1. Parties to the Agreement. This agreement is made and entered into by and between the State of Wyoming, whose address is 2001 Capitol Avenue, Cheyenne, WY 82001, (“State”) and Xerox Corporation (A New York Corporation), c/o X.E.S.I. Document Solutions, Authorized Xerox Sales Agency, whose address is P.O. Box 794, Cheyenne, WY 82003, (“Lessor”). For and in consideration of mutual promises and covenants set forth below, the parties agree to the following:

2. Purpose of Agreement. This Agreement will allow government entities with the State of Wyoming to lease from the Lessor any of the multi-functional digital copiers available under this contract.

3. Term of Agreement and Required Approvals. This Agreement is effective when all parties have executed it and all required approvals have been granted. The term of the Agreement is from August 1, 2004 through June 30, 2010.

By law, contracts for professional or other services must be approved as to form by the Attorney General and approved by the Procurement Services Division of the Department of Administration and Information, Wyo. Stat. § 9-1-403(b)(v), and all contracts for services costing over one thousand five hundred dollars ($1,500.00) must be approved by the Governor or his designee as well, Wyo. Stat. § 9-2-1016(b)(iv).

4. Scope of Agreement. Any Agency of the Executive branch of the State of Wyoming is authorized to lease products under the terms and conditions of this Agreement. The Judicial and Legislative branches of the State of Wyoming may utilize this agreement at their option. Each State Agency shall enter into a lease by executing the Equipment Order Form with Lessor in a form in substantial compliance with the form attached herein as Attachment A.

5. Term of Leases. Leases shall run for a maximum of sixty (60) months provided no lease shall extend beyond the term of this Agreement. The period shall commence upon acceptance of equipment by the State Agency.

6. Rate of Lease. Lease rates shall be the current prices of the price lists
referenced in the Contractors Proposal Price Sheet. Decreases in rates shall be provided to the State Contract Manager and published on the website and any additional manner deemed appropriate.

7. **Payment.** Each State Agency shall be solely responsible for its lease payments. Payment shall be made monthly in equal payments for the lease term. Pursuant to Wyo.Stat. § 16-2-602, no penalty shall accrue for late payments until forty-five days after payment is due. The obligation of that Agency to pay Lease Payments hereunder is a current expense of that Agency and not a debt of that Agency in contravention of any applicable limitations or requirements, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of that Agency.

8. **Return of Equipment.** Lessor shall be responsible for all arrangements and cost for the return of its equipment at the expiration of the lease term. All arrangements to return equipment shall include notice of Lessor’s intent to do so to the State Agency and shall not unreasonably disrupt the functions of the State Agency.

9. **Reservation of Title.** Equipment and all parts thereof shall retain its character as personal property and the title thereto shall not pass to the State Agency but shall remain with Lessor.

10. **Order of Precedence.** If there is any inconsistency between the terms of this Agreement and any attachment or document referenced herein, the descending order of precedence for purposes of determining which terms shall govern is as follows: This Agreement, an individual lease agreement, Lessor’s RFP response, the State’s RFP.

11. **Special Provisions.** Service and Maintenance

**MAINTENANCE SERVICE:**

Maintenance service shall be provided during normal business hours for both preventive and emergency service. Normal business hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday, excluding holidays.

1. All equipment maintenance and/or replacement shall be ON-SITE, unless otherwise approved by the State Agencies. This means the repair/exchange shall occur where the equipment is located.

2. The Contractor(s) staff shall notify the site contact of the expected arrival time of the service.
3. Response time is defined as the time interval between the problem call by the customer and the on-site arrival of the Contractor(s) technician. If within a 30-mile radius of service location, technician must respond on-site within four working hours. All other locations outside of a 30-mile radius, or if call is placed after 1:00 P.M. Mountain Time, Technician must respond on-site within eight working hours. Proposers are encouraged to indicate their response times and radius coverage.

All maintenance, repairs, labor and parts necessary to keep leased equipment in good working order shall be the responsibility of the Contractor(s) as part of the lease at no additional expense to the State Agencies. If the leased equipment includes licensed software, the Contractor(s) shall provide software support as specified in this Proposal.

If the equipment has not been restored to full operation within four hours after the service technician’s arrival, the technician shall propose all options and should arrive at a solution acceptable to the State Agency prior to leaving the site. If the equipment is down for more than eight consecutive business hours, the Contractor(s), at the Agency’s option, will be required to provide a loaner until the equipment is operational. The Contractor(s) and the Agencies may agree on a deduction off of their monthly lease payment in lieu of a loaner.

If the equipment is non-operational more than 10% of the time, excluding preventive maintenance, for two consecutive months, the Agency may require the Contractor to do a like-for-like replacement of the machine. Downtime will be calculated from the time the agency places the call and will end when the machine is operational again. A month consists of normal business hours, 8:00 a.m. through 5:00 p.m., Monday through Friday, excluding holidays. At the agency’s option, downtime in excess of 10% of the time during a month will be deducted from the monthly lease payment. Failure to comply may result in the unit(s) being canceled from the contract and similar units obtained from another Contractor with re-procurement costs including transportation and installation costs paid by the original Contractor.

**Loaners** - All transportation, delivery, installation or removal charges of LOANER equipment will be paid by the Contractor(s). Loaner equipment does not have to be the same model, but must perform the same functions as the equipment being repaired. In the case of copiers needing repair, but which are still partially operable, requirements and arrangements for loaner equipment will be made between the Contractor(s) and State Agency. If no agreement can be reached, the State Contract Manager administering this contract will make the final determination. Loaners will remain in place until the equipment has been repaired, reinstalled and confirmed operational by the State Agencies.

**MAINTENANCE DEFINITION & PERSONNEL:**

For this contract, maintenance is defined as the service required to maintain a copier at performance levels equal to or greater than the performance specifications specifically stated for this contract. Maintenance is to include the service component as well as drums, developer, and all supplies except paper. It is also to
include, but not be limited to, two preventative maintenance (cleaning and inspections) calls per year or as recommended by the manufacturer.

All maintenance shall be performed by manufacturer certified personnel. Equipment shall be maintained in accordance with factory published specifications. Proposer is to submit pricing for maintenance on a cost per copy basis WITH supplies except paper. Proposer is to indicate price breaks on proposal price sheet.


a. Amendments. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.


c. Applicable Law/Venue. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, including but not limited to Article 2A of the Uniform Commercial Code, Wyo. Stat. §§ 34.1-2.A-101 et seq. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

d. Assignment/Agreement Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the other party. The Lessor shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Agency.

e. Assumption of Risk. The Lessor shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to Lessor's failure to comply with state or federal requirements. The State Agency shall notify the Lessor of any state or federal determination of noncompliance.

f. Audit/Access to Records. The State and any of its representatives shall
have access to any books, documents, papers, and records of the Lessor which are pertinent to this Agreement. The Lessor shall, immediately upon receiving written instruction from the State Agency, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Lessor which are pertinent to this Agreement. The Lessor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by the State Agency.

g. **Availability of Funds.** Each payment obligation of the State Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Lessor, the Agreement may be terminated by the State Agency at the end of the period for which the funds are available. The State Agency shall notify the Lessor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the State or the State Agency in the event this provision is exercised, and the State Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the State Agency to terminate this Agreement to acquire similar services from another party.

h. **Award of Related Agreements.** The State may undertake or award supplemental or successor Agreements for work related to this Agreement. The Lessor shall cooperate fully with other Lessors and the State in all such cases.

i. **Compliance with Laws.** The Lessor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.

j. **Entirety of Agreement.** This Agreement, consisting of __________ (___) pages, Attachment A, consisting of __________ (___) pages, Attachment B, consisting of __________ (___) pages, and Attachment C consisting of __________ (___) pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

k. **Extensions.** Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be extended beyond the term
described herein. Any extension of this Agreement shall be initiated by the Agency, and shall be effective only after it is reduced to writing and executed by all parties to the Agreement. Any agreement to extend this Agreement shall include, but not necessarily be limited to: an unambiguous identification of the Agreement being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Agreement shall, unless explicitly delineated in the exception, remain as they were in the original Agreement; and, if the duties of either party will be different during the extension than they were under the original Agreement, a detailed description of those duties.

l. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

m. **Indemnification.** The Lessor shall indemnify, defend and hold harmless the State, the Agency, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Lessor's failure to perform any of Lessor’s duties and obligations hereunder or in connection with the negligent performance of Lessor’s duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Lessor’s malpractice.

n. **Independent Contractor.** The Lessor shall function as an independent contractor for the purposes of this Agreement, and shall not be considered an employee of the State of Wyoming for any purpose. The Lessor shall assume sole responsibility for any debts or liabilities that may be incurred by the Lessor in fulfilling the terms of this Agreement, and shall be solely responsible for the
payment of all federal, state and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Lessor or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency, or to incur any obligation of any kind on the behalf of the State of Wyoming or the Agency. The Lessor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Lessor or the Lessor's agents and/or employees as a result of this Agreement.

o. **Contractor's Insurance:** The Contractor shall not commence work under this Contract until it has obtained all the insurance required by the Department of Administration & Information (A&I) and such insurance has been approved by the State Contract Manager. Approval of insurance by the State Contract Manager shall not relieve or decrease the liability of the Contractor. The Contractor shall file a Certificate of Insurance with the Procurement Section of the Department of Administration & Information verifying each type of coverage required, and Contractor’s insurance certificates must be furnished or countersigned by a resident agent authorized to do business in the State of Wyoming.

**Proof of Insurance.** The Contractor shall not commence work under this Contract until the Contractor has obtained the following insurance coverages and provided the corresponding certificates of insurance:

1. **Commercial General Liability Insurance.** Contractor shall provide coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including products and completed operations in an amount not less than Two Hundred Fifty Thousand Dollars ($250,000.00) per claimant and Five Hundred Thousand Dollars ($500,000.00) per occurrence.

2. **Business Automobile Liability Insurance.** Contractor shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per occurrence.

3. **Workers’ Compensation or Employers’ Liability Insurance.** The Contractor shall provide proof of workers’ compensation coverage, if statutorily required by
8. **Kickbacks.** The Lessor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Lessor breaches or violates this warranty, the State may, at its discretion, terminate this Agreement without liability to the Agency, or deduct from the Agreement price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.


10. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person.

11. **Notice and Approval of Proposed Sale or Transfer of the Lessor.** The Lessor shall provide the State with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Lessor. Such notice shall be provided in accordance with the notice provision...
t. **Ownership of Documents/Work Product.** All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Agreement are at all times the property of the Agency.

u. **Patent or Copyright Protection.** The Lessor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Lessor or its sub-Lessors will violate any such restriction. The Lessor shall defend and indemnify the State for any violation or alleged violation of such patent, trademark, copyright, license or other restrictions.

v. **Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the Wyoming State Auditor shall not draw warrants for payment on this Agreement, until this Agreement has been reduced to writing, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming or his designee if required by Wyo. Stat. § 9-2-1016(b)(iv)(D).

w. **Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Lessor, shall identify the State as the sponsoring agency and shall not be released without prior written approval from the Agency.

x. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

y. **Sovereign Immunity.** The State of Wyoming and all State Agencies do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

z. **Taxes.** The Lessor shall pay all taxes and other such amounts required by
federal, state and local law, including but not limited to federal and social security
taxes, workers' compensation, unemployment insurance and sales taxes.

aa. **Termination of Agreement.** If at any time during the performance of this Agreement, in the opinion of the Agency, the work is not progressing satisfactorily or within the terms of this Agreement, then at the discretion of the State and after written notice to the Lessor, the State may terminate this Agreement or any part of it. At this termination date, the Lessor will be entitled to a pro rata payment for all work accomplished and accepted by the State Agency; however, the Lessor shall be liable to the State for the entire cost of replacement services for the duration of the Agreement term.

bb. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

c. **Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

dd. **Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.

The remainder of this page has been intentionally left blank
13. Signatures. In witness thereof, the parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

This Agreement is not binding on either party until approved by A&I Procurement and the Governor of the State of Wyoming or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

The effective date of this Agreement is the date of the signature last affixed to this page.

AGENCY

[Name and Title] ____________________________ Date

Lessor

[Name and Title] ____________________________ Date

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

[Name and Title] ____________________________ Date
Attachment A

STATE OF WYOMING
EQUIPMENT ORDER FORM
(Separate Form must be completed for each machine)
Fax completed form to (307) 777-5852

EQUIPMENT ORDER FORM NO. ____________________   Dated as of _____________________

To Master Copier Contract No. ___________________   Dated as of _________________________

This Equipment Order Form is entered into by and between the undersigned Lessee and Lessor pursuant to the Master Copier Contract identified above. All terms and conditions of such Master Copier Contract are incorporated herein and made a part hereof, the terms used in this Equipment Order Form shall have the same meanings as used in the Master Copier Contract. ANY ADDITIONAL DOCUMENTS OR PAPERWORK EXECUTED BY ANY STATE AGENCY AND/OR CONTRACTOR(S) WILL BE CONSIDERED VOID.

By its signature hereon, Lessee represents it has read, understands and agrees to the Terms and Conditions of the Master Copier Contract identified above and the provisions of this Equipment Order Form. Terms of the Master Copier Contract are hereby incorporated into this Equipment Order Form as if set for more fully herein.

In witness whereof, Lessee and Lessor reaffirm all of the conditions of the Master Copier Contract, and cause this Equipment Order Form to be executed by their duly authorized representatives.

CONTRACTOR (LESSOR): ______________________________

BY: ______________________________

PRINTED NAME: ______________________________
1. INITIAL CONTRACT TERM;

   The period ____________ months, after verification of receipt of copier.

2. COPIER LOCATION:

   ________________________________________________________________

3. COPIER/SERVICE DESCRIPTION:

   Anticipated Monthly Volume ________________

   Manufacturer _______________________________

   Model/Features _______________________________________________________

   Description: _________________________________________________________

4. PAYMENT:
Monthly Machine Cost $________________

Additional Features Costs (Identify feature & monthly cost listed separately)

___________________________________ $________________
___________________________________ $________________

Cost Per Copy $________________

Reduced Cost per Copy (if applicable) $________________

5. EXECUTION:

This Equipment Order Form shall not be binding on Lessor until executed by Lessee and executed by Lessor, and approved by the State Contract Manager.

(State Contract Manager’s signature) (Authorized Agency Representative’s signature)

Requisition (RX) #________________________ Copier being replaced (if applicable) ID#____________