



**State of New Mexico  
General Services Department**

**Statewide Price Agreement Cover Page**

**Awarded Vendor:**  
**0000056071**  
**Kyocera Document Solutions America, Inc.**  
**225 Sand Rd**  
**Fairfield, NJ 07004**  
  
**Email: joseph.dulce@da.kyocera.com**  
**Telephone No.: (973) 808-8444**

Price Agreement Number: **00-00000-19-00019AD**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **As requested**

**Ship To:**  
**All State of New Mexico agencies, commissions,**  
**institutions, political subdivisions and local public**  
**bodies allowed by law.**

Procurement Specialist: **Brandy Jones**

Telephone No.: **(505) 827-0507**

Email: **brandy.jones@state.nm.us**

**Invoice:**  
**As requested**

Title: **Copiers and Managed Print Services**

Term: **May 8, 2020 - December 31, 2021**

**This Statewide Price Agreement is made subject to the “terms and conditions” as indicated on the attached Participating Addendum.**



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Master Agreement #: **140599**

New Mexico Statewide Price Agreement Number: **00-00000-19-00019**

Contractor: **Kyocera Document Solutions America, Inc.**

Participating State or Entity: **State of New Mexico**

For purposes of this Participating Addendum, both Contractor and Participating State, collectively, may be referred to as the “Parties” or individually as “Party”.

**Definitions:**

The following terms shall be construed and interpreted as follows:

Term	Description
Goods	Tangible personal property as defined in Section 13-1-93 NMSA 1978 and as defined as “Product” in the NASPO ValuePoint Master Agreement # 140599.

**The following Goods and Services are included in this contract portfolio:**

- Group A – MFD, A3
- Group B – MFD, A4
- Group D – Single-function Printers
- Managed Print Services (MPS)
- Supplies
- Software

Professional services offered under this Participating Addendum do not meet the New Mexico statutory definition of professional services and have been deemed to be general administrative services.

Contractor Goods and Service offering details can be found at the NASPO ValuePoint website:  
<https://www.naspovaluepoint.org/portfolio/copiers-managed-print-services-2019-2024/kyocera-document-solutions-america-inc/>

1. **Scope:** This Participating 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 and authorized by that state’s statutes to utilize state contracts with the prior approval of the state’s Chief Procurement Officer.
2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by an 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 state Chief Procurement Officer.



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**3. Order of Precedence:**

- a) A Participating State's Participating Addendum, including New Mexico's Master Lease Agreement, if applicable;
- b) NASPO ValuePoint Master Agreement Terms & Conditions, including applicable 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 applicable Attachments, if any.

**4. Term of the Master Agreement:**

- a) **Initial Term:** Performances under the Master Agreement commenced on August 21, 2019, and shall terminate on December 31, 2021, unless terminated sooner, as specified in **Section 6.10, Defaults and Remedies**, of the Master Agreement.
- b) **Extension:** The 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, via written Amendment. The total duration of the Master Agreement, including any extensions, shall not exceed five (5) years.

**5. Participating State Modifications or Additions to the Master Agreement:** The following are items that each Participating State should consider when drafting a Participating Addendum:

- a) **State specific terms and conditions:** Participating States may add statutory terms required to execute a Participating Addendum. The Master Agreement Terms and Conditions should be reviewed to ensure there is no conflict with what your state may accept. The Master Agreement Terms and Conditions are intended to be utilized as a baseline for state specific requirements.
- b) **Administrative Fees:** The Master Agreement allows Participating States to incorporate an administrative fee into the published Master Agreement pricing.
- c) **Supplemental Documents:** The Contractor's Supplemental Documents are attached to the Master Agreement as **Attachment A through Attachment J**. Each Participating State is responsible for negotiating the terms and conditions of each of these documents, if they so choose. The Lead State has only negotiated the language to the extent it aligns with the Master Agreement Terms and Conditions; however, any further negotiations are at the discretion and responsibility of the Participating State.

The Parties may utilize Attachment E and Attachment G through Attachment J of the Master Agreement. Attachment A – Kyocera Master Lease Agreement Terms and Conditions, Attachment B – Kyocera Master Lease Agreement Schedule, Attachment C – Kyocera Lease Agreement Terms and Conditions, Attachment D – Kyocera Straight Lease Agreement Terms and Conditions, and Attachment F – Co-Terminus Addendum Terms and Conditions are null and void and shall not be used by the Participating State and/or Purchasing Entities. Attachment A, Attachment B, Attachment C, Attachment D and Attachment F may be replaced with the New Mexico Master Lease Agreement, Offeror's Acknowledgment, and Exhibit A Lease



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Schedule by Amendment upon approval and execution of the aforementioned New Mexico Master Lease Agreement documents by both Parties. See **Section 46. Lease Agreements** of this Participating Addendum for additional lease details.

- d) **Authorized Dealers:** All Contractor approved Dealers are listed in **Exhibit C (Authorized Dealers by State)** of the Master Agreement. The Participating State may limit the number of Dealers they use, and/or request that the Contractor approve additional Dealers. The Contractor Dealer's participation will be in accordance with the terms and conditions set forth in the Master Agreement.

Contractor will upload Authorized Dealers by State list to the NASPO ValuePoint website as soon as possible.

- e) **Goods:** The Contractor is authorized to provide Goods as referenced on page one (1) of this Participating Addendum, and as detailed in **Section 4.3, Product Offerings**, of the Master Agreement. Each Participating State shall determine what Goods they will limit, if any, in their Participating Addendum. Additional consideration should be given to the following:

- **Third-Party Software**
- **Consumable Supplies**
- **Remanufactured/Refurbished Equipment**
- **Emerging Technologies** – Emerging Technologies are subject to Section 4.3.10 of the Master Agreement.

- f) **Service Offerings:** The Contractor is authorized to provide Services as referenced on page one (1) of this Participating Addendum, and as detailed in **Section 4.4, Service Offerings**, of the Master Agreement. Each Participating State shall determine what Service Offerings they will limit, if any, in their Participating Addendum. Additional consideration should be given to the following:

- **Managed Print Services – Attachment H (Kyocera MPS Statement of Work)**, of the Master Agreement, provides a framework for any ensuing MPS engagement. Prior to any commencement, all MPS engagements must be agreed to and signed by both Purchasing Entity and Contractor.
- **Maintenance Agreements:**
  - Automatic renewals are not permitted under the Master Agreement
  - Contractor shall have the ability to blend the Service and Supply costs over a large Equipment fleet
  - **Manual Meter Reads** - As part of its Services, Contractor may, at its discretion and dependent upon device capabilities, provide electronic remote meter reading and equipment monitoring. This may allow for automated meter reading and submission, automatic placement of low toner alerts, automatic placement of service calls in the event of a critical Goods failure and may enable firmware upgrades
  - **Customer-Owned Equipment**
  - **Lease or Rental Equipment**



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- **Service Requirements** – Participating States may negotiate their own Service Level Agreement (SLA) with the Contractor; however, the minimum requirements are outlined in **Section 4.4.3(b)** of the Master Agreement. Additional consideration should be given to the following:
  - **Service Level Calculations**
  - **Reporting**
  
- g) **Purchase, Lease, and Rental Programs:** Per **Section 4.5** of the Master Agreement the Contractor is authorized and/or required to provide and adhere to the following:
  - **Acquisition Methods** – Participating States should determine which options they will allow:
    - Purchase
    - Fair Market Value (FMV) Lease
    - \$1 Buyout Lease – The Participating State and/or Purchasing Entities shall not utilize the \$1 Buyout Lease option.
    - Straight Lease
    - Cancellable Rental
    - Short-Term Lease
  - This Participating Addendum may be used to acquire Goods and/or Services through either the Purchase or Cancellable Rental acquisition methods only. See section **46. Lease Agreements** of this Participating Addendum for lease details.
  - **Leasing and Rental Terms and Conditions** – Equipment leases and rentals are subject to the Terms and Conditions as set forth in the Master Agreement, and as negotiated by the Participating State. See **Section 46. Lease Agreements** this Participating Addendum for lease details.
  
- h) **Security Requirements:**
  - Per **Section 4.6.2, Sensitive Information**, of the Master Agreement, the Participating State shall define “sensitive information” in their Participating Addendum.  
  
See Section 38 Confidentiality of the Participating Addendum for the Participating State’s confidential information details.
  - Per **Section 4.6.5, Hard Drive Removal and Surrender**, of the Master Agreement, the Purchasing Entity shall determine which hard drive disposal options they will require.
  
- i) **Inspection and Acceptance:** Per **Section 4.10.3** of the Master Agreement, confirmation of Goods Acceptance occurs upon signature of **Exhibit B (Sample D&A Certificate)**, or within five (5) Business Days after Goods install, unless otherwise stated in a Participating Addendum.
  
- j) **Warranty Requirements** – The Contractor must adhere to the warranty requirements as outlined in **Section 4.11** of the Master Agreement; however, Participating States may negotiate additional requirements with the Contractor.

Participating State must check one of the boxes below. These modifications or additions apply only to actions and relationships within the Participating State. A Participating Addendum shall not diminish, change, or



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impact the rights of the Lead State with regard to their contractual relationship with the Contractor under the Terms and Conditions of the State of Colorado NASPO ValuePoint Master Agreement.

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:

6. **Taxes:** The Contractor shall be reimbursed by the Participating State for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE PARTICIPATING STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Participating State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

7. **Retainage:**  
Reserved

8. **Performance Bond:**  
Reserved

9. **Term:** THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE NEW MEXICO STATE PURCHASING AGENT. This Agreement shall begin on a date approved by the New Mexico State Purchasing Agent and end on December 31, 2021. The Participating State reserves the right to renew the contract on an annual basis by mutual agreement not to exceed a total of five (5) years.

10. **Termination:**

- a) Grounds. The Participating State may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Participating State's uncured, material breach of this Agreement.
- b) Notice; Participating State Opportunity to Cure.
- (1) Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Participating State shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
  - (2) Contractor shall give Participating State written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Participating State's material breaches of this Agreement upon which the termination is based and (ii) state what the Participating State must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Participating State does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Participating



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State does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

(3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to provide the Goods or perform the Services contracted for, as determined by the Participating State; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the New Mexico State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

c) **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the Participating State's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either Party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PARTICIPATING STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

**11. Appropriations:** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Participating State to the Contractor. The Participating State's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**12. Status of Contractor:** The Contractor and its agents and employees are independent contractors providing Goods and/or performing professional or general services for the Participating State and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**13. Conflict of Interest; Governmental Conduct Act:**

- a) The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- b) The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
  - (1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Participating State employee while such



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- employee was or is employed by the Participating State and participating directly or indirectly in the Participating State's contracting process;
- (2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the Participating State; (ii) the Contractor is not a member of the family of a public officer or employee of the Participating State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the Participating State, a member of the family of a public officer or employee of the Participating State, or a business in which a public officer or employee of the Participating State or the family of a public officer or employee of the Participating State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
  - (3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the Participating State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the Participating State whose official act, while in the Participating State's employment, directly resulted in the Participating State's making this Agreement;
  - (4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
  - (5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
  - (6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Participating State.
- c) Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Participating State relied when this Agreement was entered into by the Parties. Contractor shall provide immediate written notice to the Participating State if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Participating State and notwithstanding anything in the Agreement to the contrary, the Participating State may immediately terminate the Agreement.
- d) All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.





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**14. Amendment:**

- a) This Agreement shall not be altered, changed or amended except by instrument in writing executed by the Parties hereto and all other required signatories.
- b) If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

**15. Merger:** This Agreement incorporates all the Agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**16. Penalties for violation of law:** The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

**17. Equal Opportunity Compliance:** The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**18. Workers Compensation:** The Contractor agrees to comply with the Participating State's laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Participating State.

**19. Applicable Law:** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**20. Records and Financial Audit:** The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Participating State, including the New Mexico Department of Finance and Administration and the New Mexico State Auditor. The Participating State shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Participating State to recover excessive or illegal payments.



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- 21. **Invalid Term or Condition:** If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.
- 22. **Enforcement of Agreement:** A Party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.
- 23. **Non-Collusion:** In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Participating State.
- 24. **Notices:** Any notice required to be given to either Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

**To the Participating State:**

Name:	Mark Hayden, State Purchasing Director, State Purchasing Division
Address:	1100 St. Francis Dr., Room 2016, Santa Fe, NM 87505
Telephone:	(505) 827-0472
Fax:	(505) 827-2484
Email:	<a href="mailto:mark.hayden@state.nm.us">mark.hayden@state.nm.us</a>

**To the Contractor:**

Name:	Joseph Dolce
Address:	225 Sand Rd, Fairfield, NJ 07004
Telephone:	(973) 882-6085
Fax:	Not provided
Email:	<a href="mailto:joseph.dolce@da.kyocera.com">joseph.dolce@da.kyocera.com</a>

- 25. **Succession:** This Agreement shall extend to and be binding upon the successors and assigns of the Parties.
- 26. **Headings:** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.
- 27. **Default/Breach:** In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Purchasing Entity and the State of New Mexico may procure the Goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Purchasing Entity and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.



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- 28. Equitable Remedies:** Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Participating State irreparable harm and that a remedy at law for such a failure would be an inadequate remedy for the Participating State, and the Contractor consents to the Participating State's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Participating State's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the Participating State may have under applicable law, including, but not limited to, monetary damages.
- 29. New Mexico Employees Health Coverage:**
- a) If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the Participating State exceed \$250,000.00.
  - b) Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the Participating State.
  - c) Contractor agrees to advise all employees of the availability of Participating State's publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://bewellnm.com>.
- 30. Indemnification:** The Contractor shall defend, indemnify and hold harmless the Purchasing Entity and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Participating State and the Risk Management Division of the New Mexico General Services Department by certified mail.
- 31. Default and Force Majeure:** The Purchasing Entity reserves the right to cancel all or any part of any Orders placed under this Agreement without cost to the Purchasing Entity, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Participating State and/or the Purchasing Entity due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the Order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Participating State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the Participating State



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provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

32. **Assignment:** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Participating State.
33. **Subcontracting:** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Participating State. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Participating State.
34. **Inspection of Plant:** The Participating State may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.
35. **Commercial Warranty:** The Contractor agrees that the Goods and/or Services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such Goods and/or Services, and that the rights and remedies provided herein shall extend to the Participating State and are in addition to and do not limit any rights afforded to the Participating State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.
36. **Condition of Proposed Items:** Where Goods are a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified in the Participating Addendum.
37. **Release:** Final payment of the amounts due under this Agreement shall operate as a release of the Participating State, its officers and employees and Purchasing Entity from all liabilities, claims and obligations whatsoever arising from or under this Agreement.
38. **Confidentiality:** Any Confidential Information provided to the Contractor by the Participating State or, developed by the Contractor based on information provided by the Participating State in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Participating State. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Participating State within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Participating State will result in direct, special and incidental damages.
39. **Contractor Personnel:**
  - a) **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Participating State. Key personnel are those individuals considered by the Participating State to be mandatory to the work to be performed under this Agreement. Key personnel shall be:



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<b>Contractor</b>	<b>Contract Manager (Primary)</b>
Name:	Joseph Dolce
Phone:	(973) 882-6085
Email	joseph.dolce@da.kyocera.com
Address:	Kyocera Document Solutions America, Inc. 225 Sand Road Fairfield, NJ 07004

<b>Contractor</b>	<b>Contract Manager (Secondary)</b>
Name:	Renato Monteleone
Phone:	(973) 461-4031
Email	renato.monteleone@da.kyocera.com
Address:	Kyocera Document Solutions America, Inc. 225 Sand Road Fairfield, NJ 07004

<b>Contractor</b>	<b>Sales Contact (Primary)</b>
Name:	John Green
Phone:	(713) 725-6172
Email	john.green@da.kyocera.com
Address:	Kyocera Document Solutions America, Inc. 225 Sand Road Fairfield, NJ 07004

<b>Contractor</b>	<b>Sales Contact (secondary)</b>
Name:	Dennis Lees
Phone:	(314) 378-8811
Email	dennis.lees@da.kyocera.com
Address:	Kyocera Document Solutions America, Inc. 225 Sand Road Fairfield, NJ 07004

- b) **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Participating State. For all personnel, the Participating State reserves the right to require submission of their resumes prior to approval. If the number of Contractor’s personnel assigned to the Agreement is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to the Participating State’s approval. The Participating State, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Agreement. The



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Contractor shall also make interim arrangements to assure that the Agreement progress is not affected by the loss of personnel. The Participating State reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Participating State, meeting the Participating State's expectations.

- 40. Incorporation by Reference and Precedence:** In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) this Participating Addendum; (2) the Master Lease Agreement, if applicable; and (3) the NASPO ValuePoint Master Agreement.
- 41. Inspection:** If this Agreement is for the purchase of Goods, final inspection and acceptance shall be made at Destination. Goods rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.
- 42. Inspection of Services:** If this Agreement is for the purchase of Services, the following terms shall apply.
- a) Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
  - b) The Contractor shall provide and maintain an inspection system acceptable to the Participating State covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Participating State during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
  - c) The Participating State has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The Participating State shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
  - d) If the Participating State performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
  - e) If any part of the services do not conform with the requirements of this Agreement, the Participating State may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the Participating State may:
    - (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
    - (2) reduce the Agreement price to reflect the reduced value of the services performed.
  - f) If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the Participating State may:
    - (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Participating State that is directly related to the performance of such service; or
    - (2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.



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- 43. Insurance:** If the Services contemplated under this Agreement will be performed on or in Participating State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.
- a) Workers Compensation (including accident and disease coverage) at the statutory limit.
  - b) Employers liability: \$100,000.
  - c) Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
    - (1) Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
    - (2) Property damage or combined single limit coverage: \$1,000,000.
    - (3) Automobile liability (including non-owned automobile coverage): \$1,000,000.
    - (4) Umbrella: \$1,000,000.
  - d) Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.
- 44. Arbitration:** Any controversy or claim arising between the Parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*
- 45. New Mexico Administrative Reporting and Fees:** All contracts and Purchase Orders arising out of this Agreement shall be deemed to include an Administrative Fee assessment at the rate of **one percent (1.00 %)** for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies and local public bodies. “**Gross total sales**” means any invoiced amount less any applicable state and local taxes.

For reporting purposes: list payments received for the issued invoice during the applicable quarter by state agency, local public body and invoice number. The Quarters are as follows.

Quarter:	Period End:	Report Due:
First	September 30	October 31
Second	December 31	January 31
Third	March 31	April 30
Fourth	June 30	July 31

Even if Contractor experiences zero sales during the quarter, a report is still required. This will also apply if the contract starts partial within a Quarter. Reports and Administrative Fee shall be due no later than thirty (30) days following the end of the quarter. Only submit one payment and one report for each quarter, do not combine payments or reports.

Payment shall be made by check payable to the “State Purchasing Division”. This contract number **00-00000-19-00019** must be included on all payments and Quarterly Sales Reports.

Remit Checks to: State Purchasing Division  
1100 St. Francis Drive, Room 2016



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PO Box 6850  
Santa Fe, NM 87505  
Attn: Compliance Officer

Sample Reports can be found at:  
<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: [GSD.QuarterlyUsageR@state.nm.us](mailto:GSD.QuarterlyUsageR@state.nm.us)

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 827-0472.

46. **Lease Agreements:** Lease options are not an allowable acquisition method. This Participating Addendum may be amended to allow for the following lease options through the execution of New Mexico's Master Lease Agreement documents as referenced in section 5. **Participating State Modifications or Additions to the Master Agreement, Subsection c) Supplemental Documents** of this Participating Addendum:
- Fair Market Value (FMV) Lease
  - Straight Lease
  - Short-Term Lease
47. **Subcontractors:** All Contactors, Authorized Dealers, and resellers authorized in the State of New Mexico, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support 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 this Participating Addendum and the aforementioned Master Agreement.
48. **Master Agreement Number:** All purchase orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include the NASPO ValuePoint Master Agreement number: **140599**.
49. **Orders:** Any Order placed by a Purchasing Entity for a Good and/or Service available under the 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. 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 financing/billing for this Participating Addendum will be directly between the Contractor and the Participating State. Any Authorized Dealer financing of Equipment and/or Goods and billing will be directly through the Contractor and not the Authorized Dealer. The Contractor is responsible for administrative fee payment and reporting for all direct or indirect sales when this Participating Addendum is used to obtain services or goods.

All orders should contain the following (1) "PO is subject to NASPO ValuePoint Master Agreement, Contract # **140599**, and the Participating Addendum, Statewide Price Agreement # **00-00000-19-00019** (2) Purchasing





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Entity Name, Address, Contact, & Phone-Number (3) Order amount (4) Type of Order (Purchase, Cancellable Rental, or FMV Lease/Straight Lease/Short-Term Lease (if Lease is an allowable acquisition method)) and purchase amount, or monthly payment amount (5) Itemized list of accessories (6) Type of Service program and rates (7) Any Supplemental Documents, including the MPS SOW Template (if applicable).

This agreement is not intended to be used to procure “Open Market” or “Not Specifically Priced (NSP)” items.

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

Contractor

Name	Joseph Dolce
Address	224 Sand Road, Fairfield, NJ 07004
Telephone	(973) 882-6085
E-mail	joseph.dolce@da.kyocera.com

Participating State

Name	Brandy Jones
Address	P.O. Box 6850, Santa Fe, NM 87502
Telephone	(505) 827-0507
E-mail	brandy.jones@state.nm.us

**51. Terms:** The Participating State is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

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

Participating State: State of New Mexico	Contractor: Kyocera Document Solutions America, Inc.
By: <i>Valerie Pauk for</i>	By: <i>Peter Morisco</i>
Name: Mark Hayden	Name: Peter Morisco
Title: State Purchasing Agent	Title: VP Channel Sales
Date:  05/08/20	Date:  April 16, 2020



For questions on executing a Participating Addendum, please contact:

**NASPO ValuePoint**

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	<a href="mailto:tfosket@naspovaluepoint.org">tfosket@naspovaluepoint.org</a>

[Please email fully executed PDF copy of this document to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org), to support documentation of participation, and to post in appropriate data bases]

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New Mexico Authorized Dealer List

001. Company: Digitech Office Equipment, Inc.  
Address 1: 4310 Paseo del Norte NE, Suite D  
Address 2: Albuquerque, NM 87113  
Website: Not provided  
Contact: Mike Andrews  
Phone: (505) 888-7575  
Email: michael@digitechofficeequipment.com

002. Company: Document Technologies  
Address 1: 7309 Jefferson Street NE  
Address 2: Albuquerque, NM 87109  
Website: Not provided  
Contact: Phil Polski  
Phone: (505) 888-3005  
Email: polski@doctech.com

003. Company: Ephesus Inc.  
Address 1: 2430 Midtown Place, Suite A  
Address 2: Albuquerque, NM 87107  
Website: Not provided  
Contact: Cody Rushing  
Phone: (505) 341-9730  
Email: crushing@eot.nm.com

004. Company: Kyocera Document Solutions America, Inc.  
Address 1: 225 Sand Road  
Address 2: Fairfield, NJ 07004  
Website: Not provided  
Contact: John Green  
Phone: (713) 725-6172  
Email: john.green@da.kyocera.com

005. Company: PTS Office Systems, Inc.  
Address 1: 2840 N. Telshor  
Address 2: Las Cruces, NM 88001  
Website: Not provided  
Contact: Kevin Horner  
Phone: (575) 524-4384  
Email: khorner@ptsofficesystems.com

006. Company: Rocky Mountain Business Systems  
Address 1: 3515 Wyoming Blvd. NE  
Address 2: Albuquerque, NM 87111  
Website: Not provided  
Contact: Abe Apodaca  
Phone: (505) 323-5252  
Email: aapodaca@rmbs.com

## CANCELLABLE RENTAL

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

## CANCELLABLE RENTAL

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.

**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.

**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.

**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. RESERVED.**

## CANCELLABLE RENTAL

**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.



**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:</b> <b>(INCLUDES SUPPLIES)</b> Color and Black & White Devices. Includes Labor, Parts, Drums Toner. ( Does not include Paper or Staples)	Fax:
	Key Operator:
<input type="checkbox"/> <b>MFP/PRINTER ALL INCLUSIVE MAINTENANCE:</b> <b>(NO SUPPLIES INCLUDED)</b> Color and Black & White Devices. Includes Labor, Parts & Drums only.	E-mail:
	Servicing Dealer/KDA Branch:
<input type="checkbox"/> <b>PRINTER MAINTENANCE PLAN:</b> Includes all Parts & Labor. Maintenance Kits & Paper are not included.	<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.)
<input type="checkbox"/> <b>OTHER PLAN (w/ explanation):</b>	

(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 gross receipts taxes levied or imposed, now or hereafter, by any government authority shall be timely paid by the Customer.
13. 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.
14. 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.



## SOFTWARE FINANCE AGREEMENT

**1. Ownership:** Obligor owns the System and grants Payee a security interest in the System and all proceeds thereof.

**2. 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.

**3. 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.

**4. 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.

**5. 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.

**6. 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.

**7. 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.