

Attachment A  
CONTRACT FOR  
MANAGED PRINT SERVICES (MPS)  
BETWEEN  
THE COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET

And  
XEROX CORPORATION

MA 7581300000391

Xerox Number (Xerox Internal Use Only) # 7118736.002

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Effective Date: September 24, 2012  
Commencement Date: November 8, 2012

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This Master Agreement ("Contract" or "Agreement") is entered into, by and between the Commonwealth of Kentucky, Finance and Administration Cabinet ("the Commonwealth" or "Customer") and Xerox Corporation ("Contractor" or "Xerox"), as the Prime Contractor, to establish a Contract for **MANAGED PRINT SERVICES (MPS)**.

The Commonwealth awards **one (1) All State Agency Contract**. All agencies under the Executive Branch of Government shall utilize this contract unless approval is granted from the Governance and Executive Order Committees. Political Subdivisions, per Section 40.017 of this Contract, may utilize this Contract as well by entering into a separate agreement with Xerox in order to establish an appropriate payment/phase schedule. All other terms and conditions of the agreement must remain the same as the Commonwealth MPS Contract.

The Commonwealth and Contractor agree to the following:

### **I. Scope of Contract**

To create a Managed Print Services (MPS) program as part of the Commonwealth's "Smart Government Initiatives". In January 2010, Governor Steven Beshear launched the Smart Government Initiative SGI to extend and expand efficiency efforts to broad sectors of government. For the next several months, nearly two-hundred (200) state workers analyzed and assessed government operations and generated recommendations for operational improvements. SGI participants provided input, perspective and their collective wisdom to improve efficiency and reduce costs within and across state government. Workers represented every Cabinet and major agency throughout state government as well as constitutional offices that elected to participate.

In the Fall of 2010, thirty-nine (39) recommendations were selected for implementation. The recommendations cover five (5) back-office business functions common to the operation of every Executive Branch agency including asset management, transportation services, postal services, procurement asset management, transportation services, postal services, and procurement and information technology. The implementation strategy and approach varies for each SGI recommendation but all result in a smarter, leaner, and more efficient Executive Branch.

This program will be implemented throughout the Executive Branch of the Commonwealth affecting all agencies through the authorization of the Governor's Office. Phases I & II, as described in the Xerox RFP Response are targeted to be completed in the first eighteen (18) months of this Contract.

### **II. Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation RFP 758 1200000479, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation RFP 758 1200000479;
3. Solicitation RFP 758 1200000479 and all attachments thereto, including Section 40--Terms and Conditions of a Contract with the Commonwealth of Kentucky;
4. General Conditions contained in 200 KAR 5:021 and Office of Procurement Services' FAP 110-10-00;
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor's proposal in response to Solicitation RFP 758 1200000479;
7. The Contractor's proposal in response to Solicitation RFP 758 1200000479.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

### **III. Negotiated Items**

1. This Contract shall not be used for term leasing or financing of any Equipment at any given time.
2. Existing Equipment  
Despite the provision of certain Services under this Contract to Existing Equipment, any Existing Equipment installed under previous lease agreements remain subject to the terms and conditions of such agreements under which it was leased, including but not limited to title, risk of loss, termination, pricing and payment. All Existing Equipment leases will remain on their current agreement(s) and will be invoiced separately from this MPS Contract. While Xerox may perform some Services for these devices under this agreement such as dispatch of Service, ordering of Consumables, or tracking of the asset information, these devices are not part of the MPS Contract and not subject to the SLAs or termination provisions as defined in this MPS Contract. Notwithstanding, anything to the contrary contained in this Contract or elsewhere, early removal of any Existing Equipment is subject to the early termination charges or other charges set out in such agreement for the Existing Equipment, as such termination is permitted by such agreement.
3. Maintenance Services
  - a. Xerox shall not provide maintenance for any device that is not placed by Xerox under this Contract. The Commonwealth holds separate Hardware Maintenance Contracts in which the agencies are required to utilize. Any

exception shall be brought before the Executive Sponsor or designee for review and approval.

- b. The Commonwealth to provide a point of contact for each Device for the purposes of the Xerox Help Desk to provide remote triage and for the technician to have a contact for arrival to a site.
- c. Commonwealth is responsible for the installation of all end user replaceable Consumables. Commonwealth and Xerox to review any manufacturers end user replaceable Consumables and mutually agree on those that will be installed by Xerox. Consumables shall be defined during Optimization.
- d. Commonwealth to provide accessibility to each site and all Devices to be placed in an area that supports the ability to perform such maintenance services.
- e. Xerox to provide all necessary parts and labor required to resolve the incident and to be part of the PPI as defined in the Pricing section of this Contract.
- f. Commonwealth end users or point of contact is responsible for the removal of single non-repetitive jams. Xerox shall repair any repetitive paper jams.
- g. The following instances shall be billed separately from the PPI. Any of these charges shall be reviewed by the Executive Sponsor or designee prior to invoicing.
  - i. OEM engineering changes not associated with the Equipment but Commonwealth requested.
  - ii. Devices rendered inoperable, defective or damaged as a result of:
    - accident, misuse, or abuse
    - an act of God or other Force Majeure event
    - operation of the Device outside the usage parameters stated in the OEM's documentation
    - the use of parts not manufactured, sold or recommended by the OEM
    - modification of the Device
    - use of any items in relation to the Devices not provided to Commonwealth by Xerox
    - Commonwealth's failure to install and maintain adequate virus protection in the output environment
    - Commonwealth's failure to install or permit updates or fixes to software or third party software as provided by the OEM
- h. In the event that a hard drive needs to be replaced in any Device, Xerox shall follow the process as defined below:
  - i. Service Technician replaces the hard drive in the Device.
  - ii. If Commonwealth requests to maintain possession of the old hard drive, then the old hard drive shall be packaged and provided to the

Commonwealth IT Site contact for disposal. A separate charge for the cost of the old hard drive, not to exceed \$250, shall be invoiced to Commonwealth.

- iii. Commonwealth will be responsible for the proper disposal of the old hard drive once delivered to the Commonwealth IT Site contact.
- iv. If Commonwealth does not request to maintain possession of the old hard drive, then the old hard drive shall be packaged and returned to Xerox.

4. Term of Agreement / Contract

The Commencement Date of this Contract is forty-five (45) days from the date of which it is signed ("Effective Date of Services"). Xerox will install Xerox Tools prior to the Commencement Date for discovery purposes.

All rental agreements of Equipment placed as part of this Contract for the Executive Branch of the Commonwealth of Kentucky shall be coterminous to this Contract.

It is the expectation and agreement of both Parties that all installations of Equipment shall be completed in the first eighteen (18) months from Commencement Date of Services and that there will be no material number of Equipment to be installed in the final thirty six (36) months of this Contract. In the event that there is a material quantity of Equipment installed in the last thirty six (36) months a proposal for extension of this Contract or the term of those installed Equipment may be submitted to the Executive Sponsor or designee for consideration.

5. Startup Services

The startup effort required for this Contract is expected to be ninety (90) days from Commencement Date of Services and not to exceed one hundred twenty (120) days. Startup is the setup of the processes necessary to support an Optimized output environment. Xerox and the Commonwealth shall agree on the revised or new processes. The processes shall include but not limited to managing, installation, maintenance, Consumables ordering, help desk submission, reporting, disposal and other required processes for the Devices that are considered in-scope for this Contract.

Xerox shall require the installation and configuration of the Xerox Tools to be completed thirty (30) days prior to beginning of the assessment of any site and to be completed as part of the startup process.

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No site can be optimized or new Equipment installed without Xerox having completed and approved that all processes are prepared, tested and ready for acceptance of support of those devices for the Services as defined in this Contract.

6. Implementation

Xerox and the Commonwealth will develop a project plan as defined in the Xerox RFP Response in the first thirty (30) days from the Commencement Date of Services. The pricing is based on the following implementation timeline and assumptions as defined in the Pricing section of this Contract.

- a. All agencies of the Executive Branch of the Commonwealth of Kentucky will be part of the MPS Contract.
  - b. Assessment of sites shall begin within thirty (30) days of the Commencement Date of Services.
  - c. All sites to be Optimized eighteen (18) months from the Commencement Date of Services unless otherwise mutually agreed by both Parties.
  - d. All Commonwealth-owned equipment will be under Xerox management upon Optimization. In the event that there is an existing Hardware Maintenance Contract for Legacy Devices Xerox will provide only Consumables and Help Desk Support for effected Legacy Devices. A balanced schedule of Equipment installations throughout the Optimization phase.
  - e. Any material change to the implementation schedule or final configuration may impact charges and will be reviewed with the Executive Sponsor or designee.
  - f. Upon completion of the initial inventory of the current Commonwealth-owned devices Xerox will provide a cost for transitioning the devices to Xerox management for maintenance and / or consumable services prior to the Optimization of the site(s). Executive Sponsor or designee to review the business case and provide approval or decline of the transition of the Legacy Devices prior to Optimization within seven (7) business days.
7. All Equipment, Existing Equipment and Legacy Devices to be installed as part of this Contract will be network attached. In situations where a local or non-network attached Device is required, the Commonwealth will be responsible for providing a monthly meter read for the purposes of billing, ordering of all Consumables and maintenance requests using approved process. Xerox will not perform any proactive services for non-network attached Devices. All non-network attached Devices to be approved by Xerox and the Executive Sponsor or designee. All non-network attached Devices must have the ability to provide meters that cannot be reset.

8. Consulting Hourly Rates are included in Section V of this Contract. The hourly rate shall not exceed \$200. Any exceptions to the "not to exceed" rate of \$200 must be approved by the Commonwealth.

9. Project Change Requests

During the Term of the Contract, if either Party requests a change to the Contract, or facts or circumstances change or information on which the Pricing, SLAs and other terms of this Contract are based or are otherwise found to be materially incomplete or inaccurate thereby necessitating a change to the Contract, a PCR Form will be introduced for approval to address the resulting impact on the Contract. The PCR Form will identify revised tasks along with Pricing associated with any such required or requested change. The following process will be followed relative to use of the PCR Form:

- a. Xerox to complete the PCR Form based on Xerox or Commonwealth request
- b. Xerox to submit to the Executive Sponsor or designee and both Parties will review and gain final agreement.
- c. For instances that require investigation the PCR will be used to identify any charges associated with the investigation, assessment or analysis prior to final solution.

Both parties are required to approve and sign the PCR. No changes or services can be implemented until a contract modification is completed per Section 40.050 of this Contract. Any such resulting changes to any Price, schedule and other terms shall be reasonable and consistent with the terms of this Contract and shall not conflict with the Contract except to the extent as expressly permitted by the Contract. All changes or additions to the Contract approved via any PCR Form shall be forwarded to the Finance Buyer in order to modify the Contract pursuant to Section 40.050 of this Contract.

10. Asset Management

Xerox shall track all Devices considered in-scope for this Contract. In-Scope Existing Equipment, Equipment or Legacy Devices where Xerox is providing maintenance services and / or Consumables.

- a. Xerox shall asset tag all Devices as part of the initial inventory as part of the assessment process.
- b. Xerox and the Commonwealth will review and approve the future state designs and from this devices will be identified for disposal, move or retained as part of the MPS program.
- c. Commonwealth to provide throughout the term of this Contract any changes to users that are identified as point of contact so that Xerox may maintain an accurate database.

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- d. If approved by the Commonwealth, the Commonwealth will provide proper storage for Consumables or parts necessary to support the performance metrics of this Contract. All requests for storage areas shall be submitted to the Commonwealth for approval. All storage areas to be locked and limited access by Commonwealth, Xerox shall bear risk of loss for only the Equipment, parts and Consumables over which Xerox retains sole custody and control.
- e. Xerox and the Commonwealth to review and mutually agree on the data elements necessary to be tracked and maintained to support the reporting and billing requirements.

#### 11. Optimization

In addition to the Optimization activities contained in the Xerox RFP Response document, the following additional activities to be performed by the Commonwealth or Xerox are as follows:

- a. Commonwealth to provide all cost information necessary to develop a Total Cost of Ownership (TCO). In the instance that costs are unknown Xerox will provide average costs, review with the Executive Sponsor or designee and gain agreement on final values to use.
- b. Xerox shall complete a physical on-site inventory for all sites in the metropolitan cities of Lexington, Covington, Frankfort and Louisville and all other sites with more than twenty-five (25) end users.
- c. All sites with less than twenty-five (25) end users will be inventoried with assistance by the Commonwealth site lead. Xerox will submit to a Commonwealth site lead, identified by the Commonwealth, a well defined and structured packet guiding the site lead to gather device inventory information required from the devices at the site necessary to complete a future state design and build of the current state costs. Xerox shall complete the design of the future state. The Commonwealth reserves the right to request on-site inventories for sites deemed critical by the Commonwealth.
- d. The Commonwealth to provide floor maps in .jpg, .bmp or other acceptable format thirty (30) days prior to the on-site or self-assessment of the site, where possible.
- e. Xerox shall use the Xerox Tools assist in data collection and volume gathering to reduce the effort required to complete the assessment part of the Optimization process.
- f. Xerox shall develop a future state design of the floors defining the layout or locations for installation of the Devices, Legacy Devices to be disposed, moved or redeployed and a final financial business case that represents the cost savings based on the final configuration. The financial business case to be based at the agency level following assessment of all sites.



- g. Future state designs are to be approved within fifteen (15) business days of submission to the using agency.
- h. Commonwealth to provide a site lead for each location to be the single point of contact throughout the assessment, design and installation of the new optimized environment.

## 12. Governance

Project – The Commonwealth Project Manager is responsible for the day to day project administration and acts on behalf of the Executive Sponsor with regard to the Managed Print Project. The Project Manager is the Executive Sponsor's designee and will serve as the primary point of contact throughout the project. The Xerox Project Manager is expected to have decision making authority for Xerox issues and will work with the Commonwealth Project Manager to ensure the success of the project. The Executive Sponsor will serve as the escalation point for any issues which exceed the authority of the Project Manager. Once agencies are transitioned to the steady state operational program, this responsibility will shift to a governance committee described below.

MPS Operational Program – Responsibility for ongoing governance and oversight of the Managed Print operational program will be vested in a committee chaired by the Executive Director, Office of Infrastructure Services or a designee. This committee will be comprised of key stakeholders representing cabinet level agencies and a representative from Xerox. This committee will be responsible for evaluating the program to ensure its goals are being met, and to recommend and submit change requests as needed to the CAB to ensure that the Managed Print Program adheres to the commonwealth's long term strategic objectives. The committee will use the standard enterprise policies and practices already in place to manage the program.

## 13. Xerox Help Desk

Xerox shall act as the primary point of contact (Level-1) or Help Desk for all Devices related issues including consumables.

- a. Xerox to contact the end user or point of contact assigned to the Device in the asset database in order to attempt to resolve the issue remotely.
- b. Any issues or incidents that are not Device related will be transferred to the appropriate Commonwealth Help Desk via phone or email.
- c. Xerox Help Desk to be available during normal business hours (8 am to 5 pm) local time.
- d. End users are to provide the Xerox Help Desk agent with the asset information or asset tag number found on the asset tag on the Device.
- e. After hours support requires a PCR to be completed, any requests for after hour support for maintenance services will require extension of the Xerox Help Desk.

- f. Xerox to provide a toll free number that will be communicated as part of the Change Management Services as defined in the Xerox RFP Response.
- g. The Commonwealth and Xerox agree to review the use of Xerox Help Desk as Level-1 if the need arises and to mutually agree on any changes.

#### 14. Change Management Services

Change Management Services is a collaborative process and shall be developed for Commonwealth. By leveraging Xerox's best practices, Xerox shall work with the Commonwealth to properly set expectations and utilize a Change Management process that will minimize End User dissatisfaction and accelerate End User adoption of the MPS solution. Accelerated End User adoption will reduce the non-value added time spent resisting change. The elements shown in the methodology below will be utilized to build the communications plan with the Commonwealth.

- a. Phase 1 – Project Start-up: Understanding and developing the environment for change
  - Ensure executive sponsorship
  - How to demonstrate the necessity and importance of a timely change initiative
  - How to gain acceptance for change
  - Create the vision for deploying and accepting the change
  - Develop a print policy
  - Build excitement for the change
  - Manage expectations
- b. Phase 2 – Implementing the Changes: Facilitating and enabling the entire organization
  - Break down any known barriers
  - Walk the talk – demonstrate the desired behavior
  - Utilize "appropriate" training techniques
  - Communicate short-term successes (pilot, one-Site, one building)
  - Keep pushing for wave after wave of change until the Optimization is complete
- c. Phase 3 – Steady State: Turning an initiative into a best practice
  - Survey to measure program success
  - Communicate the effectiveness and success of the program
  - Create a new culture where the behavior becomes the norm and new processes a best practice

#### 15. Consumables Ordering

Consumables for all network-attached Devices shall be ordered proactively using the Xerox Tools for Devices that are Xerox Tools compliant. The following represents exceptions to proactive Consumables ordering and Xerox shall accept orders using Xerox web portal or phone call to the Xerox Help Desk.

- a. Non-network attached equipment
- b. Network issues causing issues with receipt of alert status
- c. Staples
- d. Special printing needs including large print jobs that would not be supported by the current available Consumables.
  - i. Xerox shall evaluate any of these requests to confirm that necessity of shipping additional toner.
  - ii. Xerox shall recommend use of high volume based Devices or use of centralized print center(s).

#### 16. Consumables Cartridge Returns

It is Commonwealth's responsibility to ensure End Users properly dispose of used cartridges according to government regulations. It is understood that disposal processes may be by site and it is the responsibility of the End User to review any documentation and properly follow guidelines for disposal. Disposal or return instructions shall be provided with the new cartridges.

#### 17. Early Termination

Commonwealth and Xerox agree that the following process will be followed for early termination of any Equipment placed by Xerox as part of this Contract. It is agreed that early Equipment termination due to out of funds would not be subject to any early termination charges.

- Step 1: The Commonwealth requests the removal, post optimization, of Xerox owned Equipment prior to end of the term of this Contract.
- Step 2: Xerox determines if the requested Equipment can be redeployed to another area of the Commonwealth to avoid the ordering of new Equipment.
- Step 3: Xerox will evaluate the current utilization of existing Equipment to determine if modifications to the optimized environment are required.
- Step 4: Xerox will provide to the Executive Sponsor or designee a recommended plan to avoid the early termination of Equipment.
- Step 5: Executive Sponsor or designee reviews Xerox recommendation which would include the following options and in this order of precedence.

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- Re-deployment of Equipment to another area within the Commonwealth for use in the Optimization of another in scope site
- Re-deployment of Devices to balance utilization where the utilization rates of the Devices require adjustment
- Five percent (5%) Flexibility ETC Waiver
- Early Termination and payment of ETCs (Early Termination Charges)

Five percent (5%) Flexibility ETC Waiver

will provide the Commonwealth the option to terminate Equipment before the expiration of this Contract without ETCs after following the process as defined above. This flexibility and ETC waiver is limited to five percent (5 %) of the total of the MMC as defined below.

- After thirty (30) days prior written notice, Commonwealth may terminate any Equipment that has been installed at a Site (under this Contract) for at least six (6) months, without payment of ETCs as set forth in this Section, provided the Equipment is not replaced, and the Monthly Minimum Charge of the Equipment does not exceed the lesser of:
  - Five percent (5%) of the total MMCs of all such Equipment ; or
  - The total MMCs of all such Equipment, multiplied by five percent (5%), minus the MMCs of such Equipment that have been previously terminated under this provision.
- If the lesser of a(i) or a (ii). above is not sufficient to cover the entire MMC of the terminated Equipment, Commonwealth will be invoiced for any remaining Device ETC obligations as set forth in 2 below. Other than amounts due and owing as of the date the Equipment is removed from service and any remaining ETC obligations as set forth above, Commonwealth has no further payment obligation for the terminated Equipment.
- For the avoidance of doubt, this Flexibility ETC Waiver provision does not apply to Existing Equipment Leases.

18. Early Termination Charges of Equipment for Convenience

For Equipment placed under this Contract that is terminated prior to the expiration of the term of this Contract, and for which all other options as set forth in Step 5 above have been exhausted, Xerox will invoice Commonwealth for ETCs based upon the number of months from installation that the Equipment is removed as defined below:

- If Equipment is removed in Months 1-12 following installation, ETC equals eighteen (18) times the Monthly Minimum Charge

- If Equipment is removed in Months 13-21 following installation, ETC equals fifteen (15) times the Monthly Minimum Charge
- If Equipment is removed in Months 22-30 following installation, ETC equals six (6) times the Monthly Minimum Charge
- If Equipment is removed in Months 31-35 following installation, ETC equals months remaining to month 36 times the Monthly Minimum Charge
- If Equipment is removed after thirty-sixth (36<sup>th</sup>) month following installation, no ETC applies

In the event that the Commonwealth contracts with Xerox for a Xerox provided Service for Phase III & IV which includes but not limited to the solution design, implementation, software deployment and Services, all ETCs will be waived for any Equipment that is no longer required and has been installed for twenty-seven (27) months or more.

Early Termination of Equipment for Convenience is not for use in upgrade of Equipment and no other new Equipment will be ordered as a replacement unit.

In the event of early termination as set forth herein, Commonwealth will return the equipment to Xerox in the same condition as when delivered to Commonwealth, reasonable wear and tear excepted, together with any related Software and unused Consumables. For sake of clarity, Existing Equipment not placed as part of this Contract may only be terminated in accordance with the terms of its governing lease or installment purchase agreement.

19. Termination of Contract for the Commonwealth's Material Breach

Xerox may terminate this Contract, by written notice, if Xerox believes that the Commonwealth has committed a material breach of this Contract or the Agreement and such breach shall have remained uncured for sixty (60) days following written notice from Xerox alleging such breach. In the event of termination by Xerox pursuant to this paragraph, Xerox shall not be required to provide any Transition Services or Termination Assistance as defined below.

20. Termination Assistance / Transition Services

Upon the expiration or termination of this Contract, or any portion thereof, and subject to the exceptions set forth in this Section, the Parties shall cooperate in good faith to provide for: (i) the continuation of the affected Services from the date of their expiration or termination, at the same charges set forth hereunder, for a period not to exceed one (1) year ("Termination Assistance") and/or (ii) the orderly transition of the Services to Commonwealth or its designated replacement supplier at Xerox's then-current consulting services rates plus

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expenses. ("Transition Services") in accordance with the following:

1. Six (6) months prior to the expiration of the Initial Term of this Contract, but not less than three (3) months prior, the Parties shall develop a Transition Plan describing the respective tasks to be performed by each Party and the charges and expenses to be billed by Xerox, if any, for the Transition Services, ("Transition Plan"). For the sake of clarity, Transition Services are only required when the tasks required by Commonwealth to effect the transition of Services from Xerox to Commonwealth or its designated replacement supplier, as outlined in the Transition Plan, would exceed the capabilities of the Xerox personnel currently assigned to Commonwealth under this Contract. Except where Xerox has terminated this Contract for any Commonwealth material breach (including for breach of confidentiality), Xerox will continue to meet all of its obligations under this Contract up to the last day of this Contract, including the maintenance of all service records and operational documentation as required by this Contract. In the event that Commonwealth fails to provide Xerox with at least a three (3) month notification of its intent not to renew or extend the Contract, then Xerox may or may not provide Termination Assistance, in its sole discretion, for no longer than one (1) year following the termination of this Contract, for the same then-current consulting services rate.
2. In case of early termination of this Contract by either Party as permitted by the Termination section of this Contract, the Parties will develop a Transition Plan that will go into effect commencing on the date of such termination. Notwithstanding the foregoing, Xerox will not be obligated to provide Transition Services or Termination Assistance where Xerox has terminated any Services for Commonwealth's material breach of this Contract. Upon termination for cause by Commonwealth as described herein, Xerox will, upon the written request of Commonwealth, immediately provide Termination Assistance, and any Transition Services agreed to by the Parties.
3. Termination Assistance Services will continue to be billed at then-current consulting services rate as set forth under this Contract. ,
4. Transition Services will be provided to Commonwealth at Xerox then-current consulting services rates plus expenses except as otherwise provided herein.

While Xerox is providing Transition Services, the Parties will cooperate fully with one another to facilitate a smooth transition from Xerox to Commonwealth or its designated replacement supplier of the Services being terminated. Such cooperation will include migration assistance and knowledge transfer, subject to the provisions governing intellectual property, proprietary information and confidentiality (including but not limited to those concerning the Xerox Tools) as

set forth in this Contract. Within the aforementioned guidelines, Xerox will provide sufficient information to enable Commonwealth or its designated replacement supplier to assume substantial performance of the Services. Such information shall include a listing of the Devices currently included in the Services, details of the Consumables required, and contact details for the provision of Xerox's Basic Services. Notwithstanding the foregoing, Xerox is not obligated to sell or otherwise provide any of the Devices (excluding Legacy Devices) under this Contract to Commonwealth or its designated replacement supplier upon termination or expiration of this Contract for any reason except as agreed upon by Xerox, and underwritten terms and conditions acceptable to both Parties.

21. Disposal Services

- a. Xerox is responsible for the disposal of any Equipment placed as part of this Contract.
- b. All Existing Equipment that is installed under a separate agreement or contract is subject to the terms of those agreements or contracts.
- c. Xerox will tag all Legacy Devices to be disposed as part of the Optimization process.
- d. Commonwealth is responsible for the removal of the Legacy Devices to a central location at each site for pickup.
- e. Commonwealth is responsible for the disposal of Legacy Devices.
- f. Executive Sponsor or designee and Xerox will agree on the final plan for disposal at the time of approval of the final design and prior to Equipment ordering.

22. Xerox shall establish a local office in Frankfort Kentucky within the first ninety (90) days of the Commencement Date of Services of this Contract. In the interim, Xerox will share office space with its subcontractor, Pomeroy, at its local office at 5 Fountain Place, Frankfort, KY 40601

23. Initial installations shall include an extra toner cartridge for the installed Device. The installed Device, as part of the MPS program, shall be monitored and Xerox's help desk shall order and ship the replacement toner when the current toner cartridge is low. If the agency wishes, they can request extra toner by calling the Xerox toll free number or by using the Xerox web portal. Xerox shall monitor the amount of toner ordered to ensure that agencies are not ordering in excess and if so Xerox shall contact the Finance and Administration Cabinet and the Executive Sponsor or designee.

24. During the Assessment Phase, Xerox shall assess each agency to determine the level of redundancy necessary based on the agency's printing environment.

25. Device Certification

Device Certification will be performed by the Commonwealth to validate and certify that the proposed equipment functions to the standards and requirement of the Commonwealth. Xerox will assist the Commonwealth in this effort of certifying the Equipment.

- a. Xerox to provide a configuration guide template for the purposes of both parties completing the guide to include all required configuration settings of the Equipment.
- b. Xerox to provide PostScript and PCL print drivers for all Equipment, however, Xerox cannot control third party driver vendors but is willing to assist in resolving any issues that may occur.
- c. All future changes to the Equipment including firmware changes will be reviewed and confirmed acceptable for deployment prior to Xerox making any changes.
- d. Any future Equipment models that may be introduced to the Commonwealth will go through the certification process.

26. User Level Tracking / Billing and Tracking Usage for Shared Devices

For those areas where Devices will be shared or electronic means of monitoring usage at a user level is required Xerox shall utilize Xerox Tools and the Enterprise Print Governance Level-1 Services. The charges for the use of the Enterprise Print Governance Level -1 is included in the Monthly Minimum Charge. Enterprise Print Governance will require integration with the Commonwealth Active Directory for the purposes of providing proper chargeback codes.

27. Enterprise Fax Solution (Fax over IP – FOIP)

The Commonwealth reserves the right to add this option to this Contract at a later date after Xerox and the Commonwealth complete the required analysis and design of the solution. Final proposed pricing based on the design to include but not limited installation, server hardware, server operating software, maintenance and training and to be provided to the Commonwealth. The Project Change Request form will be used to facilitate any agreement to include such Services. The software pricing included in the RFP shall be used assuming that the scope remains the same plus any additional charges associated with but not limited to installation, server hardware, server operating software, Services, maintenance and training.

28. Mobile Print Offering



The Xerox Mobile Print solution using the Xerox Tools (Xerox Mobile Print Server-XMPS) for up to three-thousand (3,000) registered end users is included in the Monthly Minimum Charge. Xerox Mobile Print solution will support end user print and retrieve functionality to any enabled and supported print device plus a Mobile Print app for handheld smartphones and tablet devices for advanced printing and mobility capability.

- a. Xerox will coordinate the completion of an implementation survey with assistance from Commonwealth contacts. This survey will be used to establish and document the required installation and configuration of XDM and XMPS for Mobile Printing and will establish design elements such as Device scope and desired workflows; EIP, non-EIP and direct print location scope.
- b. Xerox shall provide training to Commonwealth subject matter experts (SMEs) (typically from internal IT organization) on how the solution works, how the solution is configured to operate, and how to troubleshoot the Xerox Mobile Printing Solution. Xerox subject matter experts shall conduct face-to-face and remote training where appropriate, allowing Commonwealth the ability to conduct additional training as necessary.
- c. Licensing of the Xerox software remains the property of Xerox and termination of the services agreement shall terminate the software activation license.
- d. Xerox Mobile Printing shall be installed at the customer location. Xerox undertakes to maintain and upgrade the service in line with new software releases.
- e. Mobile Print Solution Reporting is provided as integrated MPS reporting and provided via the existing MPS reporting package. Reports shall highlight print job activity through the mobile solution to include volume of jobs and the volume of impressions through the mobile print solution.
- f. Customer to provide Project Management, a test environment to conduct and validate any proof of concept and to certify the solution prior to full deployment.
- g. Commonwealth to provide all necessary server hardware and supporting software. Xerox to provide the Commonwealth the minimum hardware and software requirements based on the final configuration of the Mobile Print Offering.
- h. Xerox Mobile Printing Solution will leverage and integrate directly with the Commonwealth existing Email infrastructure. The Xerox Tools delivering Xerox Mobile Printing require controlled access and stable network communication to the Commonwealth email system. Xerox and Commonwealth will work together during the design and implementation of the Mobile Printing solution to determine configuration specifics.
- i. The Commonwealth will provide Xerox with access to the servers running the Xerox tools and services along with any necessary System

- Administrator privileges needed to properly run and service the Xerox Tools package as long as it meets with COT Security policies
- j. The Commonwealth is responsible for support of all mobile handheld devices, including the ability to access corporate email systems. The Commonwealth is responsible for maintaining the network infrastructure and support. New releases and service patches will be applied by the Commonwealth as required.
  - k. The Commonwealth will continue to work with Xerox to configure the Xerox Mobile Printing Solution and roll the capability to the user community identified during the Implementation phase.
  - l. The Commonwealth to provide VPN access to allow Xerox to support the Mobile Print Offering with access to the Xerox Tools and the Mobile Print servers.
  - m. Xerox to provide all current Xerox approved and publicly available Mobile Print apps for support of Android, Windows, iOSx and RIM platforms.
  - n. Xerox Mobile Print apps installation is the responsibility of the Commonwealth.
  - o. If required for royalty reporting purposes, Xerox may disclose Commonwealth's name and address to the third party licensor of certain Xerox Tools.

#### 29. Xerox Tools

Xerox will provide to Commonwealth Xerox Tools that will be required to be installed within the firewalls of the Commonwealth. Commonwealth will test and certify the use of the Xerox Tools.

- a. Commonwealth will be responsible for providing the necessary hardware and software / software licenses to support the hosting of the Xerox Tools to be installed on-site.
- b. Configuration of the Xerox Tools will include the access to a SMTP server, MS SQL Server 2008.
- c. Xerox Tools, proprietary software owned by Xerox, will be accessed by Xerox personnel.
- d. Commonwealth to assist Xerox in the installation and configuration of the on-site Xerox Tools including but not limited to, IP and Subnet range.
- e. Xerox Tools will be configured for data integration within the hosted Xerox site using web services and data encryption during the transmission of same for security purposes.
- f. Commonwealth shall be notified of all On-Site Xerox Tools(s) upgrades that must be performed. Xerox shall make all reasonable attempts to schedule any such upgrades with Commonwealth's team with reasonable notification of not less than thirty (30) days unless otherwise required and agreed upon by Commonwealth and Xerox.

- g. Upgrades that can be completed remotely, without Xerox On-Site assistance, shall be coordinated with Commonwealth team during the notification and planning of such upgrade(s).
- h. Xerox shall not bill Commonwealth for additional charges for upgrades and management of the Xerox Tools.
- i. Prior to any upgrade of the Xerox Tools or other supporting application(s) as provided by Xerox, Xerox shall provide appropriate backup of the data and application server.

Commonwealth shall be responsible for and will back up all Commonwealth Software application(s) installed on the Xerox Tools and MS SQL server(s) on at least a monthly basis.

- a. Commonwealth shall backup all data tables and data associated with the Xerox Tools database installation on MS SQL Server.
- b. Commonwealth is responsible for all Device maintenance of the Xerox Tools and MS SQL server(s) including any preventative maintenance.
- c. Commonwealth is responsible for installing and maintaining adequate and appropriate virus protection on the Xerox Tools and MS SQL server(s).
- d. To the extent that Commonwealth utilizes a third party provider for the support and maintenance of its network, including the Xerox Tools and MS SQL server(s), or otherwise has access to such, agrees that it shall require all such third party providers to execute written obligations of confidentiality in regards to Xerox's Confidential Information (including but not limited to the Xerox Tools) which are no less restrictive than those set forth in this Contract.

- 30. Xerox will be allowed to use "like new" Equipment on a case by case basis. The Finance and Administration Cabinet must review and approve the request (to include agency, volume and additional cost savings information) prior to any installation.
- 31. Xerox shall conduct an Executive Meeting with the Commonwealth's Executive staff to present its solution and implementation plan for the Commonwealth's MPS Program.
- 32. Xerox, if requested, and in collaboration with the Finance and Administration Cabinet, shall conduct a training and informational session for Commonwealth employees to discuss the MPS Program, implementation and benefits.
- 33. Paper  
Xerox, if requested, will provide the Commonwealth a proposal for paper. The Commonwealth to provide the type of paper, quantity, shipping and delivery requirements. A Project Change Request will be required for inclusion into this

Contract. For sake of clarity, paper will be billed separately and will not be included in the Monthly Minimum Charge or PPI (Price Per Impression).

34. Phase III & IV Investment Funds (Funds)

Xerox shall invest one million dollars (\$ 1,000,000) ("Funds") for the purposes of Xerox advancing the Commonwealth's goal to develop and implement advanced workflow solutions beyond the initial contracted SOW Services. The Funds will be used to provide consultative reviews, the development of solutions to address jointly prioritized Commonwealth processes, and by Xerox for annual dreaming sessions to be performed at the Xerox Lexington, KY Innovation Center on the Yorkshire campus. The costs of all projects, consulting, developments, dreaming sessions, and pilot effort will be tracked, reported, and applied against these Funds. Costs incurred by the Commonwealth such as travel expenses, time, and effort of Commonwealth personnel are not reimbursable and is the responsibility of the Commonwealth.

All development, dreaming sessions, and pilot efforts will require a Project Change Request to define the estimated Funds required to support these efforts. At the conclusion of the development or pilot effort, Xerox will provide to the Commonwealth a report with the actual Funds to be applied.

Any processes, solutions, and/or software developed by Xerox will be the sole property of Xerox, and available for use with other Xerox customers, unless pre-negotiated and approved by Xerox. Any software created will be supported only by Xerox resources unless pre-negotiated and approved by Xerox. Any software developed with these Funds by Xerox and used by the Commonwealth will be provided with no license fees. Xerox will provide a separate proposal to the Commonwealth for any support or Services fees required for on-going use of the software. If the Commonwealth requests to use this software past the term of the agreement, Xerox will negotiate an additional term of maintenance and support for the software product.

Xerox reserves the right to apply the use of Funds in accordance with the description herein. The Funds are strictly available for use during the initial term of this agreement, and any unused Funds at the end of the initial term or termination of this Agreement are forfeited and not available to the Commonwealth.

35. WSCA Rental Conversions. Xerox shall provide to the Commonwealth a list of Xerox branded devices that are currently provided on a Xerox rental agreement using the WSCA contract. If requested, Xerox will convert the requested devices from rental to this MPS agreement based on the appropriate volume band and model. Any such model that is not only the approved pricing list must be certified

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to meet the requirements of Commonwealth prior to inclusion into this MPS program.

Any such conversion of the device from the WSCA agreement to this MPS program cannot be completed until after the Commencement Date of Services.

36. Billing

A. Billing Components

All new Device Pricing is detailed in the Pricing section of this Contract. Such Pricing is comprised of a Monthly Minimum Charge (MMC) and a PPI (Price per Impression) Charge. The Monthly Minimum Charge covers Commonwealth's use of the Device for the term of this Contract from the date of install. The PPI Charge will, depending on the Capabilities of the Device, consist of up to two (2) components: (i) a PPI Charge for each black and white Impression ("B/W PPI Charge"), and (ii) a PPI Charge for each color Impression ("Color PPI Charge"). The PPI Charge includes Consumables, a portion of the maintenance charge that varies by Impression Volume, and the variable portion of the MPS solution management Services.

Other charges that may be billed may include Legacy Device PPI, additional training, moves or other charges as defined in the Pricing section of this Contract or as requested by Commonwealth via Project Change Request.

B. Billing

Xerox will invoice Customer for new Devices monthly, with charges determined by (i) multiplying the actual quantities of respective Devices in the Customer Output Environment times the respective Monthly Minimum Charges shown in Pricing section, plus (ii) the actual Impression Volumes run on such Devices multiplied by the applicable PPI Charge(s) for each type of Impression.

C. Other Charges

Other charges as set forth in the Pricing section or any subsequent PCR, will only apply if specific training, MACD or agreed Services are requested and approved by both Parties outside of Optimization. In the event that a Device move is required, after Optimization is completed, the charges as shown in the Pricing section of this Contract will be billed. The Device move charges exclude (i) shipping costs for inter-Site moves, and (ii) special equipment (such as stair climbers) that may be required to move Devices as a result of the physical layout of a Site.

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In addition, Customer shall be billed for related travel and expenses in accordance with those Services as defined where travel and expenses are not included and approved by Executive Sponsor or designee.

D. Invoicing

Xerox and the Commonwealth shall mutually agree on the format and level of invoice for submission on a monthly basis. The intention is for the use of a summary invoice at the branch or agency level and to be submitted in an electronic format that is imported by the Commonwealth into Commonwealth system(s). Xerox to provide details at device level for device related charges and to include the budget codes or other mutually agreed details necessary for Commonwealth reporting and internal charge back purposes.

The accuracy of any information such as budget codes, cost centers, etc... is limited to the submission of such details as provided by the Commonwealth.

E. Payment in Lieu of Discount Enhancement

Payments in Lieu of a Discount will be made to the Commonwealth based on the previous quarter's Average Monthly Billing. The first payment will be made in month sixteen (16) based on the three (3) months invoice billings for the thirteen thru fifteen (13 thru 15) months following the Contract Commencement Date. Xerox will submit the Payment in Lieu of Discount to the Commonwealth thirty (30) days following the quarter close. The next Payment in Lieu of discount will be based on the Average Monthly Billing for months sixteen thru eighteen (16 thru 18) and will continue for every subsequent three month period.

The actual payment amount will be determined as follows:

- i. If the Average Monthly Billing is over three-hundred-thousand dollars (\$300,000), Xerox shall pay the Commonwealth a Payment in Lieu of Discount equal to ten-thousand dollars (\$10,000).
- ii. If the Average Monthly Billing is between two-hundred-thousand dollars (\$200,000) and three-hundred-thousand dollars (\$300,000) Xerox shall pay the Commonwealth a Payment in Lieu of Discount equal to seven-thousand five-hundred dollars (\$7,500).
- iii. If the Average Monthly Billing is less than two-hundred-thousand dollars (\$200,000), no Payment in Lieu of Discount will be made.

37. Software Development

Xerox does not anticipate the development of any customized products or software programs in connection with the services provided under this Contract. Any products or software programs developed while providing services under this Contract shall remain the property of Xerox, unless the Commonwealth specifically contracts with and compensates Xerox to develop the product or program for the exclusive use of the Commonwealth.

38. License Agreements As long as the software is included in a Xerox-branded device or supplied by Xerox, and the software is maintained under a Xerox maintenance or license agreement, Xerox agrees that it will supply all "Maintenance Releases" and software updates that primarily incorporate mechanical or coding error fixes at no additional charge. Any non-Maintenance Release that contains new functionality or enhancements, or any optional software package that includes new/additional functionality or required software upgrades to a change in the states network or operating environment will be made available to the State at the current State/Local Government catalog order-time price.

39. CONFIDENTIAL INFORMATION

Each party will disclose to the other certain business information identified as confidential ("Confidential Information"). Customer Content consists of documents, materials and data provided in hard copy or electronic format by you to Xerox containing information about you and/or your clients and is considered your Confidential Information. Developments and Pre-Existing Work (collectively "Xerox Work"), Xerox Tools as defined herein, shall be considered Xerox's Confidential Information. "Developments" are items created by Xerox employees, agents, and/or licensors, including, but not limited to, computer programs, code, reports, operations and procedures manuals, forms, design or other works of authorship, and "Pre-existing Work" are items used or incorporated into a Deliverable or developed or acquired by Xerox independent of performing the Services. "Output of Services" constitutes electronic images created by scanning tangible documents containing Customer Content, or the content of any reports and other materials, created by Xerox specific to and for Customer per the applicable Statement of Work, but shall not include software. "Assessments" are assessment and recommendation reports created as a result of assessment services. "Documentation" means all manuals, brochures, specifications, information, and software descriptions in electronic, printed, and/or camera-ready form, and related materials customarily provided by Xerox for use as part of the Services. Each party will make reasonable efforts not to disclose the other party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure

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through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidentiality obligations set forth above shall terminate one (1) year after expiration or termination of the Contract or the last effective Services Contract hereunder, whichever is later; provided however, for Xerox Work and Xerox Tools, confidentiality obligations with respect thereto shall not terminate unless (i), (ii) or (iii) in the preceding sentence of this Section becomes applicable thereto. The parties do not intend for Customer to disclose confidential technical information hereunder, which includes, but is not limited to, computer programs, source code, and algorithms, and Customer will only disclose the same under the auspices of a separate Agreement. Upon expiration or termination of the Contract, each party shall return to the other or, if so requested, destroy, all Confidential Information of the other in its possession or control, except such Confidential Information as may be reasonably necessary to exercise rights that survive termination of the Contract.

#### 40. INTELLECTUAL PROPERTY

You represent and warrant you own the Customer Content and Customer Assets or otherwise have the right to authorize Xerox to perform Services hereunder and the Customer Content does not, and shall not, contain content that (i) is libelous, defamatory or obscene and/or (ii) infringe on or violate any applicable laws, regulations or rights of a third party of any kind. Xerox, its employees, agents and/or licensors shall at all times retain all rights to Xerox Work and Xerox Tools (with "Xerox Tools" being proprietary tools used by Xerox to provide the Services, and any modifications, enhancements, improvements and derivative works thereof), and except as expressly set forth herein, no rights to Xerox Work and Xerox Tools are granted to you. You shall have no rights to use, access or operate the Xerox Tools, which will be installed and operated only by Xerox. You will have access to data and reports generated by the Xerox Tools and stored in a provided database as set forth in the applicable Statement of Work. All Xerox Tools may be removed at Xerox's sole discretion. You acknowledge that Xerox does not license the Xerox Tools separate and apart from the provision of Services associated with their use. You agree not to decompile or reverse engineer any Xerox Work or Xerox Tools. Xerox grants you a non-exclusive, perpetual fully paid-up, worldwide right to use, display, and reproduce Xerox Work and Documentation only as required for use of the Services and Deliverables for your customary business purposes, and not for resale, license, and/or distribution outside of your organization. You may not sublicense any rights granted to you hereunder, but may authorize a third party ("Designee") to use such rights, solely for your benefit and your internal business purposes. Any Designee operating or maintaining the delivered solution shall be subject to



written confidentiality obligations with respect to Confidential Information that shall be no less restrictive than those set forth in the Contract. Output of Services is your sole and exclusive property and Xerox shall gain no rights therein, except as may be required for Xerox to perform Services hereunder. Xerox hereby assigns, grants, conveys, and transfers to you all rights in and to the Output of Services hereunder. You may duplicate and distribute Assessments only for your internal business purposes. Recommendations, assessments, and processes described in Assessments may only be implemented for you by Xerox and only for your internal business purposes. Except as set forth expressly in this Section, no other rights or licenses are granted to you. Any rights or licenses that are granted to you shall immediately terminate if you (i) default hereunder with respect to any of your obligations related to such rights or licenses, (ii) fail to pay amounts due, or (iii) otherwise default under the Contract.

#### 41. INDEMNIFICATION

- A. Xerox, at its expense, if promptly notified by Customer and given the right to control the defense, will defend Customer from, and pay any settlement agreed to by the indemnifying party or any ultimate judgment for, all claims by third parties for personal injury (including death) or tangible property damage to the extent proximately caused by the willful misconduct or negligent acts or omissions of Xerox, its employees, or agents in connection with the Contract. Xerox is not responsible for any Customer litigation expenses or settlements unless Xerox pre-approves them in writing.
- B. Xerox, at its expense, if promptly notified by you and given the right to control the defense, will defend you from, and pay any settlement agreed to by Xerox or any ultimate judgment for, any claim not identified in (i)-(vi) below or subject to c. below that any Services or Deliverables (excluding Third Party Products) infringe a third party's U.S. intellectual property rights. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless Xerox pre-approves them in writing. Excluded herein are claims arising from or relating to: (i) Services performed using Customer Assets and/or Customer Content for which you failed to provide to Xerox sufficient rights; (ii) Services performed, or Deliverables provided, to your specification or design, (iii) infringement resulting from or caused by your misuse or unauthorized modification of systems or product; (iv) use of Services or Deliverables in combination with other products, services or data streams not provided by Xerox if such combination forms the basis of such claim; (v) your failure to use corrections or enhancements to the Services or Deliverables provided by Xerox, and (vi) your provision to Xerox of material for duplication in violation of the copyright of a third party and it is agreed and understood by the parties that, under the Contract, Xerox is not undertaking, and will not

undertake, any obligation or duty of any kind or type to determine or ascertain whether material provided to it for duplication may be duplicated without violating a third party's copyright therein. If the use of the Services or Deliverables (excluding Third Party Products) are enjoined as a result of a claim under this Section, or in the reasonable opinion of Xerox are likely to be the subject of such a claim, Xerox will, at its option and sole expense, exercise any or all of following remedies: obtain for you the right to continue to use such Services or Deliverables; modify such Services or Deliverables so they are non-infringing; replace such Services or Deliverables with non-infringing ones or terminate such infringing Services, and/or, accept the return of such infringing Deliverables and refund to Customer any amount paid for the infringing item, less net benefits realized.

- C. Xerox will not defend Customer from, and pay any settlement agreed to by Customer for any claims to 45.b.(i)-(vi) above or for infringement of any intellectual property rights arising out of or related to performance of Services using Customer Assets, Customer Content or other materials pursuant to Commonwealth's request or direction or for Commonwealth's breach of the first sentence of the Section herein titled INTELLECTUAL PROPERTY".

**42. LIMITATION OF LIABILITY**

Xerox shall not be liable to you, in the aggregate, for any direct damages in excess of the amounts paid by you to Xerox during the twelve (12) months prior to the claim or \$200,000, whichever is greater. Except as provided in 200 KAR 5:312, neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to the Contract or any Order hereunder, whether the claim alleges tortious conduct (including negligence) or any other legal theory. This limitation of liability shall not be applicable to any specific indemnification obligations set forth in the Contract or to Customer's breach of confidentiality obligations regarding the Xerox Tools.

**43. TITLE, RISK OF LOSS AND PROTECTION OF XEROX'S RIGHTS**

Title to Equipment and Third Party Hardware shall remain with Xerox until you purchase same. Risk of loss for the Products shall pass to you upon delivery. You will keep the Products insured against loss and the policy will name Xerox as Loss Payee.

**44. SERVICES AND THIRD PARTY PRODUCT WARRANTY / WARRANTY LIMITATIONS, AND WARRANTY DISCLAIMER/ WAIVER**

- A. **Services Warranty.** Xerox represents and warrants to Customer that the Services will be performed in a skillful and workmanlike manner; provided

however, in no event will Xerox be responsible for any failure to perform Services if the failure is caused by: (i) Customer Assets, Customer Content, or services, maintenance, design implementation, supplies or data streams provided by Customer, Customer's agent or service provider to Xerox for use hereunder, (ii) Customer's failure to contract for the minimum types and quantities of Products required by Xerox to perform the Services, or (iii) Customer's failure to provide Xerox access to Customer's personnel and systems or to transfer to Xerox sufficient rights to use, access and/or modify Customer Assets constituting hardware and software, including software owned or licensed by Customer, and/or Customer Content as necessary for the provision of Services.

- B. Warranty Disclaimer and Waiver for Services.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION FOR SERVICES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, THEREFOR AND XEROX DISCLAIMS ALL OTHER WARRANTIES FOR SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.
- C. Third Party Product Warranty.** FOR THIRD PARTY PRODUCTS SELECTED SOLELY BY XEROX FOR AN ORDER, XEROX WARRANTS THEY WILL OPERATE SUBSTANTIALLY IN CONFORMANCE WITH APPLICABLE SERVICE LEVELS IN THE STATEMENT OF WORK. IF, WITHIN A REASONABLE TIME AFTER PROVISION OF SUCH THIRD PARTY PRODUCTS, SUCH SERVICE LEVELS CANNOT BE BROUGHT INTO SUBSTANTIAL CONFORMANCE WITH THOSE IN THE STATEMENT OF WORK AND SUCH NON-CONFORMANCE IS A RESULT OF XEROX'S USE OF SUCH THIRD PARTY PRODUCTS, CUSTOMER'S EXCLUSIVE REMEDY FOR THE FOREGOING WARRANTY IS TO RECEIVE A REFUND OF ANY FEES PAID FOR THE NON-CONFORMING THIRD PARTY PRODUCTS UPON THE RETURN THEREOF TO XEROX. XEROX DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO SUCH THIRD PARTY PRODUCTS, AS WELL AS FOR MAINTENANCE THEREOF, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AS WELL AS ANY OTHER WARRANTY PERTAINING OR RELATING TO DESIGN, PERFORMANCE, FUNCTIONALITY, OR COMPATIBILITY THEREOF WITH CUSTOMER'S SYSTEMS. XEROX WILL PASS THROUGH TO CUSTOMER ANY WARRANTIES PROVIDED TO IT BY THE MANUFACTURER OR LICENSOR OF THIRD PARTY PRODUCTS TO THE EXTENT

PERMISSIBLE. XEROX DISCLAIMS, AND CUSTOMER WAIVES, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, FOR THIRD PARTY PRODUCTS NOT SELECTED SOLELY BY XEROX.

- D. **Services Disclaimer.** THE WARRANTIES AND GUARANTEES SET FORTH IN THIS SECTION OF THE CONTRACT ARE EXPRESSLY CONDITIONED UPON THE USE OF THE SERVICES AND DELIVERABLES FOR THEIR INTENDED PURPOSE IN THE SYSTEMS ENVIRONMENT FOR WHICH THEY WERE ORIGINALLY DESIGNED AND SHALL NOT APPLY TO SERVICES OR DELIVERABLES WHICH HAVE BEEN SUBJECT TO MISUSE, ACCIDENT, ALTERATION OR MODIFICATION BY CUSTOMER OR ANY THIRD PARTY (EXCEPT AS SPECIFICALLY AUTHORIZED IN WRITING BY XEROX.)

45. SOFTWARE TERMS.

- A. **Software License.** The following terms apply to copyrighted Software and the accompanying documentation, including, but not limited to, operating system Software, provided with or within the Equipment acquired hereunder ("Base Software") as well as Software specifically set out as "Application Software". This license does not apply to any Diagnostic Software, any software/documentation accompanied by a clickwrap or shrinkwrap license agreement or otherwise made subject to a separate license agreement including, but not limited to any operating system software for Third Party Hardware. Xerox grants you a non-exclusive, non-transferable license to use the Base Software only on or with the Equipment with which (or within which) it was delivered. For Application Software, Xerox grants you a non-exclusive, non-transferable license to use this software within the United States on any single unit of Equipment for as long as you are current in the payment of any indicated software license fees (including any Annual Renewal Fees). You have no other rights to the Base or Application Software and, in particular, may not: (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer this software; (2) activate any software delivered with or within the Equipment in an unactivated state; or, (3) allow others to engage in same. Title to Base and Application Software and all copyrights and other intellectual property rights in it shall at all time reside solely with Xerox and/or its licensors (who shall be considered third-party beneficiaries of the Contract's software and limitation of liability provisions). Base and Application Software may contain, or be modified to contain, computer code capable of automatically disabling proper operation or functioning of the Equipment. Such disabling code may be activated if: (a) Xerox is denied reasonable access to the Base or Application Software to

periodically reset such code; (b) you have defaulted hereunder; or, (c) such license is terminated or expires. Xerox may terminate your Base Software license (1) immediately if you no longer use or possess the Equipment, or (2) upon termination of any amendment, order or separate Agreement under which you acquired the Equipment. If you transfer possession of the Equipment after you obtain title to it, Xerox will offer the transferee a license to use the Base Software within the United States on or with it, subject to Xerox's then-applicable terms and license fees, if any, and provided the transfer is not in violation of Xerox's rights. Xerox warrants that the Base and Application Software will perform in material conformity with its user documentation for ninety (90) days from the date it is delivered or, for software installed by Xerox, the date of software installation. Neither Xerox nor its licensors warrant that the Base or Application Software will be free from errors or its operation will be uninterrupted

- B. **Diagnostic Software.** Software used to maintain the Equipment and/or diagnose its failures or substandard performance (collectively "Diagnostic Software") is embedded in, resides on, or may be loaded onto the Equipment. Diagnostic Software and method of entry or access to it constitute valuable trade secrets of Xerox. Title to Diagnostic Software shall at all times remain solely with Xerox and/or Xerox's licensors. You agree that (1) your acquisition of the Equipment does not grant you a license or right to use Diagnostic Software in any manner, and (2) that unless separately licensed by Xerox to do so, you will not use, reproduce, distribute, or disclose Diagnostic Software for any purpose (or allow third parties to do so). You agree at all times (including subsequent to the expiration of the Contract or a unit of Equipment hereunder) to allow Xerox to access, monitor, and otherwise take steps to prevent unauthorized use or reproduction of Diagnostic Software, provided that such access to your facility will be during your normal business hours.
- C. **Third Party Software.** Third Party Software is subject to license and support terms provided by the vendor therefore.

#### **IV. Terms and Conditions**

##### **Section 40.015—Final Agreement**

The Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

##### **Section 40.016—Agencies to Be Served**

This Contract shall be for use by the following agencies of the Commonwealth of Kentucky:

###### **All State Agencies**

No shipments shall be made except upon receipt by Vendor of an official Delivery Order from a using agency.

##### **Section 40.017—Political Subdivisions**

Under Kentucky Statutes, political subdivisions of this State including cities, counties and school districts may participate in All State Agency Master Agreements to the same extent as agencies of the Commonwealth.

##### **Section 40.019- Quantity Basis of Contract – Estimated Quantities**

Any and all quantities mentioned in this Contract are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of this Contract. Requirements may exceed the quantities shown and the Contractor will be required to furnish all requirements shown on Delivery Orders dated during the life of this Contract.

##### **Section 40.020—Contract Provisions**

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

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#### **Section 40.025—Type of Contract**

This Contract shall be on the basis of a **firm fixed unit price**.

#### **Section 40.030—Term of Contract and Renewal Options**

The initial term of this Contract shall be for a period of **five (5) years** from the effective date of the Award of Contract.

This Contract may be renewed at the completion of the initial Contract period for **five (5) additional one (1) year periods** upon the mutual agreement of the Parties. Such mutual agreement shall take the form of an addendum to this Contract under Section 40.050—Changes and Modifications to the Contract.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend this Contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

The Commonwealth reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The Vendor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing this Contract in an extended period.

#### **Section 40.035—Basis of Price Revisions**

**PRICE ADJUSTMENTS:** Unless otherwise specified, the prices established by this Contract shall remain firm for the contract period subject to the following:

**A: Price Increases:** A price increase shall not occur during the first twelve (12) months of this Contract. A Vendor may request a price increase after twelve (12) months of this Contract, which may be granted or denied by the Commonwealth. Any such price increase shall be based on industry wide price changes. The Contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The Office of Procurement Services may request additional information or justification. If the price increase is denied, the Contract holder may withdraw from this Contract without prejudice upon written notice and approval by the Office of Procurement Services. Provided, however, that the Vendor must continue service, at the Contract prices, until a new Contract can be established (usually within sixty (60) days).

B: Price Decreases: The Contract price shall be reduced to reflect any industry wide price decreases. The Contract holder is required to furnish the Office of Procurement Services with notice of any price decreases as soon as such decreases are available.

C: Extended Contract Periods: If this Contract provides for an optional renewal period, a price adjustment may be granted at the time this Contract is renewed, subject to price increase justification as required in Paragraph A "Price Increases" as stated above.

#### **Section 40.040—Multiyear Contracts**

If this Contract is for a term that extends beyond the end of the biennium in which the Contract was made, payment and performance obligations for succeeding fiscal years are subject to the availability of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance of this Contract beyond the biennium, this Contract for such subsequent year(s) may be canceled and the Contractor shall be reimbursed in accordance with Section 40.150—Provisions for Termination of the Contract.

#### **Section 40.045— Contract Usage**

The contractual agreement with the Vendor will in no way obligate the Commonwealth of Kentucky to purchase any services or equipment under this Contract. The Commonwealth agrees, in entering into any contract, to purchase only such services in such quantities as necessary to meet the actual requirements as determined by the Commonwealth.

#### **Section 40.048—Addition or Deletion of Items or Services**

The Office of Procurement Services reserves the right to add new and similar items, with the consent of the Contractor, to this Contract. The Office of Procurement Services to effect this change will issue a Contract Modification. Until such time as the Contractor receives a Modification, the Contractor shall not accept Delivery Orders from any agency referencing such items or services.

#### **Section 40.050—Changes and Modifications to the Contract**

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in this Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS



45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of this Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

#### **Section 40.055—Changes in Scope**

The Commonwealth may, at any time by written order, make changes within the general scope of this Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in Section 40.050—Changes and Modifications to the Contract.

#### **Section 40.060—Contract Conformance**

If the Commonwealth Buyer determines that deliverables due under this Contract are not in conformance with the terms and conditions of this Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

#### **Section 40.065—Assignment**

The Contractor shall not assign this Contract in whole or in part or any payment arising there from without the prior written consent of the Commonwealth Buyer. Any purported assignment is void.

#### **Section 40.070—Notices**

After the Award of Contract, all programmatic communications with regard to day-to-day performance under this Contract are to be made to the Agency technical contact(s) identified below:

**Terry Stephens, Executive Director  
Office of Infrastructure Services  
Commonwealth Office of Technology  
101 Cold Harbor Drive  
Frankfort, KY 40601  
Telephone: 502-564-0867  
Email: [terry.stephens@ky.gov](mailto:terry.stephens@ky.gov)**

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Commonwealth Buyer identified below:

**Stephanie R. Williams, CPPO, CPPB, MPA**  
**Assistant Director**  
**Finance and Administration Cabinet**  
**Office of Procurement Services (OPS)**  
**Division of Technology Services Procurement**  
**Telephone: 502-564-8621**  
**Stephanier.williams@ky.gov**

**Section 40.075—Payment**

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person or his representative.

**Section 40.080—Contractor Cooperation in Related Efforts**

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

**Section 40.085—Subcontractors**

The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

Subcontractor changes, additions or removals, shall be approved by the Finance and Administration Cabinet.

#### **Section 40.090—Contractor Affiliation**

"Affiliate" shall mean a branch, division, or subsidiary that is effectively controlled by another party. If any affiliate of the Contractor shall take any action that, if done by the Contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

#### **Section 40.100—Commonwealth Property**

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this Contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

#### **Section 40.105—Insurance**

The Contractor shall provide professional liability insurance for its professional employees, public liability, property damage, and workers' compensation insurance, insuring as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the Contractor's operations under the terms of this Contract. In the event any carrier of such insurance exercises cancellation, notice of such cancellation shall be made immediately to the Commonwealth Buyer.

#### **Section 40.110—Confidentiality of Contract Terms**

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of this Contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of this Contract by all Parties, terms of this Contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

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#### **Section 40.115—Confidential Information**

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- Information which the Commonwealth has released in writing from being maintained in confidence;
- Information which at the time of disclosure is in the public domain by having been printed or published and available to the public in libraries or other public places where such data is usually collected; or
- Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

#### **Section 40.120—Advertising Award**

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

#### **Section 40.125— Patent or Copyright Infringement**

The Contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

The Commonwealth agrees to notify the Contractor promptly, in writing, of any such claim, suit or proceeding, and at the Contractor's expense give the Contractor proper and full information needed to settle and/or defend any such claim, suit, or proceeding.

If, in the Contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Commonwealth's written consent,

substitute other equally suitable equipment, materials, and information, or at the Contractor's options and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

The Commonwealth agrees that the Contractor has the right to defend, or at its option, to settle and the Contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the Contractor to the Commonwealth under this agreement. The Contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the Contractor.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the Contractor's written consent.

The Contractor shall have no liability for any infringement based upon:

- the combination of such product or part with any other product or part not furnished to the Commonwealth by the Contractor
- the modification of such product or part unless such modification was made by the Contractor
- the use of such product or part in a manner for which it was not designed

#### **Section 40.130—Permits, Licenses, Taxes and Commonwealth Registration**

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

#### **Section 40.135—Contract Claims**

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

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#### **Section 40.140—Rights and Remedies**

The rights and remedies of the Commonwealth provided in Section 40 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **Section 40.145—EEO Requirements**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The Contractor shall comply with all terms and conditions of the Act. A copy of the EEO forms may be obtained by downloading them from the E-Procurement website at <https://sslvpn.ky.gov/https/eprocurement.ky.gov>.

#### **Section 40.150—Provisions for Termination of the Contract**

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

#### **Section 40.160—Bankruptcy**

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

#### **Section 40.170—Conformance with Commonwealth & Federal Laws/Regulations**

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state or federal court in **Franklin County, Kentucky**.

#### **Section 40.190—Recycling**

The Contractor is required to comply with the recycling requirements of 200 KAR 5:330.

#### **Section 40.210—Accessibility**

Vendor hereby warrants that the products or services to be provided under this Contract comply with the accessibility requirements of section 504 of the Rehabilitation Act of

1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor further warrants that the products or services to be provided under this Contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the Vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

#### **Section 40.230— Access to Records**

The Contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this Contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to this Contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the Contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See Attachment A of this Contract)

#### **Section 40.240—Funding-Out Provision**

The Vendor agrees that if funds are not appropriated to the agency or are not otherwise available for the purpose of making payments, the agency shall be authorized, upon sixty (60) days written notice to the Vendor, to terminate this Contract. The termination shall be without any other obligation or liability of any cancellation or termination charges, which may be fixed by the contract.

#### **Section 40.250—Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by

Executive Order or otherwise to reduce contract hours, the Contract will be reduced by the amount specified in that document.

**Section 40.260—Limitation of Liability**

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245.



## V. Pricing and Pricing Assumptions

The pricing for this Contract is based on the assumptions as defined below. All pricing that has been provided is based on these assumptions and material changes to these assumptions may result in price change. This price change would be presented to the Governance Committee no later than the eighteenth (18<sup>th</sup>) month from Commencement Date of Services. For sake of clarity, these changes would not be considered a price change due to market or industry wide changes and not subject to the terms in Section 40.035 – Basis of Price Revisions.

### Assumptions

Volume Band	Volume Band in Impressions per month	B&W Only			
		Monthly Base Volume	Copy Only Units	Print Only Units	Copy / Print Units
1	0 - 2000	1,287	6	N/A	N/A
1A	0 - 500	1,287	N/A	27	55
1B	501 - 2000	1,287	N/A	28	56
2	2,001 - 7000	4,007	46	399	798
3	7,001 - 13,000	9,199	35	307	614
4	13,001 - 25,000	17,642	8	72	144
5	25,001 - 50,000	28,483	2	13	26
6	50,001+	70,700	1	6	12

Volume Band	Volume Band in Impressions per month	Color Enabled				
		Monthly Base B&W Volume	Monthly Base Color Volume	Copy Only Units	Print Only Units	Copy / Print Units
1	0 - 2000	643	643	1	5	10
2	2,001 - 7000	2,003	2,003	1	36	72
3	7,001 - 13,000	4,599	4,599	1	28	55
4	13,001 - 25,000	8,821	8,821	1	6	13
5	25,001 - 50,000	14,241	14,241	1	1	2
6	50,001+	35,350	35,350	1	1	1

Pricing: Legacy Devices and Existing Equipment Services Pricing

TYPE	RATE	UNIT	NOTES
Legacy Printer BW PPI (Consumables & Maintenance)	\$ 0.0254	Impression	Includes Maintenance & Consumables for Network-Attached and meter capable Devices (Most Models)
Legacy Printer COLOR PPI (Consumables & Maintenance)	\$ 0.0997	Impression	
Existing Equipment (Xerox not placed under this agreement)	\$ 12.00	Per Device per Month	MPS Services for Existing Equipment

OK

Pricing: New Equipment

COPY / Print - B&W (MFD)						
Volume Band		Make	Model	Speed (IPM)	Base Unit Cost per month	Price Per Impression (PPI) B&W
1A	0 - 500	Xerox	MFP 3300x	30	\$ 22.15	\$ 0.0199
1B	501 - 2000	Xerox	WC 5335 PT	35	\$ 84.54	\$ 0.0066
2	2,001 - 7000	Xerox	WC 5335 PT	35	\$ 84.54	\$ 0.0066
3	7,001 - 13,000	Xerox	WC 5335 PT	35	\$ 84.54	\$ 0.0066
4	13,001 - 25,000	Xerox	W 5150 PT	50	\$ 95.56	\$ 0.0058
5	25,001 - 50,000	Xerox	W 5755 APT	55	\$ 101.87	\$ 0.0050
6	50,001+	Xerox	W 5765 PT	65	\$ 129.83	\$ 0.0040

COPY / Print - COLOR (MFD)							
Volume Band		Make	Model	Speed (IPM)	Base Unit Cost per month	Price Per Impression (PPI) COLOR	Price Per Impression (PPI) B&W
1	0 - 2000	Xerox	MFP 6180 D	31/20	\$ 31.46	\$ 0.1341	\$ 0.0201
2	2,001 - 7000	Xerox	W 7125 P	25/25	\$ 95.64	\$ 0.0401	\$ 0.0061
3	7,001 - 13,000	Xerox	W 7535 P	35/35	\$ 138.94	\$ 0.0401	\$ 0.0051
4	13,001 - 25,000	Xerox	CQ 9303	60/55	\$ 286.29	\$ 0.0401	\$ 0.0046
5	25,001 - 50,000	Xerox	CQ 9303	60/55	\$ 286.29	\$ 0.0401	\$ 0.0046
6	50,001+	Xerox	CQ 9303	60/55	\$ 286.29	\$ 0.0401	\$ 0.0046

Print Only – B&W						
Volume Band		Make	Model	Speed (IPM)	Base Unit Cost per month	Price Per Impression (PPI) B&W
1A	0 – 500	Xerox	Phaser 3600DN	40	\$ 22.41	\$ 0.0086
1B	501 – 2000	Xerox	Phaser 3600DN	40	\$ 22.41	\$ 0.0086
2	2,001 - 7000	Xerox	Phaser 3600DN	40	\$ 22.41	\$ 0.0086
3	7,001 - 13,000	Xerox	Phaser 5550DN	50	\$ 53.87	\$ 0.0064
4	13,001 - 25,000	Xerox	Phaser 5550DN	50	\$ 53.87	\$ 0.0064
5	25,001 - 50,000	Xerox	Phaser 5550DT	50	\$ 67.44	\$ 0.0066
6	50,001+	Xerox	Phaser 5550DT	50	\$ 67.44	\$ 0.0066

Print Only - Color							
Volume Band		Make	Model	Speed (IPM)	Base Unit Cost per month	Price Per Impression (PPI) COLOR	Price Per Impression (PPI) B&W
1	0 – 2000	Xerox	Phaser 6700DN	42/42	\$ 31.09	\$ 0.0501	\$ 0.0096
2	2,001 - 7000	Xerox	CQ 8570 DT	40/40	\$ 30.43	\$ 0.0501	\$ 0.0081
3	7,001 - 13,000	Xerox	Phaser 7800DN	45/35	\$ 100.06	\$ 0.0501	\$ 0.0081
4	13,001 - 25,000	Xerox	Phaser 7800DN	45/35	\$ 100.06	\$ 0.0501	\$ 0.0081
5	25,001 - 50,000	Xerox	Phaser 7800DN	45/35	\$ 100.83	\$ 0.0501	\$ 0.0091
6	50,001+	Xerox	Phaser 7800DN	45/35	\$ 100.83	\$ 0.0501	\$ 0.0091

#### Pricing: Accessories

Section V of this Contract includes the accessories that may be added to the Equipment. All pricing requires the accessories to be included at time of the initial order. Any requests for upgrades will require additional charges for the implementation plus a revised charge for the accessory based on the remaining term of the Contract.

### Pricing: Moves and Training

During the installation of Xerox Equipment users will be provided training as part of the implementation process. However, Commonwealth may request additional training to be provided after the completion of Optimization and as such Xerox will provide training at the rates below.

SERVICES	PRINTER	MFD	NOTES
Intra-Site Move (Zone 1)	No Charge	No Charge	Moves within building are provided at no additional charge
Inter-Site Move (Zone 2)	\$ 225.00	\$ 225.00	Within sixty (60) miles of original placement or Xerox Service Base location
Inter-Site Move (Zone 3)	\$ 225.00 plus \$ 1.24 per mile	\$ 225.00 plus \$ 1.24 per mile	Outside of Zone-2 plus mileage charge
Additional Training (Post-Optimization)	\$ 100.00	\$ 250.00	Training after initial training provided at installation, per Device and up to two (2) hours; travel costs billed separately
Help Desk Training		\$ 1,250.00	Per Day Rate, final price based on number of days, devices, models and agenda; travel costs billed separately

### Pricing: Workflow, Document Management and Imaging Services for Phase 3 & 4

For the purpose of supporting the Commonwealth for Phases III & IV, Xerox will provide a proposal based on the scope of the Services required and in alignment with the scope as defined in this Contract.

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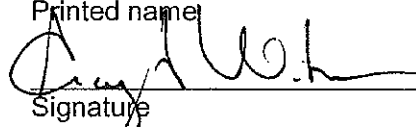
## VI. Approvals

This Contract is subject to the terms and conditions as stated. By executing this Contract, the parties verify that they are authorized to bind this Agreement and that they accept the terms of this Agreement.

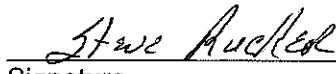
This Contract may be executed electronically in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Contract.

This Agreement may be executed electronically in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

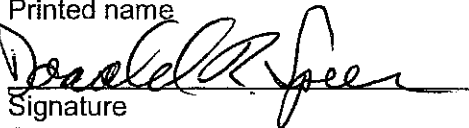
**1st Party: Xerox Corporation, as Contracting Agent ("Contractor" or "Xerox")**

<u>CECIL WATKINS</u>	<u>V.P. Finance GDO U.S.</u>
Printed name	Title
<u></u>	<u>9-21-12</u>
Signature	Date

**2nd Party: Finance and Administration, Commonwealth Office of Technology (COT)**

<u>STEVE RUCKER</u>	<u>COMMISSIONER</u>
Printed name	Title
<u></u>	<u>9-21-12</u>
Signature	Date

**Approved by the Finance and Administration Cabinet  
Office of Procurement Services**

<u>Donald R. Speer</u>	<u>Executive Director</u>
Printed name	Title
<u></u>	<u>9/21/12</u>
Signature	Date

**Attachments incorporated in this Contract**

Attachment B - Secretary's Order 11-004  
Attachment C - Service Level Agreements  
Attachment D - Current Devices for Legacy Pricing  
Attachment E - Definitions

**ATTACHMENT B**  
**SECRETARY'S ORDER 11-004**

04

## FINANCE AND ADMINISTRATION CABINET

### Vendor Document Disclosure

**WHEREAS**, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

**WHEREAS**, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

**WHEREAS**, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

**NOW, THEREFORE**, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.



- III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.
- IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

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## ATTACHMENT C SERVICE LEVEL AGREEMENT (SLA)

### Service and Supplies

Xerox uses only Xerox authorized replacement parts in Xerox equipment

#### 1) Service, Hours and Submission Methods

- a) Vendor shall perform full service support for all proposed copiers during normal business hours (8:00 a.m. – 5:00 p.m. local time).
- b) Vendor should offer additional shift coverage for the servicing of equipment and may impose an additional charge for such coverage. A shift shall be defined as an eight (8) hour period of time starting from 8:00 a.m. to 5:00 p.m. local time. These additional shift coverage options are:

# 2 shifts by 5 days (2 x 5);

# 3 shifts by 5 days (3 x 5);

# 1 shift by 7 days, (1 x 7);

# 2 shifts by 7 days (2 x 7);

# 3 shifts by 7 days (3 x 7).

- c) the Vendor shall provide the ability to extend the hours that service requests may be placed to match the extended hours required.

Xerox agrees. During the Due Diligence phase of this project, Xerox will work with the Commonwealth to identify any agencies that may require additional service hours. Extended service coverage may be provided at an additional cost.

Please note that Xerox uses proactive device management through the Xerox Tool Suite to maximize uptime of devices and minimize the need for "live" service calls. This enables remote delivery personnel to understand the status of each device on the fleet and proactively correct any issues. Through the Xerox Tool Suite, the Xerox MPS solution provides real-time remote monitoring and proactive correction of potential issues providing the ability to intervene before end users become aware of service degradation.

In addition, the Xerox Help Desk provides a convenient customer care resource to receive, document, track, and escalate commonly requested services for Xerox and non-Xerox branded devices. Help Desk professionals provide remote problem resolution, help with product features, function and operation, service call dispatch, supplies ordering, relocate equipment, order new or upgrade existing equipment.

- 3) Service Requests — Vendor shall provide toll free phone, local phone, facsimile, e-mail, internet and any electronic automated method to place service calls twenty-four (24) hours a day seven (7) days a week.

Xerox Agrees. End Users may contact the Xerox MPS Help Desk via 1-800 dedicated to the Commonwealth of Kentucky from 8 am to 8 pm EST. End Users may also choose to request Service via the web page designed specifically for the Commonwealth of Kentucky MPS program anytime 24 hours a day. Requests received via the website are logged into the Xerox Services Help Desk application and will be responded to by the Help Desk agents upon next business day. Users may also request service through a local phone number or commonly through a

client number that is forwarded to the Xerox MPS Help Desk Center for support. During afterhours the Xerox 1-800 number will have a custom message informing users of availability or how to place a request for Service.

- 4) **Electronic Meter Readings** — Vendor should provide an electronic method for providing periodic meter readings. These electronic methods may include online submission and/or automated electronic submission to be performed by the equipment in place via an available network connection if approved by the Commonwealth.

Xerox agrees. Xerox Device Manager (XDM) continuously monitors performance and captures volume metrics and alert activities for your operations. It feeds all this data to Xerox Service Manager (XSM) automatically to capture all incident data on configured alerts. Xerox Report Manager (XRM) consolidates the data on assets and incident related activities to generate reports on pre-defined schedules. These reports are used to calculate our actual performance against documented Service Level Agreements and Key Performance Indicators. Reporting is available to you and your team for discussion with your Xerox team at monthly performance reviews and quarterly business reviews.

- 5) **Service Level Agreement (see Section 60.040)** — Vendor shall maintain a Service Level Agreement (SLA) with penalties for failure to perform and should provide quarterly reports on Service Level compliance. A sample SLA is included in Attachment D.

Xerox Proposed Service Level Agreement (SLA)

Xerox agrees to maintain the following service levels defined below:

Performance Criteria	Target Level
Average Fleet Uptime	99% uptime across the fleet
Average On-Site Response Time (Console Units)	4 Hour average or better
Average On-Site Response Time (Desktop Units)	8 Hour average or better (next Business Day)
Average On-Site Response Time for all Console Units located more than 60 miles outside of the Louisville, Frankfort, Lexington and Covington MSA's	6 Hour average or better
First Time Fix	90% of all service calls or better

These service levels will be measured on a quarterly basis by the Vendor.

### 1.3 Calculation of Service Level Points

Once per quarter, Vendor will produce reporting to be evaluated by the Commonwealth against the Service Level Agreement and points will be assigned according to the following chart:

	Target Level	Below Target 1	Below Target 2	Below Target 3	Below Target 4
Average Fleet Uptime	99.0% or Higher	98.9% - 98.0%	97.9% - 97%	96.9% - 96%	95.9% or lower
Possible Points	4	3	2	1	0
	Target Level	Below Target 1	Below Target 2	Below Target 3	Below Target 4
Average On-Site Response Time (In Hours) - Desktop Units	8 or less	8.1 - 9	9.1 - 10	10.1 - 11	11.1 - 12
Possible Points	4	3	2	1	0
	Target Level	Below Target 1	Below Target 2	Below Target 3	Below Target 4
Average On-Site Response Time (In Hours) - Non-Metro Console Units	6 or less	6.1 - 7	7.1 - 8	8.1 - 9	9.1 - 10
Possible Points	4	3	2	1	0
	Target Level	Below Target 1	Below Target 2	Below Target 3	Below Target 4
Average On-Site Response Time (In Hours) - Metro Console Units	4 or Less	4.1 - 5	5.1 - 6	6.1 - 7	7.1 or more
Possible Points	4	3	2	1	0
	Target Level	Below Target 1	Below Target 2	Below Target 3	Below Target 4
First Time Fix	90% or Higher	89.9% - 80%	79.9% - 70%	69.9% - 60%	Less than 60%
Possible Points	4	3	2	1	0

These points will be added to produce a total Service Level score. This score will be used to determine the subsequent penalty according to the following schedule where the penalty can be up to 4% of the previous quarter's service and supplies billing (expressed as a negative %).

#### 1.4 Penalty Level

*One*

	Target Level	Below Target 1	Below Target 2	Below Target 3	Below Target 4
Total Score	20 – 16	15 - 11	10 - 6	5 – 1	0
Penalty/Award as a percentage of quarterly service and supplies billings	0%	-2.5%	-3.0%	-3.5%	-4.0%

The penalty shall be awarded to the Customer as a credit on the following period's service and supplies invoice.

#### 1.5 Equipment Performance

Vendor guarantees each machine specified within any maintenance agreement will perform to either a) the monthly copies between service calls as measured by machine on a quarterly basis by group and segment listed below and/or b) the monthly uptime as measured by machine on a quarterly basis by segment listed below.

Group	Volume Band	Quarterly Uptime
Copy / Print	All	95% or higher
Print Only	All	95% or Higher

Should any unit fail to maintain these copies between calls and or the monthly uptime, excluding service calls caused by operator error, that system will be subject to replacement at the Commonwealth's discretion on a like-for-like basis with then current technology. Prior to installing a substitute product, supplier will be allowed 90 days to remedy any quality or reliability issues. A designated factory authorized technician must certify each unit's ability to produce acceptable impressions or uptime. The guarantee will remain in effect for the term of the contract provided the equipment has not been subjected to abuse or neglect and has been continuously covered by a maintenance agreement. This replacement policy will remain in effect for the term of the contract and is subject to the Commonwealth remaining current with supplier's payment requirements.

#### 1.6 Additional Vendor Guarantees

**1.6.1 Training** – On-going training as requested by the Customer to be performed within one (1) week of requested date for on-site training and two (2) hours for phone/technical support. A penalty of \$50 per incident that does not meet the turnaround time specified above to be credited on the next service bill.

**1.6.2 Loaner Unit/Backup Production** – If any unit is inoperable for a period in excess of 72 hours, Vendor shall provide the Commonwealth with either:

*Am*

- i) A loaner unit of similar speed and capabilities until such time as the unit(s) covered by this agreement are operable, or
- ii) Provide the Commonwealth with off-site manned production capabilities to accomplish the work of the unit that is inoperable at the sole cost of the Vendor. Such costs shall be limited to cost of production (service and supplies), equipment, labor, power, transportation of jobs to and from the off-site production facility and facilities.

**1.6.3 Invoicing** – Vendor shall maintain timely, accurate invoicing, less service run impressions, as defined below. Failure on the vendor's part to maintain these levels as defined shall result in a \$50.00 per instance credit on the following invoice.

Measurable	Service Level
Timely Invoicing	Invoices will be submitted no later than the 25 <sup>th</sup> of the month immediately following the close of a billing period.
Accurate Invoicing	Invoices do not require any credits for miss-billing
Service Impressions	Vendor will credit all service run impressions within the same billing cycle

## 2.0 State Wide SLA's

**2.1 Timely Reporting** – Vendor shall produce contract usage reporting for the Commonwealth within 30 days of the closing of the reporting period. Failure to do so will result in a penalty of \$50.00 per day beyond the 30 day period.

**2.2 Web Based Reporting** – Vendor shall maintain the following lead times for web based reporting to be maintained on the dedicated web portal:

Item	Reporting Lead Time
Service Call	1 hour
Order Placement (for new equipment)	1 week
Order Placement (for consumables)	1 hour

Failure to do so will result in a penalty of \$50.00 per instance.

**2.3 Accuracy of Reporting** – The Commonwealth may request at any point proof of the reporting accuracy through the data set supporting the reporting. If the Commonwealth has reason to believe that multiple and systemic reporting errors exist, that cannot be corrected to the Commonwealth's satisfaction; the Commonwealth may require an audit by a third party. If errors are found, the Successful vendor must reimburse the Commonwealth for the cost of the auditor as well as correcting any administrative fee errors.

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**2.4 Accuracy of Billing** – The Commonwealth may request at any point proof of the billing accuracy through the data set supporting the billing. If the Commonwealth has reason to believe that multiple and systemic billing errors exist, that cannot be corrected to the Commonwealth's satisfaction; the Commonwealth may require an audit by a third party. If errors are found, the Successful vendor must reimburse the Commonwealth for the cost of the auditor as well as correcting any billing errors.

**2.5 Penalties** – All penalties under this, section two (2) of the Service Level Agreement shall be payable to the Commonwealth as a credit on invoicing. Such credit will be distributed among the Using Agencies according to the Commonwealth.

### **3.0 Glossary**

- 3.1. Service Call – An on-site technician visit due to machine error requiring the on-site services of a technician in order to remedy the error.
- 3.2. Service Response Time – The time required to solve a service call beginning from the moment the call is logged with the vendor until either, a copier technician arrives on site or the issue is solved through the vendor's phone support.
- 3.3. Equipment Downtime – The period of time a piece of equipment is waiting for service to be completed. This time starts from the time of the original service call into the service provider and ends once all repairs, part installations, equipment modifications and equipment configuration changes have been completed as this relates to the original service call.
- 3.4. Quarterly Equipment Uptime – the calculation of one minus the quarterly downtime on any unit divided by the average number of work hours within a quarter (519.99).
- 3.5. First Time Fix – The measurement of a successful service and technical support calls to remedy the underlying issue on the first service call. This measurement shall be that no other service calls are placed for the same issue within a 90 day period of time.

Please also note that all units are covered by the Xerox Total Satisfaction Guarantee outlined in this response.

- 6) **Service, Technician Training** — All service technicians should be factory trained by the OEM, certified to service the proposed equipment.

Xerox agrees. Xerox ensures that each Customer Service Engineer (CSE) receives comprehensive formal training to ensure they have the knowledge, skills and tools needed to provide you with excellent service. This training is provided in stages as follows:

**Pre-hire Testing:** Prior to being hired, the CSE must successfully complete a technical battery assessment. This ensures that the CSE has the necessary electromechanical, laser safety and other background skills to successfully perform in the job.

**Initial Self-Paced Training:** Once on board, the new CSE completes self-paced training modules on Xerography, Safety, Service Documentation and Introduction to Digital Products.

**Classroom Training:** After the new CSE passes a mastery test, he or she begins classroom training. This training is conducted at a Regional Learning Center and is delivered by a certified local trainer. This training includes an orientation as well as training on Portable Workstation (PC) operation and Xerox Services business applications.

**Product Training:** The CSE then attends product training. This training may take place either at the Entity Learning Center or the CSE may travel to the Xerox Services Education & Learning Organization at the Xerox learning facilities in Leesburg, VA, Henrietta, NY or El Segundo, CA. Product training includes operator functions and information specific to the products assigned to the CSE. The duration of this training will vary, depending on the product family the CSE will be servicing (training may range from 40 to 160 hours).

**Facilitated Training:** After completing product training, the CSE attends facilitated training that includes: Xerox Service Delivery Process, Call Handling, Parts Management and Customer Skills.

**Mentoring:** To ensure a smooth transition to performing as a CSE, a mentor is assigned to each CSE to complete a post-school checklist. The mentor observes the CSE to validate his or her technical capability and readiness for independent work.

This closed-looped process provides new CSEs with all the skills and knowledge they need to successfully service your equipment as effectively and efficiently as possible.

- 7) Service, Timeliness of Service — Vendor should maintain a four (4) hour service response time (8:00 a.m. through 5:00 p.m. local time), unless otherwise allowed by the Commonwealth.

Xerox has proposed an SLA in response to Question 7. We are open to arriving at a mutual agreement for Timeliness of Service Response Time. For a Xerox MPS solution, Xerox uses proactive device management through the Xerox Tool Suite to maximize uptime of devices. This enables remote delivery personnel to understand the status of each device on the fleet and proactively correct any issues. In addition, preventive maintenance is included on all service calls. Through the Xerox Tool Suite, the Xerox MPS solution provides real-time remote monitoring and proactive correction of potential issues providing the ability to intervene before end users become aware of service degradation.

In addition, the Xerox Help Desk provides a convenient customer care resource to receive, document, track, and escalate commonly requested services for Xerox and non-Xerox branded devices. Help Desk professionals provide remote problem resolution, help with product features, function and operation, service call dispatch, supplies ordering, relocate equipment, order new or upgrade existing equipment. With non-Xerox branded devices included, the Commonwealth can realize the benefits of a single process for all device help requests.

Our national service coverage planning model has been developed to optimize the size, location and skills of our workforce with the level and quality of service we commit to our customers. For on-site Customer Service Engineer average response time, products are planned in the following general categories:

- Black and White Printers: 8 hours

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- Color copiers / Multi-Function Devices: 3.5 – 4 hours
- Color Entry Production: 2.5 hours
- Color Solid Ink: 4 hours
- Digital Black and White Copiers and Multi-Function Devices: 4 – 8 hours
- Mono Light Production: 3 – 4.5 hours
- Mono Production: 2 – 4 hours
- Color Production: 2 hours
- Continuous Feed: 2 hours
- Fax: 8 hours

The above specifications represent the average on-site response time for these classes of products. There may be exceptions within categories, based on product maturity, geographic considerations like rural or remote customer sites, or service provided through authorized service delivery partners. Your Xerox Sales contact will provide response time delivery specifications based on the product mix of interest, your business locations, and specific service level requirements.

- 8) New equipment should be installed by the Vendor within thirty (30) days of request including network installation at the time of equipment installation. Excess installation time may be afforded by the Commonwealth. Optional software related to the equipment should be installed within five (5) working days of the equipment installation unless the Commonwealth extends this time.

Xerox agrees. Normal equipment lead times are 10-14 days from order placement to installation.

- 9) Network installation shall, where applicable, include: configuration of the device for the proper network protocols; and installation of the appropriate drivers. Vendor should further provide updates to drivers as released by the manufacturer.

Xerox agrees. Xerox and the Commonwealth will certify and document all device configurations, including network protocols, LDAP sign-on procedures (if required), driver acceptance, IP acquisition process, etc during the initial project set-up. As part of the site implementation walk through, the Xerox Implementation coordinator will review with the Commonwealth all of the device network processes and inspect prior to device implementation that all of the necessary processes have been scheduled at time of implementation. These processes include IP address, any specific device configuration changes to accommodate special print applications, driver installation on print servers. At the point of inspection the Xerox and Commonwealth site representatives will review with the respective resources to complete the pre-implementation activities so that the scheduled site implementation can be completed as per the MPS project plan.

At the time of the site implementation, the on-site Xerox implementation technicians will complete all of the necessary network protocols, assist the Commonwealth personnel in the driver set-up and complete a device implementation checklist as attached on the following page.

**MPS IMPLEMENTATION WORKSHEET**  
 Provides Back To Site Implementation Lead/Implementation Coordinator when complete  
 Each Printer/MFD Installed Needs a Complete Worksheet

**Company Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**City, State, Zip:** \_\_\_\_\_  
**Device Contact Name:** \_\_\_\_\_  
**Device Contact Phone:** \_\_\_\_\_

Installed Components	Equipment Information
Map ID Location	_____
Build Name, Floor #	_____
Room/Cube #	_____
Network Plate ID	_____
New Device Model	_____
New Device Serial #	_____
MAC Address	_____
IP Address	_____
Gateway	_____
Subnet Mask	_____
Print Server Name	_____
Print Queue Name	_____
Asset Tag #	_____
Meter Read	_____

**QUALITY CHECK**

Setup of New Printer Hardware Successful	YES	NO
Setup Network Configuration (IP, Subnet mask, Gateway)	YES	NO
Confirmed Test Print Sent from Network Team	YES	NO
End-User Driver Installation Successful	YES	NO
Test Print from End User PC successful	YES	NO
Tested Copy Functionality (MFD Only)	YES	NO
Tested Fax Functionality (MFD Only) to and from the device	YES	NO
Tested Scan To E-mail Capability (MFD Only)	YES	NO
Tested Secure Print - If Available	YES	NO
Tested Duplex Printing (Double Sided) If Available	YES	NO

**Comments:** \_\_\_\_\_

**Installer Name:** \_\_\_\_\_  
**Install Date:** \_\_\_\_\_

Installation Readiness - Sites/Equipment/Contact		
Network Drop Active	YES	NO
Fax Line Active (MFD Only)	YES	NO
Power Outlet Active	YES	NO
Space Available for Printer/MFD	YES	NO

Missing Item (Printer, Cable, etc.) Specify Below:  
 \_\_\_\_\_

**CALL COMPLETION SIGN OFF**

**CUST. NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**TECH. NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**\*\*Documents to Complete Installation\*\***

1) Completed Checklist	4) Secure Print Test Page
2) Final Configuration Page	5) Removal Device Config Sheet(s) if applicable
3) Network Print Test Page	

- 10) Vendor should make both PostScript and PCL print drivers available at no additional charge to the Commonwealth.

Xerox agrees. PostScript and PCL capabilities have been included in the proposed equipment.

- 11) Moves, equipment pickups and equipment trade-ins should be accomplished within fourteen (14) days of the request. Commonwealth may request an expedited move with less than fourteen (14) days lead time at additional charge to the Commonwealth.

Xerox agrees. Xerox equipment deliveries can normally be expected within two to three weeks following the receipt of an equipment/purchase order, except during times of product constraint. Xerox will inform the Commonwealth if a constraint condition exists and will provide a revised delivery date. If this is an emergency order Xerox will provide a loaner unit providing one is available. If the revised target delivery date is unacceptable or a loaner unit is not available, the Commonwealth can cancel the order without penalty to either party.

- 12) Software maintenance costs should be inclusive of available software patches and updates.

Xerox agrees for all Xerox equipment; for third party software products, additional fees may apply and will be disclosed during our recommendations.

- 13) The vendor should maintain an interactive web portal where authorized Commonwealth staff may view the status of all service related events, including but not limited to, service calls, installations, scheduled hardware maintenance, scheduled software updates and patches, etc. Also available on the web portal should be the configuration and status of all equipment installed.

Xerox agrees. The Xerox Services Portal is provided as a component of our Xerox MPS solution. It is a

secured customer portal that acts as a primary interface with the Xerox Managed Services program. Access can be controlled by user login, user role, user domain as well as Ipv4/v6 restriction. It presents a number of portal facing pages created to provide customers with a single point interface for all of their asset management needs including access to printer fleet, device status and supply levels. Additionally, users will be able to:

- Make requests for supplies, services or MACD
- Access device information, FAQs and How To's
- Find and install printers.
- Submit meter reads for non-networked devices
- Update user and asset information (for individuals who are device contacts.)
- Links to report locations to allow authorized users ability to access reports.

Various types of documentation are available and will be provided for each product installed on Xerox Services Portal:

- Quick Reference Guide handouts, which give step-by-step instructions on how to use the most common equipment features
- User and System Administrator Guides
- Electronic versions of all User and System Administrator Guides, available for download (from <http://www.xerox.com/support>) or on CD-ROM

User and System Administrator Training programs, available for download or usage on-line at [www.xerox.com/support](http://www.xerox.com/support)

The Online Support Assistant allows customers the option of using the Internet as their interface with Xerox, either in terms of a source of knowledge for self-help or as a means of contacting Xerox for support via email. The site offers multi-country / multilingual support and includes a searchable knowledge base, Browse Topics, FAQs, product specifications, and links to important resources allowing the customer a full range of support information.60.050

- 14) Replenishment of Consumables – Vendor shall automatically replenish consumables based on the device location and serial number. Additionally, the vendor shall, at a minimum, maintain one (1) spare toner (including each color enabled devices and waste toner collectors) at each equipment location.

Xerox agrees. The Xerox Tool Suite has the capability to remotely monitor network-connected devices. The monitoring includes supply status for

**Managed Print Services Portal**

Device Information

**Supplies**  
 Submit a Supply Request  
 View Supply Requests

**Service**  
 Submit a Service Request  
 View Service Requests

**Welcome**

**Managed Print Services**  
 Commonwealth of Kentucky & Xerox  
 working together to reduce costs & improve service.

Welcome! This portal has been developed to provide you with easy access to information regarding Managed Print Services. Xerox and the Commonwealth of Kentucky have partnered to provide state of the art technology and services to support the output environment.

**Info & Tips**  
 Xerox Supplies Recycling Program  
 Information on how to recycle consumables to save on cost and be environmentally friendly.

**How Green Is Your Office?**  
 Information on eco-friendly printing practices and resources.

consumables, like toner. The Tool Suite determines when toner reaches a replenishment threshold, and triggers an alert for the ordering replacement toner before the device becomes inoperable. Xerox will ship consumables and supplies to each site using common carriers. It is the responsibility of staff at each site to distribute consumables to the respective areas or end users at the site. Standard ground shipping expenses for supplies are included in the charges for the item, except for 2nd day, overnight, or other non-standard ground shipping requests. Consumables are shipped proactively and delivered on a just in time basis, minimizing the need to maintain an on-site stock. However, if requested, Xerox will keep extra supplies of consumables in an area designated by the Commonwealth

- 15) Vendor may assume legacy equipment leases and maintenance agreements. Vendor should make all payments on time for any assumed agreement assuming the Commonwealth is current with all payments to vendor.

Xerox is open to discussing assuming leases once remaining balances and termination provisions are able to be provided. Xerox is not proposing assuming any leases at this time.

## **ATTACHMENT D NETWORK DEVICE INVENTORY**



Attachment C  
Network Device Inver

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**ATTACHMENT E**  
**DEFINITIONS**

**Commencement Date of Services** - The date that Xerox starts to deliver the Managed Print Services as defined in this Contract. For this Contract, the intended Commencement Date of Services and billing is to be forty-five (45) days from the Effective Date of the Contract.

**Consumables** - Items integral to making an Impression and that are consumed in the Impression process including toner, drums, fuser agent, developer, ink cartridges, maintenance kits, feeder rollers, transfer kits, waste toner boxes and cleaning kits, for operation of the Devices provided under this Contract by Xerox on behalf of Commonwealth in order to fulfill the Services. Consumables exclude, among other things, staples, paper and other types of media.

**Device** - Equipment and Legacy output Devices including, but not limited to, laser/inkjet printers, analog/digital copiers, Multifunctional Devices, desktop scanners and fax machines. For the purposes of this Contract, the term Device will also mean an In-Scope Device.

**Due Diligence** - The activities undertaken by Xerox prior to the Commencement Date of Service to understand and validate the Current State costs of Commonwealth for future Services to be provided at the Commonwealth Sites contemplated under this Contract.

**Effective Date** - The date of this Contract as set forth on the cover page of this Contract.

**Equipment** - Hardware placed as part of this Contract by Xerox and includes Xerox and non-Xerox branded hardware.

**Existing Equipment** - All Xerox branded hardware which was leased by Commonwealth prior to the Commencement Date of Services through previously established Contracts and which will remain under their current agreements between Xerox and the Commonwealth and not subject to the terms and conditions including Termination, Service Level Agreements, penalties or credits as defined in this MPS Contract. However, some Services may be performed such as asset tracking, management, consumables ordering, maintenance dispatch and proactive services as defined in this MPS Contract but will remain under their own governed agreements.

**Legacy Devices** - All existing Commonwealth-owned printers and hardware that is considered In-Scope and supported by Xerox as part of the MPS Contract. Legacy Devices would include Xerox-branded, Commonwealth-owned printers.

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**MMC – (Monthly Minimum Charge)** - Covers Commonwealth's use of the Equipment for the Initial Term of this Contract ("Rental Term") from the date of install, and includes an asset charge, standard delivery and removal and the MPS Services.

**Mobile Print Offering** - is an offering that enables users to print remotely via email to certain enabled devices. ~~The Mobile Print Offering is an add-on offering to the Managed Print Services offering, which is enabled by certain of the Xerox Tools.~~

**Optimization** – The process that begins with the assessment of the current state output environment, development of the future state design and installation or re-use of devices agreed and approved by both Parties.

**PCR – (Project Change Request)** – The process by which the Parties make changes to this Contract as more specifically set forth in the Negotiated Items section under Project Change Request Process.

**PPI – (Price Per Impression)** - The charge basis for the In-Scope Devices for each in the Contract billed based on usage or volume. PPI charges are only applicable to printed pages. Scans, Faxes, and other non-printed impressions will not be counted.

**Xerox** - Xerox Corporation, a corporation having its principal place of business at 45 Glover Avenue, Norwalk, CT 06859, including its division, Global Document Outsourcing, and their authorized alternate sources that will provide the Services described in this Contract.

**Xerox Tools** – Certain proprietary tools used by Xerox to provide the Services, and any modifications, enhancements, improvements and derivative works thereof, as further outlined in this Contract.

