

PARTICIPATING ADDENDUM
NASPO ValuePoint
MULTI-FUNCTION DEVICES AND RELATED SOFTWARE, SERVICES AND CLOUD SOLUTIONS

MASTER PRICE AGREEMENT #187962
Administered by the State of Colorado
between
Konica Minolta Business Solutions USA Inc. (hereinafter “Contractor”) and the Commonwealth of
Massachusetts (hereinafter “Participating State”) for Statewide Contract ITE001

1. Scope

This addendum by and between the Commonwealth of Massachusetts Operational Services Division and Konica Minolta Business Solutions USA Inc. is based upon the NASPO ValuePoint Multi-Function Devices and Related Software, Services and Cloud Solutions Master Price Agreement with Konica Minolta Business Solutions USA Inc. This addendum hereby establishes Massachusetts Statewide Contract ITE001 for Multi-Function Devices and Related Software, Services and Cloud Solutions.

The Contractor has been awarded in the following categories:

- Group A - Multi-Function Devices, A3
- Group B - Multi-Function Devices, A4
- Group C - Production Equipment
- Group D - Single Function Printers
- Group E - Large/Wide Format Equipment
- Group F – Scanners
- Group G – Software
- Group H - Consumable Supplies
- Group I - Managed Print Services
- Sub-Group G1 - Software Related Services
- Sub-Group C1 - Standalone Production Devices
- Sub-Group C2 - Industrial Print Equipment
- Sub-Group D1 - Specialty Printers

2. Duration

The initial term of NASPO ValuePoint Multi-Function Devices and Related Software, Services and Cloud Solutions is two (2) years. In addition, this Contract has up to three (3) consecutive one (1) year additional terms, upon the mutual agreement of the Lead State and Contractor, by written Amendment. The total duration of the Master Agreement, including any extensions, shall not exceed five (5) years.

This Participating Addendum will expire upon the expiration of the master agreement, NASPO ValuePoint Multi-Function Devices and Related Software, Services and Cloud Solutions or the expiration of any contract renewals authorized by the Master Agreement and exercised by both the State of Colorado and the Commonwealth of Massachusetts.

3. Contract Pricing

Contractor will offer the following:

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Products and Pricing will be based upon the Agreement and the Contractor’s NASPO ValuePoint approved price list as of the date of signature of this Participating Addendum. If changes are made to the NASPO ValuePoint approved price list after the signature date of this Participating Addendum, Contractor shall provide a copy of the most recent NASPO ValuePoint approved price list, identifying such changes, to OSD in an editable, spreadsheet format. OSD reserves the right to identify particular products or services that are ineligible for purchase by Eligible Entities under ITE001.

4. Participation

The following are the Commonwealth entities (“Eligible Entities”) that are designated by the State Purchasing Agent as eligible to use this Addendum known as Statewide Contract ITE001:

1. Cities, towns, districts, counties and other political subdivisions
2. Executive, Legislative and Judicial Branches, including all Departments and elected offices therein
3. Independent public authorities, commissions and quasi-public agencies
4. Local public libraries, public school districts and charter schools
5. Public hospitals owned by the Commonwealth
6. Public institutions of higher education
7. Public purchasing cooperatives
8. Non-profit, UFR-certified organizations that are doing business with the Commonwealth
9. Other states and territories with no prior approval by the State Purchasing Agent, and
10. Other entities when designated in writing by the State Purchasing Agent.

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5. Commonwealth Modifications or Additions to Master Price Agreement

The following documents are incorporated into the resulting Contract as though fully set forth herein. In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- The Commonwealth of Massachusetts Terms and Conditions for Information Technology Contracts (**Attachment A**);
- The Commonwealth of Massachusetts Standard Contract Form (**Attachment B**);
- This Participating Addendum and its attachments;
- MA NASPO KMPF Lease (Attachment C)
- The executed Master Agreement;
- The Purchase Order;
- The Quote

The Contractor is prohibited from requiring Customers to sign any documents not referenced herein without the prior written approval of the Operational Services Division, which approval will be evidenced by the publication of the approved document on the Commonwealth’s eProcurement portal COMMBUYS, www.commbuys.com

The Commonwealth of Massachusetts requires Contractors to submit the following forms signed using accepted forms of signatures (see section 12):

- The Commonwealth of Massachusetts Standard Contract Form – (signing the Standard Contract Form signifies acceptance of the Commonwealth Terms and Conditions) (**Attachment B**)
- The Commonwealth of Massachusetts Substitute W-9 (**Attachment D**)
- Prompt Payment Discount Form (**Attachment E**)
- Supplier Diversity Plan Forms (**Attachment F**)
- Contractor Authorized Signatory Listing (Choose either one of the following attachments)
 - **Attachment G.1:** Corporation (C or S), Partnership, Trust/Estate, Limited Liability Company
 - **Attachment G.2:** Signature for Individual, Sole-Proprietor or Single Member LLC
- Electronic Funds Transfer Sign Up Form (**Attachment H**)

5.1.1. 5.1. Reporting Requirements

Reporting and Payment Due Dates

Reporting/Payment Period	Quarterly Report Due Date	Payment Due Date
January 1st – March 31st	April 30th	May 15th
April 1st – June 30th	July 30th	August 15th
July 1st – September 30th	October 30th	November 15th
October 1 – December 31st	January 30th	February 15th

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5.1.2. Quarterly Sales, Supplier Diversity Program expenditure, and Environmentally Preferable Products report

OSD has developed a centralized process for collecting sales, SDP, and EPP data. Sales data is used by OSD to measure progress on contract spend from year-to-year. The reporting assists with forecasting future contract spend, evaluating Vendor performance, and tracking Vendor spend towards environmental products and their SDP commitment. EPP reporting allows the EPP Program to annually quantify benefits and spend on sustainable products. Reporting also assists with the development of new contracts and/or new categories of services under existing contracts. In the event the Commonwealth adopts an alternate reporting system, Vendors will be required to utilize such system as directed by the OSD Contract Manager.

Completion and submission of the Quarterly Sales and SDP Report is a requirement for all awarded Vendors under this contract each quarter. An Awarded Vendor must submit a Quarterly Sales and SDP Report each quarter regardless of whether they have had sales during a quarter.

Vendors are required to submit reports through the Commonwealth’s Vendor Report Management (VRM) System which may be accessed via web portal at <https://massosd.gob2g.com>. Vendors must maintain records such that they are able to report, for all invoices submitted under the contract, the purchasing entity name, the invoice number, the invoice date, the product/service description, the unit of measure, the price per unit, the quantity, the line total purchase amount, and any environmentally preferable product reporting requirements as applicable.

5.1.3.

Statewide Contract Administration Quarterly Fee Payment and Report

This Statewide Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B and 801 CMR 4.02, and which is incorporated by reference into Statewide Contracts with the Operational Services Division (OSD). The price stated in any Bidder’s Quote price and any Contractor’s Statewide Contract shall be inclusive of this fee and Contractors shall not reflect this fee as a separate line item on customer invoices.

This fee will be based on 1% of the total dollar amounts, adjusted for credits or refunds, paid by Eligible Entities to the Statewide Contractor based on the statewide contract. All “Statewide Contracts” awarded, and all purchase orders and purchases made pursuant to this RFR are subject to this fee. Eligible entities are defined in Section 3, above.

Note that if the 1% Administration Fee is deductible as a business expense for federal income tax purposes, it is also deductible as an expense for Massachusetts tax purposes.

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5.1.3.1. Quarterly Fee Payment

For each Reporting Period, as defined above in the Reporting Requirements and Due Dates section, Statewide Contractor shall pay to OSD a fee equal to one percent (1%) of the total payments (adjusted for credits or refunds) received from all Eligible Entities that have purchased from the Statewide Contractor pursuant to this Agreement. All payments must be received by OSD on or before 45 days after the last day of the Reporting Period or a Contractor will be considered in breach of contract.

Quarterly payments will include any periods less than a full calendar quarter if a contract does not start on the first day of a quarter or end on the last day of the quarter.

Payments are to be made through a web-based secure payment center, which is accessible through a link provided to Statewide Contractors by OSD. All Administration Fee payments are to be made directly through the secure payment center. Payments may be made via Automatic Clearing House (ACH) or by using one of the following credit cards: American Express, Discover, MasterCard and/or Visa. Payment of the Administration Fee by check is not permitted unless a contractor makes a written request for an exception and demonstrates, to the satisfaction of OSD's Contract Manager, that compliance poses a hardship.

There is no charge to contractors to use ACH as OSD covers the nominal fee for using the ACH payment method. OSD will NOT cover the convenience fee for selecting credit card. The contractor is responsible for paying this non-refundable fee. The convenience fee (currently established by Statewide Contract PRF59A) is over and above the 1% Administration Fee and is subject to change during the term of the contract resulting from this bid. Prior to the due date for the Statewide Contractor's Administration Fee payment and report, the Statewide Contractor will receive an e-mail from OSD that includes all required information to submit payments via the secure payment center.

5.1.3.2. Statewide Contractor Administration Fee Quarterly Reporting Electronically submitting your payment, which is comprised of the 1% administration fee of the total payments received by the Contractor from all Eligible Entities for the Quarter, will serve as the Statewide Contractor Administration Fee Report.

Each Statewide Contractor shall submit one Statewide Contractor Administration Fee Report for each Statewide Contract for each Reporting Period. The electronic submission of the payment shall serve as submission of the Statewide Contractor Administration Fee Report.

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5.1.4. Audit

During the term of this Agreement and for a period of six years thereafter, the Operational Services Division, its auditors, the Office of the Inspector General, the Office of the Attorney General, or other authorized representatives shall be afforded access at reasonable times to Contractor's accounting records, including sales information on any system, reports, or files, in order to audit all records relating to goods sold or services performed pursuant to this Agreement. If such an audit indicates that Contractor has materially underreported Sales, then the Vendor shall be responsible for payment of the costs associated with the audit.

5.1.5. Other Terms

Contractors are responsible for compliance with all other contract reporting requirements including, but not limited to, contract detailed spend, Supplier Diversity Program (SDP) and other contract reports, as required by this contract.

All amounts payable by the Contractor to OSD under this Agreement that are not received by the due date specified shall bear simple interest from the date due until paid. The Late Payment Interest Rate is set by the Office of the State Comptroller on an annual basis and can be found by selecting the fiscal year in question on the Comptroller's Fiscal Year Updates webpage.

In the event of the Contractor's breach of this policy including, but not limited to, non-reporting, non-payment, late reporting/payment, under-reporting/payment, the Commonwealth reserves the right to pursue all recourse and penalties available including, but not limited to, contract suspension and contract termination. The Commonwealth is allowed to suspend, terminate, or debar pursuant to Massachusetts General Laws Chapter 29, Section 29F, as amended, and pursuant to Section 4 of the Commonwealth Terms and Conditions. In addition, in the event the Contractor fails to make any payment when due, the Contractor shall be liable to the Commonwealth for all expenses, court costs, and attorneys' fees (including inside counsel) incurred in enforcing the terms and conditions of this Agreement.

5.1.6. Ad hoc reports

The Commonwealth Contract Manager may request additional reports from time to time. The Contractor must comply with these requests to the extent that the information requested is available.

5.1.7. Reporting Sales

Contractors may report manually in the Vendor Report Management System website or may upload their report using a spreadsheet. It is advised to use the upload process for convenience. When reporting by spreadsheet Contractors must utilize the downloadable report template from the website. Contractors must fill in all requested columns in the report template. When

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a sales report is ready to submit the Contractor uploads their report using the “View/Add Sales Details” button and then select “Upload Sales Data.” This will prompt the website to review and validate the report at which time you may receive “errors” or “alerts” on your report. An error will generally mean that there is an error in the report itself, such as missing information or a line total not matching the unit price and quantity, and these will require correcting before the website will accept the report. An alert will generally mean that a customer name is not recognized, and you will have the option of changing it or submitting it to the system with a request for a name exception. In most cases for an alert the Contractor should submit their customer names as-is and request an exception and OSD will reply to the Contractor if more information is needed. All reports require the following information:

- a) Purchasing Entity Name (must be specific and not a generic name i.e. “Commonwealth”)
- b) Invoice Number
- c) Invoice Date (use “Short Date” format)
- d) Product/Service Description (be as descriptive as possible)
- e) Unit of Measure (i.e. “each” or “hour”)
- f) Unit Price
- g) Quantity
- h) Line Total Purchase Amount (must equal Unit Price X Quantity)

Contractors must comply with additional sales, environment and climate information about products or services (e.g., third-party certifications, standards, post-consumer recycled content, etc.), data requested by OSD on the quarterly sales report.

5.1.8. Reporting SDP

Contractors report their SDP spend by selecting the “View/Add Diverse Expenditures” button and searching for their partner/partners. Once you have added an SDP partner you will be able to add the amount spent with them in that quarter.

5.1.9. Submitting the Report

Once sales and SDP have been completed you must return to the “This Sales Report” page and click “Submit Report” in order to finish.

5.1.10.

Report Schedule

Quarterly Sales and SDP Reporting must be received by OSD on or before 30 days after the last day of the quarter (as specified above) or the Contractor will be in breach of contract. The Quarterly Sales and SDP Reporting periods are based on the Massachusetts fiscal year calendar.

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5.2. Supplier Diversity Program Plan Forms and Instructions (Attachment E)

Massachusetts [Executive Order 599](#) reaffirmed and expanded the Commonwealth’s policy to promote the award of state contracts in a manner that develops and strengthens diverse businesses. The Commonwealth’s [Supplier Diversity Program](#) (SDP) promotes the partnering of Awarded Statewide Contractors with [Supplier Diversity Office](#) (SDO) certified or recognized diverse business partners. All Bidders are required to make a meaningful financial commitment by partnering with one or more SDO certified or recognized business enterprises or non-profits. Bidders must identify their commitment in the form of a specific percentage of sales under the resulting contract which will be spent with an SDP partner or partners on a Massachusetts fiscal year basis. The percentage commitment will extend for the life of any resulting contract. Bidders will not be awarded unless they submit an acceptable SDP plan.

5.2.1. Eligible SDP Partner Certifications

The list below identifies the types of SDO certified business enterprises and non-profits that are eligible to be SDP partners. The Commonwealth reserves the right to amend this list at any time.

- Minority-Owned Business Enterprise (MBE)
- Minority Non-Profit Organizations (M/NPO)
- Women-Owned Business Enterprise (WBE)
- Women Non-Profit Organization (W/NPO)
- Veteran-Owned Business Enterprise (VBE)
- Service-Disabled Veteran-Owned Business Enterprise (SDVOBE)
- Disability-Owned Business Enterprise (DOBE)
- Lesbian, Gay, Bisexual, and Transgender Business Enterprise (LGBTBE)

5.2.2. Eligible Types of Business-to-Business Relationships

Bidders and Contractors may engage SDP Partners in the following two ways:

Subcontracting, defined as a partnership in which the SDP partner is involved in the provision of products and/or services to the Commonwealth.

Ancillary Products and Services, defined as a business relationship in which the SDP partner provides products or services that are not directly related to the Contractor’s contract with the Commonwealth but may be related to the Contractor’s own operational needs.

Other types of business-to-business relationships are not acceptable under this contract. All provisions of this RFR applicable to subcontracting shall apply equally to the engagement of SDP Partners as subcontractors.

5.2.3. Program Flexibility

The SDP encompasses the following provisions to support Bidders in establishing and maintaining sustainable business-to-business relationships meeting their needs:

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- SDP Partners are **not** required to be subcontractors.
- SDP Partners are **not** required to be Massachusetts-based businesses.
- SDP Partners **may be changed or added** during the term of the contract if the Contractor continues to meet its SDP Commitment.

5.3. Climate and Sustainable Products and Service Requirements

5.3.1. Environmental Requirements for Contractor

5.3.1.1. Accurate Labeling of Environmentally Preferable Products (EPPs)

The Purchasing Entity reserves the right to require the Vendor to remove any environmental claims that are false, vague, misleading or unsubstantiated in catalogs, price sheets, websites or other marketing materials that are provided to the Purchasing Entity under this contract. The Vendor must label imaging equipment with EPEAT registration level and identify toner as OEM or Remanufactured in any catalogs, marketing materials, price lists, and online ordering portal associated with this contract. Upon request of the Purchasing Entity, the Vendor must provide documentation that each product sold has the required third-party certification(s) or other environmental attributes listed below.

If the Contractor is offering an online ordering catalog through COMMBUYS PunchOut functionally, it must have an option to filter by EPP products.

5.3.1.2. Training

Contractor must offer educational/marketing materials and at least one training (at the request of the contract user) that can be accessed by contract users explaining its EPP labeling and reporting practices.

5.3.1.3. Blocking Products

Contractor agrees to block from its ordering system any products that do not comply with the Environmental Specifications listed below or that are not in compliance with environmental laws adopted by the Commonwealth of Massachusetts. OSD may consider failure to comply with the Environmental Specifications for this contract as well as the EPP labeling, reporting, and training requirements described above to be grounds for termination of this contract.

5.3.1.4. Packaging

Contractor may not offer packaging containing intentionally added lead, cadmium, mercury, hexavalent chromium or PFAS (measured as total organic fluorine) above 100 ppm. In addition, the Contractor must agree to work with all distributors to remove products packaged with

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polystyrene void fill such as packing “peanuts” and report annual progress to OSD in addition to alternative environmentally preferable packaging that is used.

5.3.2. Environmental Specifications

Products and services offered on this contract must comply with the Commonwealth of Massachusetts’ environmental, health and safety laws, regulations, and executive orders. This includes, but is not limited to:

Executive Order 515: Establishing an Environmental Purchasing Policy for Executive Departments. View the Environmentally Preferable Products (EPPs) Procurement Program General Information, Requirements and Guidance for detailed information about the program at <https://www.mass.gov/doc/epp-general-information-requirements-and-guidance/download>.

Senate Bill 9: An Act Creating a Next Generation Roadmap for Massachusetts Climate Policy aims to achieve Net Zero emissions by 2050, which furthers the Commonwealth’s efforts to combat climate change and protect vulnerable communities. The full Act may be viewed at <https://malegislature.gov/Bills/192/S9>.

Executive Order 594: Leading By Example: Decarbonizing and Minimizing Environmental Impacts of State Government requires all eligible state agencies to assess and implement strategies to mitigate greenhouse gas emissions and other environmental impacts when planning for and undertaking projects related to the design, construction, operations, and maintenance of state facilities, and the procurement of goods and services, including vehicles. View EO 594: Leading By Example requirements at <https://www.mass.gov/executive-orders/no-594-leading-by-example-decarbonizing-and-minimizing-environmental-impacts-of-state-government>.

Appliance Efficiency Standards: Pursuant to G.L. c. 25B. The Department of Energy Resources (DOER) has adopted regulations under 225 CMR 9.00, which can be accessed at <https://www.mass.gov/regulations/225-CMR-900-appliance-energy-efficiency-standards-testing-and-certification-program>, for testing the energy efficiency of certain appliances and lamps. Manufacturers must certify Covered Products to DOER in the Northeast Energy Efficiency Partnerships (NEEP State Appliance Standards Database which can be found at <https://neep.org/SASD>. Covered products that are not certified are prohibited under this contract. Products covered by this regulation may not be shipped for sale in Massachusetts unless they have been certified by the DOER.

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Vendor agrees to adhere to the Environmental Specifications listed below. In addition, the Commonwealth of Massachusetts reserves the right to adopt additional environmental specifications designed to protect human health and the environment over the life of this contract.

EPEAT Requirements

All imaging equipment offered for sale must meet the Global Electronics council Electronic Procurement Environmental Assessment Tool (EPEAT) bronze registration or higher as identified in the NASPO ValuePoint Multi-Function Devices and Related Software Services and Cloud Solutions Contract and prefers those that are labeled as EPEAT Climate+. In addition, the Commonwealth requires the following categories to also meet EPEAT Bronze requirements:

Group D - Single-function Printers

Group F – Scanners

Firmware

Vendors must refrain from issuing any firmware updates that intentionally disable remanufactured cartridges that, at the time of the firmware update, use aftermarket electronic circuitry to operate with the registered product's then-current manufacturer firmware.

Toner Cartridges

All toner cartridges allowable for sale under this agreement must also abide by the requirements outlined in the Commonwealth's ITE001 for Multi-Function Devices and Related Software, Services and Cloud Solutions.

Must be installed with Duplex Mode ON

All imaging equipment should be installed with duplex mode set to “on” by default

5.4. COMMBUYS Market Center

COMMBUYS is the official source of information for this Bid and is publicly accessible at no charge at www.commbuys.com. Information contained in this document and in COMMBUYS, including file attachments, and information contained in the related Bid Questions and Answers (Q&A), are all components of the Bid, as referenced in COMMBUYS, and are incorporated into the Bid and any resulting contract.

Vendors are solely responsible for obtaining all information distributed for this Contract via COMMBUYS.

It is Contractor's responsibility to check COMMBUYS for any amendments, addenda or modifications to this Contract.

5.4.1. COMMBUYS Subscription

A free COMMBUYS Seller subscription provides value-added features, including automated email notification associated with posting and modifications to COMMBUYS records.

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Contractor agrees that: (1) they will maintain an active seller account in COMMBUYS; (2) they will, when directed to do so by the procuring entity, activate and maintain a COMMBUYS-enabled catalog using Commonwealth Commodity Codes; (3) they will comply with all requests by the procuring entity to utilize COMMBUYS for the purposes of conducting all aspects of purchasing and invoicing with the Commonwealth, as added functionality for the COMMBUYS system is activated; (4) they understand and acknowledge that all references to the ComPASS website or related requirements, shall be superseded by comparable requirements pertaining to the COMMBUYS website; and (6) in the event the Commonwealth adopts an alternate market center system, successful Bidders will be required to utilize such system, as directed by the procuring entity. Commonwealth Commodity Codes are based on the United Nations Standard Products and Services Code (UNSPSC).

The COMMBUYS system introduces new terminology, which bidders and contractors must be familiar with in order to conduct business with the Commonwealth. To view this terminology and to learn more about the COMMBUYS system, please visit the COMMBUYS Resource Center.

Contractor is required to maintain a valid email address in COMMBUYS in order to receive notifications.

COMMBUYS supports a supplier's Web-based catalog from which purchases can be made by any eligible COMMBUYS buyer. Contractors who already maintain or are developing a Website for product ordering are advised that links to their sites will only be enabled within COMMBUYS if the system is limited to or can distinguish between Statewide Contract customers and retail or commercial customers. Contractors who already maintain or are developing a Website for product information are advised that links to their site will only be enabled within COMMBUYS if content is restricted to terms authorized under their Statewide Contract.

6. Performance and Payment Timeframes

All term leases, rentals, maintenance or other agreements for services entered into during the duration of this Contract and whose performance and payment time frames extend beyond the duration of this Contract shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No written agreement shall extend five (5) years beyond the final termination date of this Statewide Contract. No new leases, rentals, maintenance or other agreements for services may be executed after the Contract has expired.

7. RENTAL, LEASES

Rentals are limited to a maximum of six (6) months.

Service and maintenance plans for leased devices may not be financed as part of the lease; rather they must appear as separate line items on vendor quotations and invoices.

Leases (including short term rentals) are subject to all the terms and conditions of this Participating Addendum and Section III F (Leasing and Rental Terms and Conditions) of the NASPO ValuePoint

Master Agreement. The Commonwealth expressly acknowledges that its lease of any products is expressly conditioned upon full acceptance of these terms.

8. Primary Contacts

The primary contact individuals for this participating addendum are as follows (or their named successors):

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Lead State

Name	Nikki Pollack
Address	Department of Personnel & Administration State Purchasing & Contracts Office 1525 Sherman Street, 5th Floor Denver, Co 80203
Telephone	303-866-5671
Fax	
E-mail	nikki.pollack@state.co.us

Cooperative Contract Manager

Name	Joel Atkinson
Address	
Telephone	(850) 848-1250
Fax	
E-mail	jatkinson@naspovaluepoint.org

Contractor – Local Government Account Manager

Name	Nitzia Payne
Address	1595 Spring Hill Road, Suite 410 Vienna, VA 22182
Telephone	(703) 637-1540
Fax	
E-mail	npayne@kmbs.konicaminolta.us

Participating Entity

Name	Ryan Johnson Strategic Sourcing Manager (SSM)
Address	Operational Services Division, One Ashburton Place, Room 1608 Boston, MA
Telephone	781-470-4384
Fax	617-720-4527
E-mail	Ryan.Johnson2@mass.gov

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8. Purchase Order Instructions

All orders should contain the following (1) Mandatory Language “PO is subject to Massachusetts Statewide Contract ITE001 and NASPO ValuePoint Contract # 187962” (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount. Purchase Orders and payments may be made only to the Contractor identified above and on COMMBUYS.

9. Price Agreement Number

All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Massachusetts Statewide Contract number: ITE001 and the NASPO ValuePoint price agreement number: 187962].

10.OSD Logo Use

Successful Bidders will be provided a COMMBUYS Logo and Statewide Contract Logo (Statewide Contract Logos) for print and online marketing of said Contractor’s goods and services available on Statewide Contract. Statewide Contract Logos may only be used for the purpose of promoting the use of Statewide Contracts and does not guarantee any sales of services and/or commodities marketed. Statewide Contract Logos are only allowed to be used by Statewide Contractors who are registered on COMMBUYS and only to market those services/commodities available on their Statewide Contract(s). Statewide Contractor must adhere to all terms in their Statewide Contract(s) and be in good standing, which includes not having any outstanding issues (such as non-compliance with any reporting requirements) and not being debarred, terminated, or suspended, as determined by the Commonwealth Contract Manager and Strategic Sourcing Team (SST). COMMBUYS and other marks, graphics, logos, page headers, icons, scripts unique to OSD on www.mass.gov and www.commbuys.com are the trademarks and/or trade dress and property of the Commonwealth, use of which is prohibited without prior approval by the Commonwealth. In no case shall such trademarks or trade dress be used in any manner that is likely to cause confusion, that disparages or discredits the Commonwealth and in connection with any service or product that is not sponsored, endorsed, or produced by the Commonwealth. OSD reserves the right to accept or reject any proposed uses of the Statewide Contract Logos which do not fully support these terms. All proposed online and print materials are subject to review by OSD, which may assess the appropriateness of proposed content. Use of the logos which does not, in the opinion of OSD, support the general purpose outlined herein may be rejected, including uses that contain libelous, slanderous, obscene, profane, violent, criminal, or otherwise objectionable content, which will be rejected. Statewide Contractors must adhere to the Statewide Contractor Marketing Requirements as set forth in each Statewide Contract. Statewide Contractor acknowledges that their having a Statewide Contract and their use of Statewide Contract Logos is not an endorsement of the Contractor by the Commonwealth or OSD. All marketing materials must be reviewed by the Contract Manager and OSD’s Marketing Department for approval before distribution. Should the Statewide Contractor be instructed by OSD to cease utilizing the COMMBUYS Logo and/or Statewide Contract Logo, Statewide Contractor shall promptly remove the logo(s) from

PARTICIPATING ADDENDUM
NASPO ValuePoint
MULTI-FUNCTION DEVICES AND RELATED SOFTWARE, SERVICES AND CLOUD SOLUTIONS

MASTER PRICE AGREEMENT #187646
Administered by the State of Colorado
between
Konica Minolta Business Solutions USA Inc. (hereinafter "Contractor") and the Commonwealth of
Massachusetts (hereinafter "Participating State") for Statewide Contract ITE001

all printed and electronic marketing material. OSD reserves the right to terminate the OSD Logo Use of all Statewide Contractors at any time, for any reason, and/or modify the logos. Upon request of OSD to update logo(s) to newer versions, Statewide Contractors shall promptly update their materials accordingly. Marketing information must be factual in nature in order to promote those goods and/or services for which the Contractor has a Statewide Contract and must not be critical of other Statewide Contractors; and Contractors must not display the Commonwealth of Massachusetts Seal for commercial purposes because use of the coat of arms and the Great Seal of the Commonwealth for advertising or commercial purposes is prohibited by law. Contractors may only utilize email lists to market to Commonwealth eligible entities if such emails contain an "Unsubscribe" option in order to allow recipients to opt out of receiving such emails.

11. Required Attachments

- Attachment A – Commonwealth of Massachusetts Terms and Conditions
- Attachment B – Commonwealth of Massachusetts Standard Contract Form
- Attachment C – Massachusetts Substitute W-9 Form
- Attachment D – Commonwealth of Massachusetts Prompt Payment Discount Form
- Attachment E – Commonwealth of Massachusetts Supplier Diversity Program Forms
- Attachment F.1 or F.2 – Contractor Authorized Signatory Listing
- Attachment G – Authorization for Electronic Funds Transfer

12. Accepted Forms of Signatures

1. Traditional "wet signature" (ink on paper);
2. Electronic signature that is either:
3. Hand drawn using a mouse or finger if working from a touch screen device; or
4. An uploaded picture of the signatory's hand drawn signature
5. Electronic signatures affixed using a digital tool such as Adobe Sign or DocuSign.

If using an electronic signature, the signature must be visible, include the signatory's name and title, and must be accompanied by a signature date.

Please be advised that typed text of a name not generated by a digital tool such as Adobe Sign or DocuSign, even in computer-generated cursive script, or an electronic symbol, are not acceptable forms of electronic signature.

13. Software: Purchasing Entities that acquire software shall be subject to the license agreements distributed with such software. Software subscriptions shall not be subject to automatic renewals, unless otherwise agreed to in an Order. Purchasing Entities shall have the option to finance software subscriptions by utilizing Contractor lease and rental rates. Notwithstanding the foregoing, in the event of a conflict in language between an end user license agreement (EULA) and this Participating Addendum, the language in the Participating Addendum will supersede and control. In addition, any language in a EULA which violates a Participating State's constitution or a statute of that state; or violates the laws of a local entity making a purchase, will be deemed void, and of no force or effect.

14. Individual Customer

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and

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political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the NASPO ValuePoint Master Price Agreement Contract # 187962 (administered by NASPO ValuePoint together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary to or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

Authorizing Signature for the Contractor Signature and Date Must Be Captured at Time of Signature X  Kristen McKenna (Dec 18, 2024 16:19 EST)	Authorizing Signature for the Commonwealth Signature and Date Must Be Captured at Time of Signature X  Anna Shpigel (Jan 7, 2025 12:19 EST)
Date: 12/18/2024	Date: 01/07/2025
Print Name: Kristen McKenna	Print Name: Anna Shpigel
Print Title: Director, Government Contracts	Print Title: Deputy Assistant Secretary



For office use only (Check one): ☐ Windsor ☐ Dealer

**Attachment C
Master Premier
Lease Agreement**

APPLICATION NUMBER

KONICA MINOLTA
AGREEMENT NUMBER

This Master Premier Lease Agreement ("Agreement") is written in "Plain English". The words **Lessee, you** and **your**, refer to the customer (and its guarantors). The words **Lessor, we, us** and **our**, refer to **Konica Minolta Business Solutions U.S.A., Inc., its subsidiaries and affiliates.** (Supplier)

CUSTOMER INFORMATION

FULL LEGAL NAME			STREET ADDRESS	
CITY	STATE	ZIP	PHONE*	FAX
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING STREET ADDRESS	
CITY	STATE	ZIP	E-MAIL	
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				

*By providing a telephone number for a cellular phone or other wireless device, you are expressly consenting to receiving communications (for NON-marketing or solicitation purposes) at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from Lessor and its affiliates and agents. This Express Consent applies to each such telephone number that you provide to us now or in the future and permits such calls. These calls and messages may incur access fees from your cellular provider.

SUPPLIER INFORMATION

NAME OF SUPPLIER			STREET ADDRESS	
CITY	STATE	ZIP	PHONE	FAX

TERMS AND CONDITIONS (THIS AGREEMENT CONTAINS PROVISIONS SET FORTH BELOW, ALL OF WHICH ARE MADE A PART OF THIS AGREEMENT.)

1. LEASE AGREEMENT: You agree to lease from us the personal property as identified in the ITE001 Equipment Confirmation Form ("ECF") to this Master Premier Lease Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. You may issue ITE001 Equipment Confirmation Forms with, or without, Purchase Orders that incorporate by reference, this Master Premier Lease Agreement and if so incorporated by reference, each such ECF will constitute a Schedule for the purposes of this Master Premier Lease Agreement. Each Schedule is a separate lease. To the extent the Equipment includes intangible property or associated services such as periodic software licenses and prepaid database subscription rights, such property shall be referred to as the "Software". You agree to all of the terms and conditions contained in this Agreement and any Schedule, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement"), subject to the NASPO ValuePoint Master Agreement and the Commonwealth of Massachusetts Participating Addendum thereto, collectively Massachusetts Statewide Contract ITE001. This Agreement may be modified only by written Agreement and not by course of performance. This Agreement becomes valid upon execution by or for us. The Equipment is deemed accepted by you under the applicable Schedule unless you notify us within ten (10) days of delivery or written acceptance, whichever occurs first that you do not accept the Equipment and specify the defect or malfunction. In that event, at our sole option, we or our designee will replace the defective item of Equipment or this Agreement will be canceled and we or our designee will repossess the Equipment. You agree that, upon our request, you will sign and deliver to us, a delivery and acceptance certificate confirming your acceptance of the Equipment leased to you. This Agreement will continue from the Billing Date for the Term shown. Any extension or renewal of the Term will be in accordance with the Term extension and renewal terms and conditions of the NASPO ValuePoint (lead by the State of CO) Contract Number 140597 as modified by that certain Participating Addendum between you and Konica Minolta Business Solutions U.S.A., Inc. **THE BASE RENTAL PAYMENT SHALL BE ADJUSTED PROPORTIONATELY UPWARD OR DOWNWARD, IF THE ACTUAL COST OF THE EQUIPMENT EXCEEDS OR IS LESS THAN THE ESTIMATE PROVIDED TO LESSEE.** If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. You authorize us to insert or correct missing information on this lease including your proper legal name, serial numbers, other numbers describing the Equipment and other omitted factual matters. You agree that in connection with requests for financing, we may ask any municipal or other local government agency or instrumentality for updated or annual and/or quarterly financial statements. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignee or third parties having an economic interest in this Agreement, any Schedule or the Equipment.

2. RENT: Rent will be payable in installments, each in the amount of the Monthly Payment (or other periodic payment) shown plus any applicable sales and/or use tax. If you do not provide a tax exemption certificate upon request and we pay any tax on your behalf, you agree to reimburse us promptly. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or as otherwise agreed. We will have the right to apply all sums received from you to any amounts due and owed to us under the terms of this Agreement. **Except as stated otherwise in the Commonwealth Terms and Conditions or for a valid event of non appropriation, your obligation to make all Monthly Payments (or other periodic payment) hereunder is absolute and unconditional and you cannot withhold or offset against any Monthly Payments (or other periodic payment) for any reason** You agree that you will remit payments to us in the form of company checks (or personal checks in the case of sole proprietorships), direct debit or wires only. You also agree cash and cash equivalents are not acceptable forms of payment for this Agreement and that you will not remit such forms of payment to us. **WE BOTH INTEND TO COMPLY WITH ALL APPLICABLE LAWS. IF IT IS DETERMINED THAT YOUR PAYMENTS UNDER THIS AGREEMENT OR UNDER A SCHEDULE RESULT IN AN INTEREST PAYMENT HIGHER THAN ALLOWED BY APPLICABLE LAW, THEN ANY EXCESS INTEREST COLLECTED WILL BE APPLIED TO AMOUNTS THAT ARE LAWFULLY DUE AND OWING UNDER THIS AGREEMENT OR WILL BE REFUNDED TO YOU. IN NO EVENT WILL YOU BE REQUIRED TO PAY ANY AMOUNTS IN EXCESS OF THE LEGAL AMOUNT.**

(Continued on back)

EXCEPT AS PROVIDED HEREIN, THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT: THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

LESSOR ACCEPTANCE

Konica Minolta Business Solutions U.S.A., Inc.			
LESSOR	AUTHORIZED SIGNER	TITLE	DATED

CUSTOMER ACCEPTANCE

	X	
FULL LEGAL NAME OF CUSTOMER (as referenced above)	AUTHORIZED SIGNER	DATED
FEDERAL TAX I.D. #	PRINT NAME	TITLE

To help the Government fight the funding of terrorism and money laundering activities, Federal Law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. What this means is, when you open an account, we will ask for your name, address and other information that will allow us to identify you; we may also ask to see identifying documents.

See reverse side for additional terms and conditions.

3. OWNERSHIP OF EQUIPMENT: We are the Owner of the Equipment and have sole title (unless you have a \$1.00 purchase option) to the Equipment (excluding software). You agree to keep the Equipment free and clear of all liens and claims. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory.

4. WARRANTY DISCLAIMER: EXCEPT TO THE EXTENT PREEMPTED BY SECTION 11.4.1 OF THE REQUEST FOR RESPONSE, WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS". You acknowledge that none of Supplier or their representatives are our agents and none of them are authorized to modify the terms of this Agreement or on any Schedule. No representation or warranty of Supplier with respect to the Equipment will bind us, nor will any breach thereof relieve you of any of your obligations hereunder. You are aware of the name of the manufacturer or supplier of each item of Equipment and you will contact the manufacturer or supplier for a description of your warranty rights. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or Supplier of the Equipment. **THIS AGREEMENT AND EACH SCHEDULE CONSTITUTES A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.** You agree that any manufacturer or Supplier warranty is a separate and independent obligation of Supplier to you, that no assignee of the payments under any Schedule shall have any obligation to you with respect to such warranty and, except as otherwise may be prohibited by applicable law, Commonwealth's Terms and Conditions, rule or statute, that your obligations under this Agreement are not subject to setoff, withholding, reduction, counterclaim or defense for any reason whatsoever including, without limitation, any claim you may have against Supplier.

5. LOCATION OF EQUIPMENT: You will keep and use the Equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, if you do not purchase the Equipment, you will make the Equipment available for pick up, in retail resaleable condition (normal wear and tear acceptable), full working order, and in complete repair.

6. LOSS OR DAMAGE: Upon acceptance of the Equipment, you are responsible for the risk of loss or for any destruction of or damage to the Equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage and you will then pay to us the present value of the total of all unpaid Monthly Payments (or other periodic payments shown) for the full Agreement term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at four percent (4%) per year. Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage.

7. COLLATERAL PROTECTION AND INSURANCE: You are responsible for installing and keeping the Equipment in good working order. Except for ordinary wear and tear, you are responsible for protecting the Equipment from damage and loss of any kind. If the Equipment is damaged or lost, you agree to continue to pay the amounts due and to become due hereunder without setoff or defense, except as otherwise may be prohibited by applicable law, Commonwealth rule or statute. You agree to cooperate with us and any insurer in the placement of any coverage and claims thereunder.

8. INDEMNITY: Subject to the Commonwealth Terms and Conditions, we are not responsible for any loss or injuries caused by the installation or use of the Equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment. **We reserve the right to control the defense and to select or approve defense counsel. This indemnity survives the expiration or termination of this Agreement. Nothing contained in this Agreement shall abrogate the right of the Commonwealth's Office of the Attorney General to defend and control the defense of the Customer in connection with Claims.**

9. TAXES AND FEES: You agree to pay when invoiced all sales and/or use taxes and fees relating to this Agreement or the Equipment unless a valid exemption certificate is supplied. We will file all tax returns. We reserve the right to charge a fee upon termination of this Agreement either by trade-up, buy-out or default. Any fee charged under this Agreement may include a profit and is subject to applicable sales and/or taxes.

10. ASSIGNMENT: EXCEPT AS MAY BE PROVIDED UNDER THE COMMONWEALTH'S BILL PAYING POLICY, YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer payments under any Schedule(s) under this Agreement and/or the Equipment without notice and may assign any Schedule(s) with your prior written consent. You agree that if we sell, assign, or transfer any payments under any Schedule(s) under this Agreement, with your written consent, and/or the Equipment, such assignee will have the same rights and benefits that we have now and will not have to perform any of our obligations, which obligations will remain with us. Subject to applicable law, Commonwealth rule or statute, you agree that the rights of such assignee will not be subject to any claims, defenses, or set offs that you may have against us whether or not you are notified of such assignment. The cost of any Equipment, Software, services and other elements of this Agreement has been negotiated between you and the Supplier. None of Lessor's assignees will independently verify any such costs. Lessor's assignees will be providing funding based on the payment you have negotiated with Supplier. You are responsible for determining your accounting treatment of the appropriate tax, legal, financial and accounting components of this Agreement.

11. DEFAULT AND REMEDIES: (a) If you do not pay any lease payment or other sum due to us or other party when due or (b) if you break any of your promises in the Agreement or any other Agreement with us or (c) if you, or any guarantor of your obligations become insolvent or commence bankruptcy or receivership proceedings or have such proceedings commenced against you, you will be in default. If any part of a payment is more than 45 days late, you agree to pay a late charge not to exceed the amount established by the Office of the Comptroller of the Commonwealth. If you are ever in default, we may do any one or all of the following: (a) instruct Supplier to withhold service, parts and supplies and / or void the Customer One Guarantee; (b) terminate or cancel this Agreement and/or any and all Schedules and require that you pay, **AS LIQUIDATED DAMAGES FOR LOSS OF BARGAIN AND NOT AS A PENALTY**, the sum of: (i) all past due and current Monthly Payments (or other periodic payments) and charges due under this Agreement and any Schedule; (ii) the present value of all remaining Monthly Payments (or other periodic payments) and charges for the remainder of the term of such Schedule, discounted at the rate of four percent (4%) per annum (or the lowest rate permitted by law, whichever is higher); and, if the Equipment is not made available for retrieval by Lessor within 10 days of written request therefore (iii) the present value (at the same discount rate as specified in clause (ii) above) of the amount of any purchase option with respect to the Equipment or, if none is specified, our anticipated value of the Equipment at the end of the initial term of such Schedule (or any renewal thereof); and (c) require you to return the Equipment to us to a location designated by us (and with respect to any Software, (i) immediately terminate your right to use the Software including the disabling (on-site or by remote communication) of any Software; (ii) demand the immediate return and obtain possession of the Software and re-license the Software at a public or private sale; and/or (iii) cause the Software supplier to terminate the Software license, support and other services under the Software license). We may recover interest on any unpaid balance at the rate established by the Office of the Comptroller of the Commonwealth. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Lessor or its Assignee or any other law. If, under Article 9 of the applicable Uniform Commercial Code, we have to take possession of the Equipment, you agree to pay the cost of repossession. The net proceeds of the sale of any repossessed Equipment will be credited against what you owe us. **YOU AGREE THAT WE WILL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL INDIRECT OR INCIDENTAL DAMAGES FOR ANY REASON WHATSOEVER.** You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. All of our rights are cumulative. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive lessee's rights under Article 2A (508-522) of the UCC.

12. UCC FILINGS: You grant us a security interest in the Equipment if this Agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument in order to show our interest in the Equipment.

13. CONSENT TO LAW, JURISDICTION, AND VENUE: This Agreement shall be deemed fully executed and performed in the Commonwealth of Massachusetts and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the Commonwealth of Massachusetts.

14. LESSEE GUARANTEE: You agree, upon our request, to submit the original of this Agreement and any schedules to the Lessor via overnight courier the same day of the facsimile or other electronic transmission of the signed Agreement and such schedules. Both parties agree that this Agreement and any schedules signed and submitted to us by facsimile or other electronic transmission shall, upon execution by us (manually or electronically, as applicable), be binding upon the parties. You waive the right to challenge in court the authenticity of a faxed or other electronically-transmitted signed copy of this Agreement and any schedule and agree that the faxed or other electronically-transmitted copy containing your faxed or other electronically-transmitted signature and our manual or electronic signature shall be considered the sole original for all purposes, including without limitation, any enforcement action under paragraph 11.

15. COMPUTER SOFTWARE: Notwithstanding any other terms and conditions of this Agreement, you agree that as to Software only: a) We have not had, do not have, nor will have any title to such Software, b) You have executed or will execute a separate software license Agreement and we are not a party to and have no responsibilities whatsoever in regards to such license Agreement, c) You have selected such Software and as per Agreement paragraph 4, EXCEPT AS PROVIDED IN SECTION 11.4.2.1 OF THE REQUEST FOR RESPONSE, WE MAKE NO WARRANTIES OF MERCHANTABILITY, DATA ACCURACY, SYSTEM INTEGRATION OR FITNESS FOR USE AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR THE FUNCTION OR DEFECTIVE NATURE OF SUCH SOFTWARE, SYSTEMS INTEGRATION, OR OTHERWISE IN REGARDS TO SUCH SOFTWARE. CUSTOMER'S LEASE PAYMENTS AND OTHER OBLIGATIONS UNDER THIS LEASE AGREEMENT SHALL IN NO WAY BE DIMINISHED ON ACCOUNT OF OR IN ANY WAY RELATED TO THE ABOVE SAID SOFTWARE LICENSE AGREEMENT OF FAILURE IN ANY WAY OF THE SOFTWARE.