractor represents to the best of its knowledge that it has the right to provide the Contractor Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party and that Contractor Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b. **Inherent Services.** Unless otherwise expressly provided in this Agreement, Contractor shall furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials

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necessary for the Contractor to provide and deliver the Contractor Services and Deliverables.

- c. Contractor represents, as of the date of this Participating Addendum, that it has the financial capacity to perform and to continue perform its obligations under this Agreement; that Contractor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Contractor that will materially adversely affect performance of this Agreement; and that entering into this Agreement is not prohibited by any contract, or order by any court of competent jurisdiction.

4.9 Rendering of Services: The Contractor shall render services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the requirements set forth in the Participating Addendum and a Purchase Order. The Purchasing Entity and/or Participating State may inspect, observe and examine the performance of the services rendered on the Purchasing Entity's premises at reasonable times, without notice. If the Purchasing Entity notifies the Contractor that any part of the services rendered are inadequate or in any way differ from the Participating Addendum requirements for any reason other than as a result of the Purchasing Entity's default or negligence, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable times as the Purchasing Entity specifies. This remedy shall in be in addition to any other remedies available to the Purchasing Entity and/or Participating State by law or in equity.

4.10 Contractor Personnel:

- a. **Identification:** If requested by the Purchasing Entity, the Contractor shall provide a list of the names and addresses of all Contractor's employees, Contractor personnel, or subcontractor's employees who may at any time require admission to the Purchasing Entity's premises in connection with the rendering of services, specifying each such person's connection to the Contractor, the role the person is to take in the performance of the Participating Addendum, and other particulars as the Purchasing Entity may require. The Purchasing Entity reserves the right to refuse to admit to the Purchasing Entity's premises any person employed or contracted by the Contractor whose admission, in the sole opinion of the Purchasing Entity, would be undesirable.
- b. **Identification of Contracted Personnel:** The Contractor shall furnish each Contractor personnel with a means of identifying themselves as agents, subcontractors, or employees of the Contractor assigned to perform services under the Participating Addendum and furnish the Purchasing Entity with security credentials on these Contractor personnel, if requested.
- c. **Background or Criminal History Investigation:** When the Purchasing Entity business needs require a background or criminal history investigation, and prior to the commencement of any services under this Participating Addendum, the Purchasing Entity may request that Contractor provide a certification that a background or criminal history investigation of Contractor personnel, and subcontractor's employees, who will be providing services to the Purchasing Entity under the Participating Addendum has been performed on such personnel through either (a) Contractor's standard pre-

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employment screening processes or (b) a screening requested by the Purchasing Entity. If any of the stated personnel providing services to the Purchasing Entity under this Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history results, the Purchasing Entity may request immediate replacement of the person. If a replacement is not possible the Participating Entity may terminate any related Purchase Order. Purchasing Entity may not request that Contractor take action because of race, religion, gender, age, disability, or any other legally-prohibited basis under federal, state or local law.

4.11 Repair or Service Refusal; Replacement Parts:

- a. Contractor will repair or replace in accordance with the terms and conditions of the Participating Addendum and the manufacturer's specifications any part of the Products being services under a Purchase Order ("Serviced Products") that becomes unserviceable due to normal usage (other than consumable supplies).
- b. If the Purchasing Entity refuses repair or Serviced Products repair, a statement shall be placed in writing from the Purchasing Entity to Contractor as such. In an event where the Purchasing Entity does not permit Contractor to repair or replace the Serviced Products, such action shall excuse Contractor from any and all future performance hereunder.
- c. Replacement parts on leased or rental machines will be furnished on an exchange basis and will be new, reconditioned or used. Replacement parts for Purchasing Entity-owned equipment will be furnished as new equipment unless the Purchasing Entity accepts in writing replacement parts which are not new in exchange for an additional discount for such reconditioned or used parts, and to the extent such reconditioned or used parts will not adversely impact machine performance as determined by the operation of the machine in accordance with manufacturer's specifications.
- d. Except for hard drives on Purchasing Entity-owned equipment, all parts on leased or rental equipment removed due to replacement will become the property of the Contractor. Except for hard drives on Purchasing Entity-owned equipment, all parts on Purchasing Entity-owned equipment removed due to replacement may become the property of the Contractor if the Purchasing Entity does not want the equipment removed.

4.12 Services not included under the Participating Addendum: The Services provided by Contractor under a Purchase Order will not include the following:

- a. Contractor is responsible for communicating to the Purchasing Entity prior to a transaction any equipment requirements. Repairs resulting from Purchasing Entity misuse (including without limitation intentional improper voltage or the use of supplies

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- that do not conform to the manufacturer's specifications) or the intentional failure to provide, adequate electrical power, air conditioning or humidity control;
- b. Repairs made necessary by service performed by persons other than Contractor representatives;
 - c. Service calls or work which Purchasing Entity requests to be performed outside of Normal Business Hours (unless covered under an extended hour service contract) and service calls or work which Purchasing Entity requests to be performed on State Observed Holidays;
 - d. Removable cassette, copy cabinet, exit trays, or any item not related to the mechanical or electrical operation of the Serviced Products;
 - e. Consumable paper supplies, unless expressly provided for in a Purchase Order;
 - f. Repairs and/or service calls resulting from accessories not purchased from Contractor;
 - g. Any software, system support or related connectivity unless specified in writing by Contractor;
 - h. Parts no longer available from the applicable manufacturer;
 - i. Electrical work external to the Serviced Products, including problems resulting from overloaded or improper circuits;
 - j. Installation or de-installation and/or movement of the Serviced Products from one location to another unless specified in writing by Contractor; and
 - k. Repairs of damage or increase in service time caused by force majeure events. Damage to Serviced Products or parts arising from causes beyond the control of Contractor are not covered by this Participating Addendum.

4.13 Service Termination: Contractor may terminate its Service obligations under any Purchase Order at no additional cost to the Purchasing Entity for Serviced Products that have been modified, damaged, altered or serviced by personnel other than those authorized to perform service under this Participating Addendum.

4.14 Service Calls: Service calls will be made during Normal Business Hours. Purchasing Entity and Contractor can agree upon any exceptions in writing in advance before Contractor

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order acceptance or anytime thereafter. Service does not include coverage on State Observed Holidays. Travel and labor-time for the service calls after Normal Business Hours, on weekends and on State Observed Holidays, if and when available and only in the event and to the extent that Contractor agrees to provide such non-standard coverage, will be charged at overtime rates per the Master Agreement in effect at the time the service call is made. Purchasing Entity is responsible for disconnecting, repairing and re-connecting unauthorized attachments or components.

4.15 Basic Connectivity Services: If any software, system support or related connectivity services are specifically set forth on a Purchase Order and accepted by Contractor, Contractor shall provide any such services at the Purchasing Entity's location set forth in the Purchase Order, as applicable, or on a remote basis. Purchasing Entity shall provide Contractor with such access to its facilities, networks and systems as may be reasonably necessary for Contractor to perform such Services. Purchasing Entity shall provide any special security requirements for the location prior to service. Purchasing Entity acknowledges that Contractor's performance of any such services is dependent upon Purchasing Entity's timely and effective performance of its responsibilities as set forth in the Purchase Order, as applicable. Unless connectivity services are specifically identified in the Purchase Order as part of the services to be performed by Contractor, Contractor shall have no obligation to perform and no responsibility for the connection of any hardware or software to any Purchasing Entity network or system.

4.16 Purchasing Entity Obligations: Purchasing Entity agrees to provide a proper place for the use of the Serviced Products, including but not limited to, electric service, as specified by the manufacturer. Purchasing Entity will provide adequate facilities (at no charge) for use by Contractor representatives in connection with the service of the Serviced Products under a Purchase Order within a reasonable distance of the Serviced Products. Purchasing Entity agrees to provide appropriate access to its facilities, networks and systems as may be reasonably necessary for Contractor to perform its services. Prior to service, Contractor may request the Purchasing Entity to allow the Contractor access to the Serviced Products. Purchasing Entity will provide a key operator for the Serviced Products and will make identified key operators or their designees available for instruction in use and care of the Serviced Products. Unless otherwise agreed upon by Contractor in writing or designated in the applicable Purchase Order, all supplies for use with the Serviced Products will be provided by Purchasing Entity and will be available "on site" for servicing.

4.17 Delivery; Acceptance: Purchasing Entity agrees to confirm delivery of all Products covered by each Purchase Order when the same is delivered by signing a delivery acknowledgement. By signing a delivery acknowledgement, it is not certifying acceptance of the equipment. Unless otherwise agreed upon by both parties in writing, signing the delivery acknowledgement only certifies equipment has arrived to the location delivered.

A good or service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the goods or services do not

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conform with the specifications identified in this Contract and Solicitation (“Defects”), the Purchasing Entity shall within thirty(30) calendar days of the delivery date (“Acceptance Period”) to notify Contractor in writing of the Defect. Contractor agrees that upon receiving such notice, it shall use reasonable efforts to correct the Defects within fifteen (15) calendar days (“Cure Period”).

Once equipment is installed and successfully operational, the Purchasing Entity shall sign an acceptance certificate which shows acceptance of the Product(s) and allows Contractor to invoice for the Product(s). Purchasing Entity agrees to sign and return to Contractor the acceptance certificate (which, at mutual agreement, may be done electronically) within five (5) business days after any Product is installed.

Purchase Orders may be cancelable by Purchasing Entity following acceptance by Contractor per the terms of the Participating Addendum. Contractor reserves the right to make Product deliveries in installments. All such installments shall be invoiced and paid for when all delivery and installation are completed so that Purchasing Entity can accept equipment. Delay in delivery of any installment may relieve Purchasing Entity of its obligation to accept remaining installments and may temporarily relieve the obligation to remit payments as invoiced by Contractor for any equipment that has yet to be delivered and shall be reviewed on a case-by-case basis. Contractor reserves the right at any time to revoke any credit extended to Purchasing Entity because of Purchasing Entity’s failure to pay for any Products when due per the terms of this Participating Addendum.

4.18 Returns; Damaged Products: No Products may be returned without Contractor’s prior written consent. Only consumable goods invoiced within sixty (60) days will be considered for return. Products returned without written authorization from Contractor may not be accepted by Contractor and is the sole responsibility of Purchasing Entity. All nonsaleable merchandise (that has been opened or partially used) will be deducted from any credit due to Purchasing Entity. All claims for damaged Products or delay in delivery shall be deemed waived unless made in writing and delivered to Contractor within ten (10) business days after receipt of Products.

4.19 Patent, Copyright, And Trade Secret Protection:

a. Contractor and/or its third-party Subcontractors has or have created, acquired or otherwise has or have rights in, and may, in connection with the performance of Contractor Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the “Contractor Technology”). Contractor Technology is and remains the property of Contractor and its licensors. To the extent that any Contractor Technology is contained in any of the Deliverables including any derivative works, and upon payment by the State to Contractor for any such accepted Deliverable, the Contractor hereby grants the State a royalty-free, fully paid, worldwide, perpetual or for a term as specified in the applicable license or contract document, non-exclusive license to use, access and benefit from use of such Contractor Technology

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solely as part of and in connection with the State's use of such accepted Deliverables for the State's use.

- b. Contractor shall not acquire any right, title and interest in or to the copyrights for any goods provided by the State or any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Contractor (the "State's Information"). The State hereby grants Contractor a royalty-free, fully paid, worldwide license to use the State's Information provided to the Contractor for delivery of Services to the State.
- c. The Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a third- party claim that the Contractor Services or Deliverables supplied by the Contractor, or the operation of such Deliverables pursuant to a current version of Contractor-supplied technology or documentation, infringes a patent, or copyright or violates a trade secret in the United States. The Contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following: i) That the Contractor shall be notified within ten (10) business days in writing by the State of any such claim; and, ii) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense. To the extent available from the applicable Cloud Hosting Provider for pass through to the State, Contractor will pass through to the State any infringement indemnities provided by the Cloud Hosting Provider for the Cloud Services.
- d. Should any, Deliverable, Contractor Services or software supplied by Contractor, or the operation thereof become, or in the Contractor's opinion are likely to become, the subject of a third party claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Deliverable or Contractor Services or software, or to replace or modify the same to become non-infringing and continue to meet procurement specifications as stated in this Agreement and in any SOW, in all material respects, provided that if neither of these options can reasonably be taken, or if the use of such Deliverable or Contractor Services by the State shall be prevented by legal action, the Contractor shall take back such Deliverable and/or software and cease performing the infringing Services, and refund any sums the State has pre-paid Contractor therefor, less any reasonable amount for use of or damage to any such returned Deliverables, software or discontinued Contractor Services , and make commercially reasonable efforts to assist the State in procuring substitutes for such Deliverables and Contractor Services or software. Contractor shall not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Contractor Deliverable, Service or software, (ii) results from the State's supplied information or materials or (iii) results from the continued use of the same after receiving notice they infringe a trade secret of a third party.

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4.20 IP Rights: Proprietary materials licensed to the State in the delivery of Contractor Services shall be identified to the State prior to use or provision of Contractor Services hereunder and shall remain the property of the Contractor. Software or firmware embedded in a Deliverable shall not be a severable Deliverable unless specifically indicated in an SOW. All Software source and object code is the property of Contractor or Contractors Subcontractors and/or licensors and is only licensed to the State on a nonexclusive basis as provided in the applicable Statement of Work, in consideration for the license fee paid by the State, pursuant to the terms of the respective governing software license.

4.21 Representations: By submitting a Deliverable, the Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner so that the Deliverables will, as delivered meet the specifications stated or referred to in this Agreement or SOW. The parties acknowledge and agree that the State's Acceptance of a Deliverable indicates only that the State has reviewed the Deliverable and detected no material deviations from the agreed specifications ("Deficiencies") at that time and that the State's Acceptance of a Deliverable does not discharge any of the Contractor's obligations under this Agreement for the provision of Contractor Services and Deliverables per the specifications of a SOW.

4.22 Contractor Personnel Removal: The State may request the Contractor to remove or reassign Contractor personnel assigned to perform Contractor Services ("Contractor Personnel") at the State's discretion for any lawful reason or if the performance or conduct of such personnel is unsatisfactory. The State may request that such Contractor Personnel be replaced within fifteen (15) business days from such removal. The State's contract administrator shall notify the Contractor in writing and the exclusion of a designated individual(s) shall take effect as soon as reasonably practicable provided that the parties shall first discuss alternatives to removal as may be requested by Contractor in writing, however the State reserves the right to deny entry or to request the immediate removal of any Contractor Personnel for any lawful reason from any of its facilities based on security or safety concerns. The decision of the contract administrator following such discussions if any shall be final. This provision shall not infringe upon the right of the Contractor to employ the removed individual, nor shall the State's rights under this provision implicate the State as a party to any of the Contractor's obligations in the Agreement. The State shall have the right, at no charge to the State, to interview, check the references of, and accept or reject any proposed replacements for Contractor Personnel who will be performing Contractor Services on-site at the State's facilities prior to such Contractor Personnel replacements beginning work on the project. To the extent that departing Contractor Personnel provide adequate notice to the Contractor, Contractor shall use commercially reasonable efforts to obtain a smooth transition at no additional charge to the State, including the provision of knowledge transfer documentation and cooperation between the replaced and the newly assigned personnel including an overlap in the assignment of the replaced and newly assigned personnel for a duration of at least ten (10) business days, unless the State's contract administrator agrees to a shorter period in writing.

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4.23 Warranty: Contractor agrees to perform its Services in a professional manner, consistent with applicable industry standards. For any Products manufactured by Contractor (“Contractor Equipment”), Contractor’s warranty is as set forth in Section 4.11 of the Master Agreement, Contractor’s response to the solicitation, and the Participating Addendum. PURCHASING ENTITY ACKNOWLEDGES THAT THE LIMITED WARRANTY CONTAINED HEREIN AND THEREIN DOES NOT ASSURE UNINTERRUPTED OPERATION AND USE OF THE CONTRACTOR EQUIPMENT. In connection with any other Product sale, Contractor shall transfer to Purchasing Entity any Product warranties made by the applicable Product manufacturer, to the extent transferable and without recourse. Physical or electronic copies of any applicable Product warranty will be delivered by Contractor to Purchasing Entity upon Purchasing Entity’s written request. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARTICIPATING ADDENDUM, CONTRACTOR DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE, OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR SHALL NOT BE RESPONSIBLE AND SHALL HAVE NO LIABILITY FOR LOST PROFITS, LOSS OF REVENUE, OR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS PARTICIPATING ADDENDUM OR ANY PO, OR THE SUBJECT MATTER HEREOF, OR THE USE OR PERFORMANCE OF THE CONTRACTOR EQUIPMENT OR THE LOSS OF USE OF THE CONTRACTOR EQUIPMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH PARTY HAS BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR’S TOTAL AGGREGATE LIABILITY TO ANY PURCHASING ENTITY, IF ANY, UNDER ANY PO, SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID TO CONTRACTOR THEREUNDER DURING THE ONE-YEAR PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. IN NO EVENT SHALL CONTRACTOR BE LIABLE TO ANY PURCHASING ENTITY FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF ANY SOFTWARE PROVIDED UNDER AN PO, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, OR DELAY OF DELIVERY OF SERVICES UNDER THE PO. CONTRACTOR ASSUMES NO OBLIGATION TO PROVIDE OR INSTALL ANY ANTI-VIRUS OR SIMILAR SOFTWARE AND THE SCOPE OF SERVICES CONTEMPLATED UNDER A PO DOES NOT INCLUDE ANY SUCH SERVICES. Purchasing Entity must comply with any applicable license agreement or license terms relating to intangible property or associated services included in any Products, such as periodic software licenses and/or prepaid database subscription rights (“Software License”), whether pursuant to written, click-through, shrink-wrap or other agreements for such purpose, with the third party supplier of the software (“Software Supplier”). Contractor has no right, title or interest in any third-party software. Purchasing Entity is solely responsible for negotiating terms and entering into Software Licenses with the applicable Software Supplier. Contractor transfers to Purchasing Entity, for the term of each PO for lease or rental, any written warranties and the benefit of any indemnities made by the manufacturer or Software Supplier with respect to the Product leased or rented pursuant to such PO.

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4.24 Warranty Of Third Party Products: The Parties agree that, because the Contractor is not the manufacturer or developer of third party vendors' products or services, any third-party vendors' products and services provided hereunder are not warranted by Contractor and any warranties shall solely under the terms and conditions of the third-party licenses or other agreements extended directly to the State by the third-party vendor and by which such products are governed. Contractor shall pass through to the State any warranty and indemnification rights available for pass through to the State from the manufacturers or vendors of such products and services comprising the Deliverables. Such third-party warranty coverage shall not relieve the Contractor from Contractor's warranty obligations for Contractor's Services as provided herein.

4.25 Payment Terms And Invoicing: Pricing shall be set forth in the individual Statements of Work. Payments terms are as follows, unless otherwise agreed to a Statement of Work:

- a. All invoices shall include Contractor's or Authorized Dealer's tax identification number and a detailed description of Services rendered. If the State fails to pay a properly submitted invoice within thirty (30) Days of receipt, it shall pay a late payment penalty as provided in s. 16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to s. 16.528 (3)(e), Wis. Stats., it shall pay any undisputed portion of said invoice, and will be excused from the prompt payment requirement for the disputed portion pending resolution of the dispute, provided it gives timely notice of such dispute to Contractor in writing and escalates the matter through the dispute resolution process in section 4.31 of this Agreement.
- b. All purchase orders issued by Participating Entities under this Participating Addendum shall include the Participating State contract number: SPO Price List Contract No. 505ENT-M20-MFDCOPIER-02 and the Lead State, State of Colorado-State Cooperative Contract Number 140595. Participating Entities may use a PCard, subject to its credit limit, or issue a purchase order, provided that any additional or different terms of such PCard or purchase order shall not apply. Purchase orders shall be submitted directly to Authorized Dealers or Contractor's wholly owned financing subsidiary.
- c. Contractor, its wholly owned financing subsidiary, or its Authorized Dealers, shall forward invoice(s), directly to the ordering agency. Purchase Orders and Payments shall be made to Contractor, its wholly owned financing subsidiary, or its Authorized Dealers. The Contractor, or its Authorized Dealers, shall accept credit card purchases with no additional cost for such payment method.

4.26 Taxes: The Participating State and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below. The Participating State, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The Participating State may be subject to other states' taxes on its purchases in that state depending on the laws of that state.

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Contractors performing construction activities are required to pay state use tax on the cost of materials. Purchasing Entities other than State agencies may or may not be subject federal tax and Wisconsin state and local taxes. It is the responsibility of the Purchasing Entity to provide the Contractor with the appropriate tax exemption information.

4.27 Pricing and Discount: Contractor's stated prices approved and agreed to with NASPO under the Master Price Agreement shall apply to this Participating Addendum and its SOWs unless otherwise mutually agreed for a specific SOW. The State of Wisconsin qualifies for governmental discounts, if available; and its educational institutions also qualify for educational discounts, if available. The Contractor may offer, within written quotes, a greater discount than the approved minimum discount for the State of Wisconsin, volume purchases or for competitive reasons.

Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency sixty (60) calendar days before the proposed effective date of the price increase. Prices applicable under a particular SOW shall be subject to any price increase restrictions and notice requirements agreed upon in the SOW.

- a. Purchasing Entities will be allowed to negotiate any of the purchase and lease options available in the Master Agreement for lower pricing.
- b. Monthly lease pricing shall not increase over the lease term unless an accessory is added.
- c. If a Purchasing Entity adds or removes accessories, the Purchasing Entity and Contractor shall agree upon the new monthly lease price prior to the lease rate change to reflect the machine change.
- d. Purchasing Entity may negotiate a lower rate for volume placements.

4.28 Right to Assurance: If the State in good faith has reason to believe that the Contractor does not intend to or is unable to perform or continue performing under this Agreement, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within thirty days, from Contractor's receipt of such notice may, at the State's option, be the basis for terminating the Agreement for the State's convenience per the terms of this Agreement or other rights and remedies available by law.

4.29 Right of Offset: Upon written notice, the State may offset against contractual payments due to the Contractor in an amount necessary to satisfy a certified or verifiable delinquent payment owed by the Contractor to the State of Wisconsin or any local unit of government in Wisconsin that is not under formal written appeal. The State also reserves the right to cancel this Agreement as provided in Section 4.32.2 Termination, if a delinquency is not satisfied by the offset or other means during the Agreement Term.

4.30 Contractor Compliance and Responsibility for Actions: The Contractor shall at all times comply with and observe all Federal, State, and local laws, ordinances, and regulations that are in effect during the term of this Agreement that govern Contractor's business and

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operations. The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors under this Agreement, and neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

4.31 Renegotiation of Agreement: Each party shall have the right to request the other renegotiate the terms and conditions of this Agreement to the extent required to accommodate a change in governing law or policy that, in the sole discretion of the requesting party, either substantially and unreasonably changes the its duties hereunder, or renders performance, enforcement or compliance with the totality of the Agreement impossible, patently unreasonable, or unnecessary.

4.32 Term and Termination:

4.32.1 This Agreement shall end conterminously with the Master Agreement, provided that any Statements of Work or equipment lease agreements entered into prior to expiration or termination of this Agreement shall survive such expiration of the Master Agreement, for the term stated in the Statement of Work, and continue to be subject to its terms.

- a. The Participating State reserves the right to cancel this Participating Addendum if the Contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax and does not cure such failure within thirty (30) days of receipt of notice.
- b. The Participating State also reserves the right to cancel this Participating Addendum with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- c. The Participating Addendum may be canceled by the Participating State at any time, with or without cause, upon 30 days written notice to the Contractor. The Participating Addendum may be cancelled by the Contractor upon 60 days written notice to the Participating State. Cancellation may be in whole or in part.
- d. The Participating State reserves the right to cancel in whole or in part without penalty due to nonappropriation of funds or for failure of the Contractor to comply with terms, conditions, and specifications of this Participating Addendum that remains uncured following thirty (30) days of receipt of notice of such failure.
- e. In the event the Contractor is in default following the expiration of a thirty (30) day cure period, the Participating Addendum is subject to immediate cancellation to the extent allowable by applicable law.
- f. In the event of a cancellation of this Participating Addendum, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.
- g. The Purchasing Entity may terminate a specific Purchase Order issued under this Participating Addendum if the Contractor is unable to render the services or provide the Products required in a timely manner in accordance with the terms of the PO, in order to meet the business needs of the Purchasing Entity, which inability shall remain uncured following thirty (30) days written notice to the non-performing party.

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4.32.2 Termination for Cause:

- a. The State may terminate this Participating Addendum with written notice if, after providing the Contractor with thirty (30) days written notice of the Contractor's right to cure a material failure of the Contractor to perform under the terms of this Agreement, the Contractor fails to cure such material failure within the thirty (30) day cure period.

The Contractor may terminate this Agreement if, after providing the State with thirty (30) days written notice of the State's right to cure a material failure of the State to perform under the terms of this Agreement, the State fails to cure such material failure within the thirty (30) day cure period.

Any termination for cause must be preceded by written notice and an opportunity to cure as provided in this section. Unless otherwise stated in the notice of termination, termination of this Agreement shall not terminate any SOW's in progress or equipment lease agreements. Upon the termination of this Agreement for any reason, or upon Agreement expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration (including any surviving SOWs or equipment lease agreements).

- b. Upon termination under this section, all Deliverables prepared by the Contractor under a Contractor Services and Statement of Work and paid for by the State that are intended to be the property of the State under the terms of this Agreement shall become the property of and be delivered to the State. The time period the State will have from the date of termination of any Cloud Services to remove all its data from the cloud shall be addressed in the applicable SOW based on the Cloud Hosting Provider's trade rules and practices.
- c. The State may, upon termination of this Agreement for cause, procure on terms and in the manner that it deems appropriate, materials or services to replace those terminated for cause under this Agreement.

4.32.3 Termination for Convenience: The State reserves the right to terminate the Agreement without cause in whole or in part upon sixty (60) days advance written notice to Contractor, when in the best interests of the State and without penalty or recourse, provided that the State may only terminate in part if the remaining elements are not dependent upon the terminated elements and provided further that any existing Statements of Work or equipment lease agreement entered into prior to such termination shall not be affected by termination of this Agreement under this section and shall survive for the term of the Statement of Work or equipment lease agreement unless the Statement of Work or equipment lease agreement is separately terminated according to this Agreement and the applicable Statement of Work or equipment lease agreement. For any Statements of Work that are terminated by the State according to this Agreement or the applicable Statement of Work, upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and use commercially reasonable efforts to minimize all further costs

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to the State. The Contractor may terminate this Agreement at any time, without cause, in whole or in part by providing a written notice to the State at least one hundred and eighty (180) days in advance of the intended date of termination provided that the Contractor may only terminate in part if the remaining elements are not dependent upon the terminated elements and provided further that any existing fully executed Statements of Work entered into prior to such termination shall not be affected by termination of this Agreement under this section and shall survive for the term of the Statement of Work unless the Statement of Work is separately terminated according to this Agreement and the applicable Statement of Work. In the event either party exercises its right to terminate this Agreement for Convenience pursuant to this Section of the Agreement, the Contractor shall be entitled to payment for the Services completed as of the date of termination or cancellation, such payment will be due according to the payment terms as set forth in the individual statement of work, or, if silent, the NASPO Master Agreement. The State shall be entitled to receive all Deliverables in progress or completed under the terminated Statements of Work as of the date of termination or cancellation. The State shall have no other liability arising out of termination or cancellation exercised according to this Agreement.

4.33 Contract Dispute Resolution: In the event of any unresolved dispute or disagreement between the parties under this Participating Addendum, whether with respect to the interpretation of any provision of the terms and conditions, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's appropriate executive authority and the equivalent executive authority within the Participating Entity, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.

(a) **No Termination or Suspension of Services:** If any problem or dispute arises between the parties, in no event nor for any reason and unless and until authorized by a court of competent jurisdiction, shall Contractor interrupt the performance of the services or any other obligation hereunder, disable any equipment used in the services, or perform any other action that prevents, slows down, or reduces in any way the performance of the services or the Purchasing Entity's ability to conduct its business; provided that Purchasing Entity is making payment for all Products and services during the period of any such dispute.

4.34 No Quantity Guarantees: This Participating Addendum is non-exclusive. The State of Wisconsin may obtain related goods or services from other sources during the term of this Agreement in its sole discretion and at its sole option. Subject to the foregoing, the State of Wisconsin makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Services shall be procured through this Agreement.

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4.35 Risk of Loss or Damage: The Participating State, except for loss or damage due to fire, theft, or the negligence of the Participating State, shall be relieved of all risks of loss or damage to the Products during periods of transportation and installation (if installation is provided by the Contractor), unless and until such time as unencumbered title is vested in the Participating State, or, with respect to leased Products, during the term of the lease until the leased Products are made available to the Contractor at the end of the lease term. Participating State will maintain All-Risk Property Insurance, whether through self-insurance or otherwise, to insure the installed owned, leased, or rental Products for physical loss or damage at replacement value. Purchasing Entity must notify Contractor in writing immediately of any loss.

4.36 State Payment Offsets for Contractor's Delinquency:

- a. Contractors who have a delinquent Wisconsin tax liability may have their payments offset by the Participating State.
- b. The Participating State shall offset payments made to the Contractor under this Participating Addendum in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the Participating State, or to any state or local unit of government. The Participating State also reserves the right to cancel this Participating Addendum if the delinquency is not satisfied by the offset or other means during the term of the Participating Addendum.

4.37 Nondiscrimination/Affirmative Action: In connection with the performance of work under this Participating Addendum, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor further agrees to take affirmative action to ensure equal employment opportunities.

- a. Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the Contractor. An exemption occurs from this requirement if the Contractor has a workforce of less than fifty (50) employees. Within fifteen (15) working days after the Participating Addendum is awarded, the Contractor must submit the plan to the Participating State for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the Participating State.
- b. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, nondiscrimination notices required by applicable law.
- c. Failure to comply with the conditions of this provision may result in the following consequences:

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1. Termination of this Participating Addendum;
2. Designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or
3. Withholding of a payment due under the Participating Addendum until the Contractor is in compliance.

4.38 Independent Contractor: The Contractor shall act as an independent contractor in performing all Services under this Agreement and, except as otherwise outlined herein, as between the State and Contractor, shall maintain complete control over its employees, Contractor Personnel, and Subcontractors, if any.

4.39 State and Federal Law, Regulation and Policy as Applied to Deliverables: Contractor Services and Deliverables shall comply with the acceptance criteria defined by the parties and incorporated into an applicable SOW. In the course of defining such criteria, the parties shall cooperate to identify and address applicable laws, in consultation with the State's advisors. The Contractor will work with the State and its advisors to implement all appropriate agreed-upon changes in business processes or as applicable to the Contractor Services and Deliverables as required by State and Federal law, regulations or policy as agreed by the parties through the change control procedures specified in the Statement of Work. In the event a change in or the State's interpretation of an applicable law, regulation or policy requires a modification or addition to the scope of Services described herein or by an SOW under this Agreement, the parties shall utilize the change control procedures set forth in this agreement to facilitate the implementation of such changes to the scope of Services. Additional compensation shall be as mutually agreed to by the parties.

4.40 Cooperation with Other Contractors: In the event that the State enters into a contract with another contractor for the provision of additional services that interact with or relate to the Contractor Services, the Contractor shall require that its Contractor Personnel use commercially reasonable efforts to cooperate with such other contractor so as not to disrupt the performance of their services. Contractor Personnel shall cooperate on a commercially reasonable basis with State personnel, hardware manufacture representatives, system software Contractors, and communications systems Contractors in the provision of Contractor Services to the State.

4.41 Confidential, Proprietary and Personally Identifiable Information: Any additional or different terms applicable to Confidential Information or personally identifiable information from those set out in the Master Agreement may be addressed as mutually agreed and applicable to the work in the governing Statement of Work.

4.42 Liquidated Damages: Liquidated Damages for failures or delays in the performance of the Contractor Services may be addressed as mutually agreed and applicable to the Contractor Services in the governing Statement of Work.

4.43 Non-Exclusive: Except for remedies designated herein as exclusive or which are exclusive as a matter of law, no remedy conferred by any of the specific provisions of this Agreement is

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intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one (1) or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

4.44 Insurance Responsibility: The Contractor shall maintain the following insurance coverage:

- Worker's compensation insurance, as required under Chapter 102 of the Wisconsin Statutes, for all of the Contractor's employees engaged in the Contractor Services performed under this Contract;
- Commercial liability, bodily injury and property damage insurance against claim(s) that may occur in carrying out the Contractor Services pursuant to this Contract, with a minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations; and
- Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the Contractor Services pursuant to this Contract, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- Certificate of Insurance, showing up-to-date coverage, shall be on file in the Agency before the Contractor Services may commence. (if applicable)

The State reserves the right to require higher or lower insurance limits, where warranted, provided any higher required limits shall not apply to existing Statements of Work unless otherwise agreed in writing and Contractor may terminate this Agreement (but not existing SOWs) for its convenience (upon the 180 days' notice as required in 5.17.3) if it does not agree to comply with the higher limits.

4.45 Recordkeeping and Record Retention: §19.36 (3) of the Wisconsin Statutes applies to this Agreement, and Records (as defined in §19.32 of the Wisconsin Statutes) that are produced or collected under this Agreement are subject to disclosure pursuant to a public records request.

The Contractor shall establish and maintain adequate records of all documentation developed or compiled by it for the State and expenditures incurred by it under this Agreement. All such records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP) in accordance with federal, State and local laws or ordinances applicable to Contractor. The Contractor, following final payment, shall retain all its records produced or collected under this Agreement for six (6) years.

Any additional responsibilities relative to Contractor's retention of records may be addressed as mutually agreed in the applicable Statement of Work for Contractor Services.

4.46 Promotional Advertising and News Releases: Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion

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is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Agreement shall not be made by Contractor without prior written approval of the State.

4.47 Anti-Trust Assignment: By entering into this Agreement, Contractor conveys, sells, assigns and transfers to the State all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the State relating specifically to that proportionate amount of the Goods or Services attributable to the Goods or Services purchased or acquired by the State from the Contractor under this Agreement.

4.48 Assignment of Agreement: The Contractor shall provide prior written notice to the State before assigning the rights and obligations of this Agreement to another party. The State reserves the right to withhold approval of any such assignment in its sole discretion. The terms and conditions of this Agreement as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties. Notwithstanding the above, Contractor may utilize Subcontractors and Cloud Hosting Providers as provided in the Agreement.

4.49 Agreement Dispute Resolution:

In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's appropriate executive authority and the equivalent executive authority within the Contracting Agency, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.

(a) **No Termination or Suspension of Services:** If any problem or dispute arises between the parties, in no event nor for any reason and unless and until authorized by a court of competent jurisdiction, shall Contractor interrupt the performance of the Services or any other obligation hereunder, disable any equipment used in the Services, or perform any other action that prevents, slows down, or reduces in any way the performance of the Services or the State's ability to conduct its business.

4.50 Software; Software License Agreement: Software must be offered to aid in the aspects of devices as appropriate, throughout the term of the agreement.

The software included in the Participating Addendum shall not be utilized as a standalone imaging solution but as a means to enhance the capabilities of the devices.

4.51 Miscellaneous Terms:

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- a. Disclosure:** If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which Contractor knows a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this Agreement is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the Agreement. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

Contractor certifies to the best of its knowledge and belief, no relationship exists between it and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the state.

- b. Dual Employment:** Contractor shall abide by any requirements applicable to Contract in Section 16.417, Wis. Stats.
- c. Employment:** The contractor will not engage the services of any person or persons it knows is now employed by the State of Wisconsin, including any department, commission or board thereof, to provide Contractor Services relating to this Agreement without the written consent of the employing agency of such person or persons and of the contracting agency.
- d. Conflict Of Interest:** Private and non-profit corporations are bound by ss. 180.0831, 180.1911(1), and 181.0831 Wis. Stats., regarding conflicts of interests by directors in the conduct of state contracts.
- e. Independent Capacity Of Contractor:** The parties hereto agree that the Contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the state. The Contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the Contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the state.

5. Lease Agreements:

Lease Terms: Equipment leases are subject to the Terms and Conditions as set forth in the Master Agreement **Attachment A** (Canon Lease Agreement), unless otherwise agreed to. To

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initiate a lease, Purchasing Entity may issue a Purchase Order (“PO”) and reference the type of lease (FMV, Straight, or \$1 Buyout Lease) on the PO or may simply sign other transactional documents deemed acceptable to the parties.

Assignment: Contractor may assign, solely for financing purposes, upon written notification to the State of Wisconsin State Bureau of Procurement, their right title and interest in and to: (i) the Products subject to the Lease Agreement; (ii) all payments and other amounts due and to become due thereunder with respect to the Products; and (iii) all rights and remedies under this Participating Addendum with respect to the Products, such payments and other amounts due. Any such assignment however, does not excuse Contractor from bearing any obligation, terms and conditions as outlined under either the NASPO ValuePoint Master Agreement #140595 or this Participating Addendum. Contractor intends to assign, solely for financing purposes, rights as set forth immediately above and this paragraph constitutes the required written notification to the State of Wisconsin State Bureau of Procurement.

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.

End of Term Notification: Contractor must notify a Purchasing Entity, in writing, of their End of Term 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:

- i. Any acquisition or return options, based on the type of lease or rental agreement;
- ii. Any renewal options, if applicable; and/or
- iii. Hard drive removal and surrender cost, if applicable.

End of Term Options: 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.

6. Resellers: All Authorized Dealers authorized in the State of *Wisconsin*, as shown on the dedicated Contractor (cooperative contract) website, are approved to accept orders and provide sales, service support, and invoicing to participants in the NASPO ValuePoint Master Agreement. The contractor’s dealer participation will be in accordance with the terms and conditions set forth in the Master Agreement.

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7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

Orders can be made out to (a) Contractor or (b) Authorized Dealers as approved by Contractor and the Participating State or Entity. To the extent the Purchasing Entity and the Contractor agree on additional terms, the terms will be documented on the Purchasing Entity Order, and signed by both parties.

All orders should contain the following (1) "PO subject to NASPO ValuePoint Contract #140595 & State Contract #505ENT-M20-MFDCOPIER-02" (2) Purchaser's, Address, Contact, & Phone-Number (3) Purchase order amount (4) Type of Lease (FMV, Straight, or \$1 Buyout lease) and monthly payment (5) Itemized list of accessories (6) Service program and rates (7) Attached SOW Template if applicable.

8. Product Installation & Invoicing: Unless otherwise agreed to by both parties, signing the delivery and acceptance ("D&A") certificate constitutes Acceptance of the Product(s) and allows Contractor to invoice for the Product(s). 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.

Contractor will provide timely billing and Customer will notify Contractor, in writing, of any billing concern. In order for Contractor to generate accurate service invoices, Purchasing Entities shall provide meter reads within the Contractor(s) requested timeframe.

Invoices that are generated without receiving the proper meter read information from the Purchasing Entity will not be considered inaccurate.

The Purchasing Entity shall provide written notice of any alleged invoicing issue(s) and the Contractor will be allowed a thirty (30) day cure period to address any such issue. 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.

9. Not Specifically Priced ("NSP") Open Market Items: Not Specifically Priced (NSP) items compliment or enhance the Products and/or Services offered under the resulting Master Agreement(s). NSP items will not include:
- i) Interactive White boards;
 - ii) Computers, monitors, or other related items;
 - iii) Fax machines;

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- iv) Overhead Projectors; and
- v) Cameras.

NSP items may only be acquired through the Contractor(s) or their Authorized Dealer(s) and must be reported quarterly with all other sales under the resulting Master Agreement(s). NSP items must be priced at a minimum discount of 15% from MSRP or List Price. 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.

10. Showroom Equipment: Upon request by a Purchasing Entity, showroom Equipment for Groups A, B, and C may be converted to a purchase, lease, or rental providing the following conditions are met:
 - a. The meter count on Group A and Group B Devices does not exceed 10,000 copies total (i.e. b&w and color combined); and the meter count on Group C Devices does not exceed 50,000 copies total (i.e. b&w and color combined);
 - b. The Device must be discounted by at least 5% off the Master Agreement pricing for that same Device; and the Purchasing Entity and the Contractor must indicate on the Order that the Device is a showroom model.
11. Software: Purchasing Entities that acquire software shall be subject to the license agreements distributed with such software. Software subscriptions shall not be subject to automatic renewals. Purchasing Entities shall have the option to finance software subscriptions by utilizing Contractor lease and rental rates. Notwithstanding the foregoing, in the event of a conflict in language between an end user license agreement (EULA) and the Master Agreement, the language in the Master Agreement will supersede and control. In addition, any language in a EULA which violates a participating state's constitution or a statute of that state; or violates the laws of a local entity making a purchase, will be deemed void, and of no force or effect, as applied to the participating or purchasing entity.
12. Maintenance Service Level Agreements: Purchasing Entities are subject to the Contractor's "Maintenance Service Level Agreement" provided in Master Agreement **Attachment B** (Canon Maintenance Terms and Conditions), and Master Agreement **Attachment E** (Digital Press Production and Large Format Equipment Master Services Agreement) if applicable.

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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity:	Contractor:
Signature:  <small>0B289D75359A430...</small>	Signature:  <small>5CD530DDE6D2461...</small>
Name: Chris Patton	Name: Shinichi Yoshida
Title: Deputy Secretary	Title: EVP & GM
Date: 3/30/2020 12:02 PM CDT	Date: 3/2/2020 5:33 午後 CST

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	tfosket@naspovaluepoint.org

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

to support documentation of participation and posting in appropriate data bases.]