

DSI Flat Rate Program Terms and Conditions

This Agreement ("Agreement") is entered into by Document Solutions Inc. (DSI) to provide the Managed Print Services as detailed below. This Agreement is entered into and made effective as of the Start Date on the face of this agreement and unless sooner terminated in accordance herewith, shall have a term of six (6) years from the first usage billing cycle date.

I. QUOTE: Customer is responsible for accuracy of detail of all device descriptions, serial numbers, IP addresses, fleet quantities, page volumes and technical information reasonably which it provided, and for the accuracy of both the Asset List attached hereto as Schedule A, and the list of print devices covered by the terms of this agreement as set forth in Appendix A ("Covered Assets").

II. PROGRAM TYPE: Program Types are defined by the alert and response mechanisms, fulfillment responsibilities and general deliverables for covered assets.

a) **DEVICES AND USERS INCLUDED IN Flat Rate AGREEMENT (FRA):** FRA is invoiced at a monthly per device rate inclusive of all parts, toner, software, and labor which are detailed in Schedule A. All devices and users included will be monitored remotely via an agreed upon software platform.

b) **UNMANAGED DEVICES:** Unmanaged devices are not covered by the terms of the Agreement. DSI has no responsibility to provide services for unmanaged devices. The parties, however, may agree in writing to add unmanaged devices to this Agreement when like devices are currently covered, the result of which may trigger other terms and conditions of this Agreement. Devices added to this agreement must have a completed Move, Add, Change Form (MAC) executed by both parties.

III. CONSUMABLES: Consumables are defined as those items consumed during the print output process, excluding paper and staples. Consumables are categorized as toner cartridges ("Toner") or consumables parts (which include maintenance kits, drums and other related parts) that have a stated page yield expectation. All consumables must be at 25% or higher upon entering into agreement. If lower than 25%, DSI will invoice for initial replacement of consumable.

IV. GO LIVE: The Go Live period, which commences after the successful testing of communications with devices in the Customer's environment is inclusive of the implementation Start Date and ensuing five (5) business days. During Go Live, DSI will begin responding to device alerts by shipping toner and conducting service that coincides with service levels stated in the Agreement.

V. SERVICE: Service hours are 8:00 a.m. to 5:00p.m. local time Monday through Friday, excluding Holidays. Service at times other than established service hours may be furnished on an "as available basis" at published rates then in effect. DSI has no obligation to make adjustments, repairs or replacements to the extent resulting directly from (a) unauthorized third parties performing any material maintenance, repair or replacement, (b) unauthorized Customer modification, relocation, damage (including without limitation, unavoidable accidents), abuse Of misuse Of the equipment, (c) unauthorized equipment alteration and tampering, or connection with non-compatible equipment, (d) placing the equipment in an area that does not conform to space, electrical and environmental requirements, (e) failure of improper electrical power, (f) Acts of God, lightning or other Incidents of excess voltage or power surges, or (g) Customer using toner or printer parts from any source other than DSI. The standard of care applicable to all maintenance and repairs will be to keep the device in good working order and condition, while considering the age and type of the device at issue. DSI may meet its obligations under this Agreement directly, or by having an authorized representative perform these duties.

VI. UNSERVICEABLE DEVICES: During the term of this Agreement, If it is determined by DSI, In Its reasonable estimation and after reasonable efforts, that equipment maintained under the scope of this Agreement needs to be replaced or reconditioned due to (a) two service events within a six month time frame

or (b) a service event cost exceeding the current market price to replace the machine, DSI has the right to deem equipment that meets either (a) or (b) as unserviceable upon submission of written notice to Customer. In the event equipment is deemed unserviceable in accordance with the foregoing sentence, Customer may elect to either (a) have the equipment reconditioned at Customer's expense, (b) order a new piece of comparable equipment, or (c) remove this piece of equipment from the agreement.

VII. INVOICING: The fees for service under this Agreement are defined in this FRA and billed in advance of delivery of service. Customer agrees that all payments required under the FRA will be paid Net 30 days from the date of invoice. Applicable per user rates are defined by this agreement. Starting meter reads and employee headcount will be identified on the contract start date on the face of this agreement. The FRA invoicing of this agreement will occur at the first of every month. The invoice will be a lump monthly amount based on an agreed range of printing users in the Assessment, plus or minus 10% headcount. So, for example, if 100 users were assessed to be printing, the contract will cover 90 to 110 printing user per month for the same monthly lump amount.

VIII. PRICING ADJUSTMENTS: DSI reserves the right to periodically review, and re-quote based on (a) variances to the following customer metrics in excess of 10% from that stated on the Quote.

- a) Employee count
- b) Total monthly volume
- c) Color vs Mono ratio

If Customer does not accept revised Quote, DSI reserves the right to cancel Agreement with sixty (60) days written notice of cancellation. Invoicing at new rates will commence upon the revised Quote effective date.

IX. CUSTOMER RESPONSIBILITIES: Customer will be responsible for normal customary daily care and cleaning including dusting equipment, replenishing toner, clearing Jams, etc. Customer is also responsible for installing "Customer-Replaceable Parts", as designated by the Original Equipment Manufacturer, which include but are not limited to toner cartridges, drums, transfer belts, waste toner boxes, and paper that meets Dealer's specifications.

- a. **RELOCATIONS, ADDITIONS AND CHANGES:** Customer shall provide ten (10) day written notice prior to removing or adding a piece of equipment, except to the extent a printer is removed due to failure, theft, Act of God or other occurrence outside of Customer's reasonable control. If Customer relocates the print devices outside of DSI's service area, service may be discontinued to these devices.

X. Fair Play: The FRA rate per user is a flat monthly fee with no overages. Customer understands that certain Fair Play standards should be adhered to through the term of the agreement. Should Fair Play not be adhered to DSI reserves the right to present an updated FRA rate based on new usage patterns.

Examples of Fair Play infractions:

- Unmanaged Volumes Migrating to devices being managed by DSI.
- External or outsourced print being brought back in house after FRA contract is in place.
- Printing substantially more volumes because there are no overage charges.

DSI will provide regular reporting to ensure that any strange increases in volume/consumables or changes in print behavior are known as early as possible. Should a Fair Play infraction be significant enough to warrant a new FRA price, DSI will present the new price along with the reasons for it. Customer will have 60 days to

either accept or refute the new rate with options of contract cancellation should a joint agreement not be reached.

XI. LIABILITY LIMITATION: Except for situations involving gross negligence or willful misconduct, DSI's liability to Customer is limited to repair and maintenance under this Agreement. DSI is not liable, in any event, for any indirect, consequential damages, including, but not limited to, loss of use, data revenue or profit. DSI will not be liable for any delay or failure to perform its obligations due to any cause beyond its reasonable control, including without limitation, performing services at a location reasonably determined by DSI as hazardous to health and safety, labor difficulties, power failures, etc.

XII. INTELLECTUAL PROPERTY: Software and related tools remains the sole and exclusive property of DSI. Customer may not sell, transfer, assign, pledge, modify, adapt copy, disassemble, decompile, or in any way encumber or convey the software.

XIII. ASSIGNMENT: Customer may not assign, transfer or sub-contract any of its rights or obligations to any third party.

XIV. TERM: Upon expiration of the six (6) year term, this Agreement shall automatically renew for one one-year periods, unless either party provides at least ninety (90) days written notice of an intention not to renew, but in no event shall the term exceed the term allowable under NMSA 1978, sec. 13-1-150.

XV. SEVERABILITY: If any provision or part of any provision in the Agreement shall be invalid or unenforceable for any reason, the remaining provisions or part provisions shall remain in effect.

XVI. FORCE MAJEURE: *Neither party hereunder shall be held liable for losses, injury, damages direct or indirect resulting from, but not limited to, riots, war, strike, Acts of God (Tornado, Hurricane, Flood, Earthquake, Volcano, etc.).* This Agreement shall be considered null and void if events of this nature prevent either party from fulfilling the obligations outlined in this Agreement. This does not protect against any negligence or malfeasance of either party where non-performance is caused by the usual and natural consequences of an external event, or where the intervening circumstances are specifically contemplated.

XVII. JURISDICTION: This Agreement shall be interpreted and enforced according to the laws of the state of NM. Both parties consent and submit to the personal jurisdiction of the state or province for any legal action or proceeding arising out of or in any manner relating to this Agreement.

XVIII. FREIGHT: Freight for toner is included in the agreement at no additional charge unless expedited charges are incurred for DSI performance outside of the agreement at the request of Customer.

The Customer acknowledges that they have read this Agreement and agree to all the terms and conditions by signing this Agreement below.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

AWM

ALAN WEBBER, CITY MAYOR

DATE: Mar 31, 2022

CONTRACTOR:
DSI

[Signature]
JACOB N. SOLAN

NAME

VPS

TITLE

DATE: 1/5/22

CRS# 2019-00-8

Registration # 151410

ATTEST:

[Signature]

KRISTINE BUSTOS MIHELIC, CITY CLERK *[Signature]*

GB MTG 03/30/2022

CITY ATTORNEY'S OFFICE:

[Signature]

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

[Signature]

MARY MCCOY, FINANCE DIRECTOR

Org.Name/Org.#

City of Santa Fe ADDENDUM

This agreement incorporates the additional terms and conditions in the addendum between DOCUMENT SOLUTIONS INC. (DSI) and the CITY OF SANTA FE (CUSTOMER).

TERMINATION

This Agreement may be terminated by CUSTOMER upon 30 days written notice to the DSI.

INDEMNIFICATION

DSI shall indemnify, hold harmless and defend CUSTOMER from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from DSI's performance under this Agreement as well as the performance of DSI's employees, agents, representatives and subcontractor.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by CUSTOMER in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. CUSTOMER and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by CUSTOMER for the performance of this Agreement. If sufficient appropriations and authorization are not made by CUSTOMER, this Agreement shall terminate upon written notice being given by CUSTOMER to DSI. The CUSTOMER's decision as to whether sufficient appropriations are available shall be accepted by DSI and shall be final.

RELEASE

DSI, upon acceptance of final payment of the amount due under this Agreement, releases the CUSTOMER, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. DSI agrees not to purport to bind CUSTOMER to any obligation not assumed herein by CUSTOMER unless DSI has express written authority to do so, and then only within the strict limits of that authority.

INSURANCE

DSI shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. DSI shall furnish CUSTOMER with proof of insurance of DSI's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than CUSTOMER and DSI. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

Signature Lines required:

City of Santa Fe:

AWM

Alan Webber, Mayor

Date: Mar 31, 2022

DSI:

J. K. ... VP SALES
Name & Title

Date: 1/25/22

Attest:

Kristine Mihelcic

Kristine Bustos Mihelcic, City Clerk
GB MTG 03/30/2022

City Attorney's Office:

Marcia Martinez

Senior Assistant City Attorney

Approved for Finances:

Mary McCoy

Mary McCoy, Finance Director

Desktop (A4) Rate Breakdown

Single Function Printers (SFP)

Dell / HP Desktop	Speed	Rate (\$)	Est. Qty.	Est. Total
Monochrome	ANY	\$42.00	24	\$1,008.00
Color	ANY	\$65.00	29	\$1,885.00

Konica Minolta	Speed	Rate (\$)	Est. Qty.	Est. Total
Monochrome	ANY	\$27.00	1	\$27.00
Color	ANY	\$58.00	0	\$0.00

Multi-Function Printers (MFP)

Dell / HP Desktop	Speed	Rate (\$)	Est. Qty.	Est. Total
Monochrome	ANY	\$62.00	2	\$124.00
Color	ANY	\$85.00	5	\$425.00

Konica Minolta	Speed	Rate (\$)	Est. Qty.	Est. Total
Monochrome	ANY	\$34.00	18	\$612.00
Color	ANY	\$75.00	5	\$375.00

MFD (A3) Rate Breakdown

Konica Minolta	Speed	Rate (\$)	Est. Qty.	Est. Total
Monochrome	45	\$60.00	1	\$60.00

Konica Minolta	Speed	Rate (\$)	Est. Qty.	Est. Total
Color	25	\$96.00	8	\$768.00
Color	35	\$115.00	28	\$3,220.00
Color	45	\$145.00	7	\$1,015.00
Color	55	\$159.00	22	\$3,498.00
Color	65	\$178.00	2	\$356.00

Estimated Monthly Payment: \$13,373.00

Estimated Future Units: \$1,911.00

72 MONTH TOTAL	\$ 962,856.00
TOTAL 6 YEAR FUTURE UNITS	\$ 11,466.00
TOTAL 6 YearTERM OF CONTRACT	\$ 974,322.00



COPIERS AND MANAGED PRINT SERVICES

Led by the State of Colorado

Master Agreement #: 140597

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

Contractor: **Konica Minolta Business Solutions USA 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 # 140597.

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

- Group A – MFD, A3
- Group B – MFD, A4
- Group C – Production Equipment
- Group D – Single-function Printers
- *Group E – Large/Wide Format Equipment
- *Group F – Scanners
- Managed Print Services (MPS)
- Supplies
- Software
- Accessories for Discontinued Base Units

* Denotes Purchase Only Goods

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:

<http://www.naspovaluepoint.org/portfolio/copiers-managed-print-services-2019-2024/konica-minolta/>

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

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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.
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 8, 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 K**. 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



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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 through Attachment K of the Master Agreement. Attachment A – Konica Master Premier Advantage Agreement, Attachment B – Konica Master Premier Advantage Schedule, Attachment C – Konica Master Premier Lease Agreement, and Attachment D – Konica Master Premier Lease Schedule are null and void and shall not be used by the Participating State and/or Purchasing Entities. Attachment A through Attachment D are replaced with the New Mexico Master Lease Agreement, Offeror’s Acknowledgment, and Exhibit A Lease Schedule affixed to this Participating Addendum.

- 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 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**
- **Emerging Technologies** – Emerging Technologies are subject to Section 4.3.9 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 F (Konica Sample 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**



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- **Lease or Rental Equipment**
 - **Legacy Equipment**
 - **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
 - **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.
 - Groups E and F do not qualify for leasing and rental. Groups E and F Goods may only be purchased.
 - 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 impact the



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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 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.



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- (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 employee was or is employed by the Participating State and participating directly or indirectly in the Participating State's contracting process;

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- (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.

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.

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- 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.
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.



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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:	mark.hayden@state.nm.us

To the Contractor:

Name:	Kristen McKenna, State Contract Manager
Address:	1595 Spring Hill Road., Suite 410, Vienna, VA 22182
Telephone:	(703) 760-3551
Fax:	(703) 506-1257
Email:	kristen.mckenna@kmb.konicaminolta.us

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.
28. **Equitable Remedies:** Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Participating State irrevocable 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

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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 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.



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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:
- | | |
|--|---|
| Kristen McKenna
State Contract Manager
Telephone: (703) 760-3551 | Joe Cernie
Government Account Manager
Telephone: (602) 531-3636 |
|--|---|
- 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

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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 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), including 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 include 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. Konica Minolta agrees that its insurance policies and certificates shall contain standard cancellation language. Should any of the policies be cancelled prior to the expiration thereof, notification shall be provided in accordance with policy provisions and by Konica Minolta's insurance broker(s).
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 **00-00000-19-00019AC** must be included on all payments and Quarterly Sales Reports.



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

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

46. Lease Agreements:
Reserved

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, invoicing 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: **140597**.

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 lease and rental programs must remain with the Contractor or Authorized Dealers through Contractor's or Authorized Dealer's approved financial institutions as outlined in the Master Lease Agreement and the Offeror's Acknowledgement Forms. 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 # **140597**, and the Participating Addendum, Statewide Price Agreement # **00-00000-19-00019AC** (2) Purchasing Entity Name, Address, Contact, & Phone-Number (3) Order amount (4) Type of Order (Purchase, FMV Lease, Straight Lease, Short-Term Lease, or Cancellable Rental) 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.



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

Contractor

Name	Desiree Mendro
Address	1595 Spring Hill Road, Suite 410, Vienna, VA 22182
Telephone	(703) 637-1527
E-mail	dmendro@kmbs.konicaminolta.us

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: Konica Minolta Business Solutions USA, Inc.
By: <i>Valerie Pauk for</i>	By: <i>Kristen McKenna</i>
Name: Mark Hayden	Name: Kristen McKenna
Title: State Purchasing Agent	Title: State Contract Manager
Date: 06/18/2020	Date: <i>6/15/2020</i>

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 to post in appropriate data bases]

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New Mexico Authorized Dealer List

001. Company: Document Solutions, Inc.
Address 1: 4121 Prospect NE
Address 2: Alamogordo, NM 87110
Website: Not provided
Contact: Phil Houser
Phone: (505) 256-9579
Email: philhouser@dsinm.com
002. Company: GBS Inc.
Address 1: 1100 Aztec, Suite B
Address 2: Gallop, NM 87301
Website: <http://www.gbsbiz.com/>
Contact: Michael Jones
Phone: (505) 863-4461
Email: mjoes@gbsbiz.com
003. Company: ImageNet Consulting, LLC
Address 1: 916 N. Sullivan
Address 2: Farmington, NM 87401
Website: Not provided
Contact: Patrick Russell
Phone: (405) 232-1264
Email: prussell@imagenetconsulting.com
004. Company: Interstate Business Technologies, Inc.
Address 1: 1516 N. Bennett St.
Address 2: Silver City, NM 88061
Website: Not provided
Contact: Robert Barney
Phone: (928) 428-3357
Email: robbarney@cableone.net
005. Company: Konica Minolta Business Solutions USA, Inc.
Address 1: 3800 Rutledge Rd. NW, Suite B
Address 2: Albuquerque, NM 87109
Website: www.kmbs.konicaminolta.us
Contact: Mike Brennan
Phone: (505) 888-6680
Email: brennanm@kmbs.konicaminolta.us
006. Company: Pacific Office Automation, Inc.
Address 1: 3830 Singer Blvd. NE, Suite 2020
Address 2: Albuquerque, NM 87109
Website: Not provided
Contact: Doug Pitassi
Phone: Not provided
Email: dpitassi@pacificoffice.com
007. Company: Stanfield Printing Company, Inc.
Address 1: 115 N. West 4th St.
Address 2: Guymon, OK 73942
Website: www.spcop.com
Contact: John Reid
Phone: (580) 338-8418
Email: johnr@spcop.com

ATTACHMENT I, KONICA MFP HARD DRIVE SECURE DISPOSAL TERMS AND CONDITIONS

The following terms and conditions apply to the provision of hard drive disposal services by Konica Minolta Business Solutions U.S.A., Inc. ("KMBS") to Customer during the term of this Agreement:

- 1. OVERVIEW:** This service is provided in connection with the "Statement of Work for KMBS MFP Hard Drive Secure Disposal Service" entered into between Customer and KMBS.
- 2. PAYMENT:** Payment is due within thirty (30) days from the date of the invoice. Should the customer fail to make any payment due hereunder, or be or become insolvent or be a party to or acquiesce in any bankruptcy or receivership proceeding or any similar action affecting the affairs or property of Customer, or violate any aspect of this Agreement, KMBS may (1) refuse to continue to provide the service, or (2) furnish service on a time, travel and material basis, without prejudice to any other remedies KMBS may have. Reasonable costs, including counsel fees, shall be recoverable by KMBS in the event collection activities, including litigation, are required to collect outstanding amounts due under this Agreement. **NO CASH PAYMENTS ACCEPTED.** Accepted manners of payment are by major credit card or checks made payable to KMBS.
- 3. SITE PREPARATION & ACCESS:** Customer shall ensure that equipment is placed in an environment that conforms with the manufacturer's specifications and requirements. Customer shall provide KMBS' personnel with free and full access to the equipment and any necessary operating time for the purposes of furnishing the hard drive disposal services during normal business hours and with reasonable lead time..
- 4. LIMITS TO SCOPE OF SERVICE:** KMBS reserves the right to refuse to provide the hard drive disposal services if, in its opinion, the condition or location of the equipment creates an unreasonable risk to KMBS or KMBS's technicians. KMBS is not liable for any failure or delay in performance due to any cause beyond its control.
- 5. ADDITIONAL EQUIPMENT:** No hard drive disposal services for additional or substituted equipment will be provided by KMBS until it is accepted by KMBS in writing.
- 6. SERVICE INCLUDED:** KMBS' obligations under this Agreement is to provide the hard drive data protection service selected on the Konica Hard Drive Disposal Options Form, upon Customer's scheduling of a service date with KMBS. Services included in each of the respective hard drive exchange or data sanitization services are detail in the statement of work attached hereto. Unless otherwise indicated, normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of holidays observed by KMBS. Overtime charges, at KMBS' then current Master Agreement rates, will be charged for all services provided outside normal business hours at Customer's request.
- 7. PROJECT SCHEDULING:** Customer shall contact KMBS and schedule a service date. If KMBS cannot provide the services by the service date requested, KMBS will notify customer of the earliest possible date in which the services can be rendered.
- 8. SELLER'S AGENTS:** Customer acknowledges that it has been advised that no employee, representative or agent of KMBS has any authority to bind KMBS to any affirmation, promise, representation, or warranty concerning any of the equipment or services. Unless an affirmation, promise, representation, or warranty is specifically set forth in this Agreement it does not form a basis of this bargain and shall not be enforceable against KMBS.
- 9. LIMITS ON DATA WIPE:** Customer acknowledges that no data wipe process will leave a hard drive as free from unreadable residual data as a comparable new product. KMBS makes no recommendations regarding the Customer's data removal requirements or representations regarding the effectiveness of one method of data removal over another.
- 10. ASSIGNMENT:** Customer may not assign this Agreement, without KMBS' express written consent. In the event that KMBS assigns or subcontracts any of its obligations under this Agreement, KMBS shall remain primarily

responsible to perform those obligations. KMBS may assign, without notice, any of its rights under this Agreement.

11. NOTICES: All notices required to be given under this Agreement shall be in writing and shall be sent by U.S. first class mail to the parties as follows: To Customer at the address listed on the front of this Agreement and to KMBS, at 100 Williams Drive, Ramsey, NJ 07446, Attention: Office of Direct Administration.

12. INDEMNIFICATION: Customer shall bear all risk of theft, loss or damage not caused by KMBS employees or agents, to all equipment to which hard drive disposal services are provided under this Agreement.

13. WARRANTY: KMBS WARRANTS THAT THE SERVICES SHALL BE PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER. KMBS MAKES NO OTHER WARRANTIES WHATSOEVER EXPRESS OR IMPLIED WITH REGARD TO THE HARD DRIVE DISPOSAL SERVICE AND EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14. REMEDY LIMITATIONS: THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES FOR ANY PROVEN BREACH OF THIS AGREEMENT (INCLUDING WARRANTY). THE PARTIES DO RESERVE THE RIGHT TO RECOVER CONTRACT DAMAGES ALLOWED VIA THIS AGREEMENT. KMBS' LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE COVER DAMAGES ON THE COST OF ALTERNATE HARD DRIVE DISPOSAL SERVICES AND/OR THE HARD DRIVE PURCHASED BY THE CUSTOMER. KMBS SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO,

DAMAGES DUE TO LOSS, CORRUPTION, DISCLOSURE OR USE OF DATA OR INFORMATION OF ANY KIND. LOSS OF OR DAMAGE TO REVENUE, PROFITS OR GOODWILL, DAMAGES DUE TO NON-COMPLIANCE WITH THIRD PARTY REQUIREMENTS,

15. FORCE MAJEURE: Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to make payment) to the extent that such party was hindered in its performance by any act of God, civil commotion, labor dispute, or any other occurrence beyond its reasonable control.

16. WAIVER & SEVERABILITY: Failure by KMBS to enforce any provisions of this Agreement or any rights hereunder, or failure to exercise any election provided for herein, shall in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the party's right to later enforce or exercise the same or other provisions, rights, or elections it may have under this Agreement. If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of the remaining provisions of this Agreement.

17. ORIGINAL DOCUMENT: Customer further agrees (a) that facsimile or electronic signatures shall be accepted as original signatures; and (b) that this Agreement or any document created pursuant to this Agreement, may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. KMBS may accept orders electronically from Customer pursuant to this Agreement. Neither party shall raise any objection to the authenticity of this Agreement or any document created hereunder, based on either the use of a facsimile signature or the use of a copy retrieved from an electronic storage system.