Xerox Clarifications to
Western States Cooperative Association
Request for Proposal for
WSCA Software Value-Added Reseller

We have reviewed WSCA's Request for Proposal ("RFP") and have prepared the enclosed Proposal in response to the *WSCA Software Value-Added Reseller RFP*. Our Response is based on establishing a universal contract offering with WSCA based on the WSCA Mater Agreement Terms and Conditions, and then establishing separate Agreements with the individual Participating States with the State of Arizona being the lead State for this particular offering.

Although our Proposal is based on the requirements included in the State's RFP, our Proposal does include some responses that require an explanation. Those explanations are included in this document and are further described in our Proposal. In addition, we have included some Additional Terms that were not addressed by WSCA or the State.

Please note that Xerox agrees to negotiate a solution that is acceptable to WSCA and the Participating States if any of the below clarifications or Additional Terms are inconsistent with WSCA's overall requirements or are in conflict with a Participating State's law or are otherwise unacceptable to the Participating State. Our team is prepared to discuss our Proposal in detail, and adjust our proposed support services, terms, and/or price offering based on WSCA's and the Participating State's final requirements. Should Xerox be awarded this RFP, Xerox agrees to negotiate a Contract that incorporates the mutually agreed terms contained in WSCA's Agreement, the Lead State's RFP, this document, and any additional negotiated item(s).

Xerox's Clarifications to WSCA Master Agreement

WSCA Master Agreement Terms and Conditions for Software VAR January 10, 2011

4 - Cancellation. Xerox agrees that WSCA can terminate the Agreement and stop taking orders for any additional software with 30 days prior written notice. Software support Agreements can be terminated with 30 days prior written notice.

7 – Defaults & Remedies. Xerox requests written notice of its default and be provided thirty (30) days to cure its performance before the Customer exercises its right to terminate the Software Support Agreement.

11 – Indemnification. Xerox will agree to this indemnity provision providing Xerox is provided written notice of the claim or action, and allowed to select attorneys of its own choice to appear and defend the claim or action. In addition, Customer agrees to provide Xerox with all reasonable assistance that Xerox may require, and that Customer will do nothing to compromise Xerox's defense or settlement of the claim or action. Xerox will not indemnify Customer due to any negligent or willful act on the part of Customer, its officers, employees, volunteers, or agents, or the negligent or willful acts of any party other than a Xerox officer, employee, or agent.

12 – Indemnification – Intellectual Property. Xerox agrees that it will indemnify the Customer from all copyright and patent information included in the Xerox-branded software. However, Xerox will not indemnify the Customer, its officers, employees, volunteers, and agents for any infringement caused by complying with Customer's requirement to use, or Customer's use of the Xerox-branded/supplied software with software or hardware not provided or recommended Xerox. To avoid infringement, Xerox may modify or substitute an equivalent Xerox-brand software, refund the price paid for the Xerox-brand software (less the reasonable rental value for the period it was available to the Customer), or obtain any necessary licenses.

15 – Insurance. Additional Insured. Xerox agrees to name WSCA as an additional insured under the comprehensive general liability and automobile liability insurance policies only for claims arising out of the willful or negligent acts, or omissions of Xerox in the performance of the services under the contract.

24 – Records Administrative and Audit. Xerox agrees to keep accurate records verifying the charges for the Services and will make the records available to verify services under the Agreement upon reasonable request. The records will kept for two (2) years, or period as required by the Participating State, following the Agreement's expiration. Records will be limited to financial and other records required to substantiate the Services and accurate billings under the Agreement, and excludes any information deemed by Xerox to be confidential or proprietary.

28 – Title of Product. Please note that title and risk of loss to the software will transfer to WSCA upon delivery.

30 – Warranty. In lieu of a refund, Xerox will repair or replace any software that does not perform to its published specification, provided the software is covered by a Xerox warranty or Software Support Agreement.

Clarifications to Lead State RFP Documents

Statement of Work

4.6.3 – Product Returns. Please note that title to any purchased software transfers to the participating state upon delivery. The software cannot be returned to Xerox except if the software does not perform to its stated specifications.

Uniform Terms

3.1. – Records and 3.3 - Audit. Xerox agrees to keep accurate records verifying the charges for the Services and will make the records available to verify services under the Agreement upon reasonable request. The records will kept for two (2) years, or period as required by the Participating State, following the Agreement's expiration. Records will be limited to financial and other records required to substantiate the Services and accurate billings under the Agreement, and excludes any information deemed by Xerox to be confidential or proprietary.

3.7 – Property of State and 3.8 – Ownership of Intellectual Property. Xerox does not anticipate the development of any customized products or programming in connection with the services provided under this Contract. Any products or programming developed while providing services under this Contract shall remain the property of Xerox, unless the Customer specifically contracts with and compensates Xerox to develop products or programs for the exclusive use of the Customer.

Xerox does agree, however, to grant Customer a non-exclusive, non-transferable, perpetual right to use any programs created by Xerox under this contract strictly for the Customer's internal business use and not for resale and/or distribution to third parties. All content and data specific to the Customer shall remain the property of the Customer.

3.12 – Offshore Performance of Work Prohibited. Please note that some of our help desk services are performed in facilities located in Canada and Jamaica.

4.4 – Availability of Funds for the Next State Fiscal Year and 4.5 – Availability of Funds for the Current State Fiscal Year. Xerox acknowledges the Customer's right to cancel any Software Support Agreement if their governing body does not appropriate funds for the Agreement's continuation. In order to terminate under this provision, the Customer will be required to send Xerox written notice, within 30-days of its governing body's decision not to appropriate funds, stating that its governing body failed to appropriate fund. The Customer will then be released from its obligation to make any further payments through the end of the appropriated period.

6.1 – Risk of Loss. Please note that title and risk of loss to the software will transfer to the Customer upon delivery.

6.2.3 – Indemnification – Patent and Copyright. Xerox agrees that it will indemnify the Customer from all copyright and patent information included in the Xerox-branded software. However, Xerox will not indemnify the Customer, its officers, employees, volunteers, and agents for any infringement caused by complying with Customer's requirement to use, or Customer's use of the Xerox-branded/supplied software with software or hardware not provided or recommended Xerox. To avoid infringement, Xerox may modify or substitute an equivalent Xerox-brand software, refund the price paid for the Xerox-brand software (less the reasonable rental value for the period it was available to the Customer), or obtain any necessary licenses.

7.4 – Inspection/Testing. Please note that the software will be deemed accepted upon its delivery. Xerox is aware of its obligation to perform under this contract. If Xerox cannot keep software in good working order during the term of this Contract, Xerox will replace the software with similar software at Xerox' expense.

8.2 – Stop Work Order. Xerox agrees that WSCA can unilaterally suspend, delay, or cancel any open, undelivered software order. Software telephone support is available throughout the suspension period.

8.5 – Right of Offset. Xerox agrees that it is responsible for any outstanding liabilities or obligations owed the State. Should such a liability or obligation be overdue, Xerox requests that the Customer provide Xerox written notice describing the overdue obligation or liability. Xerox agrees to promptly investigate the claim and will either issue a separate check or notify WSCA why the obligation is not due.

9.4 – Termination for Convenience. Xerox agrees that WSCA can terminate the Agreement and stop taking orders for any additional software with 30 days prior written notice. However, this cancellation provision does not pertain to any software delivered prior to WSCA's termination notice. Software support can be terminated with 30 days prior written notice.

9.5 – Termination for Default. Xerox requests written notice of its default and be provided thirty (30) days to cure its performance before the Customer exercises its right to terminate the Software Support Agreement.

Special Terms and Conditions

Indemnification. Xerox will agree to this indemnity provision providing Xerox is provided written notice of the claim or action, and allowed to select attorneys of its own choice to appear and defend the claim or action. In addition, Customer agrees to provide Xerox with all reasonable assistance that Xerox may require, and that Customer will do nothing to compromise Xerox's defense or settlement of the claim or action. Xerox will not indemnify Customer due to any negligent or willful act on the part of Customer, its officers, employees, volunteers, or agents, or the negligent or willful acts of any party other than a Xerox officer, employee, or agent.

Insurance Requirements, Xerox agrees to name WSCA as an additional insured under the comprehensive general liability and automobile liability insurance policies only for claims arising out of the willful or negligent acts, or omissions of Xerox in the performance of the services under the contract.

Additional Terms

This Lease / Services and Solutions Agreement, which bears Xerox contract number _____, is entered by and between name ("WSCA") and Xerox Corporation ("Xerox") and consists of this document, the WSCA Master Agreement Terms and Conditions, and the State of Arizona's Request for Proposal, # RFP 11-01. Should there be a conflict between the terms included in the various documents the order of precedence shall be the WSCA Agreement followed by State of Arizona Request for Proposal # 11-01 as amendment by this Clarifications document, and the below Additional Term.

1. **Agreement & Order Documents.** Customer can place individual Software orders by issuing a Purchase Order or signing a Xerox Order Agreement. These documents are for order entry purposes only and detail the requested shipment date, installation site, order quantities, product description, contracted rates, and bill-to address, if applicable. Each "Order Document" shall constitute an Individual Software Agreement that references the WSCA or Participating State's Agreement contract number, and incorporates the WSCA / Participating State's Agreement terms and conditions, notwithstanding anything contained in the order document which is at variance with or additional to the WSCA / Participating State's Agreement and has not been agreed to by both parties. .

2. **Warranty Disclaimer.** Xerox disclaims the implied warranties of non-infringement.

3. **Limitation of Liability.** Except for personal injury (including death), property damage, and intellectual property damage, Xerox shall not be liable in the aggregate to Customer for any direct damages in excess of $50,000 or the amounts paid Xerox during the initial term of the applicable Individual Software Agreement during the 12 months prior to the claim, whichever is greater. Neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to the Agreement or any Individual Equipment Agreement, whether the claim alleges tortious conduct (including negligence) or any other legal theory. Any action Customer takes against Xerox must be commenced within 2 years after the event that caused it. Notwithstanding the foregoing, the limitations on Xerox's liability contained in this section shall not apply to claims proximately caused by the gross negligence or willful misconduct of Xerox.

4. **Payment**. Payment will be made in accordance with the Participating State's Prompt Pay Act or other similar legislation.

5. **Default.** Customer will be in default if (1) Xerox does not receive any payment as provided under the Participating State's Prompt Pay Act or other similar legislation. Prior to declaring a default due to a payment or other breach, Xerox will provide written or telephonic notice describing the specific breach.

6. **Miscellaneous.**

    A. **Agreement Copies.** Each party may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Agreement, which will be admissible in any action to enforce it.

    B. **Communications.** Customer authorizes Xerox or its agents to communicate with Customer by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address Customer provides to Xerox.

    C. **Compliance with Laws.** Both parties will comply with applicable laws. Xerox will not charge or collect any amounts in excess of those allowed by applicable law.

7. **Cash Purchase.**

    A. **Title & Risk.** Title, warranty, and risk of loss to the Equipment passes to Customer upon delivery.

    B. **Default & Remedies**. If Customer defaults an individual Cash Purchase Agreement, Xerox, in addition to its other remedies, including the cessation of Basic Services, may require immediate payment of all amounts then due, plus interest on all amounts due until paid as allowed under the Participating State's law.

8. **Software Support Maintenance for Customer Owned Software**

    A. **Maintenance Commencement & Term.** The Term for Maintenance Services will begin following the software's delivery as included in each Individual Software Support Maintenance Agreement. Xerox shall notify Customer at least 30-days prior to the expiration of the then-current term of each Software Support Maintenance Agreement that the Maintenance Agreement will renew for a term of the same number of months as the initial term unless a written notice of cancellation is received from Customer prior to the expiration of the then-current term. Pricing for this renewal term shall be at Xerox's then current published pricing.

    B. **Default & Remedies.** If Customer defaults or breaches an individual Software Support Maintenance Agreement, Xerox, in addition to its other remedies, Customer will be in default under this Agreement if (1) Xerox does not receive any payment within 15 days after the date it is due, or (2) Customer breaches any other obligation in this or any other agreement with Xerox after being provided written notice and 30 days to resolve the breach. If Customer defaults, Xerox may, in addition to its other remedies (including the cessation of the Software Support), require immediate payment of all amounts then due, as allowed under the Participating State's law.

9. **Software Terms**. Software documentation and terms are included with the software clickwrap or shrinkwrap license agreement or otherwise made subject to a separate license agreement.

10. **Software Support.** Xerox will provide the software support set forth below ("Software Support"). Software Support will be provided as long as Customer is current in the payment of all applicable software license and support fees.

 A. Xerox will maintain a web-based or toll-free hotline during Xerox's standard working hours to report Software problems and answer Software-related questions.

 B. Xerox, either directly or with its vendors, will make reasonable efforts to: (a) assure that Software performs in material conformity with its user documentation; (b) provide available workarounds or patches to resolve Software performance problems; and (c) resolve coding errors for (i) the current Release and (ii) the previous Release for a period of 6 months after the current Release is made available to Customer.

 C. Xerox will not be required to provide Software Support if Customer has modified the Software.

 D. New releases of Software that primarily incorporate compliance updates and coding error fixes are designated as "Maintenance Releases" or "Updates". Maintenance Releases or Updates that Xerox may be available will be provided at no charge and must be implemented within six months. New releases of Software that include new content or functionality ("Feature Releases") will be subject to additional license fees at Xerox's then-current pricing. Maintenance Releases, Updates, and Feature Releases are collectively referred to as "Releases". Each Release will be considered Software governed by the Software License and Software Support provisions of this Agreement (unless otherwise noted). Implementation of a Release may require Customer to procure, at Customer's expense, additional hardware, and/or software from Xerox or another entity. Customer will not be obligated to purchase a Feature Release.

*** *Last Clarification & Additional Term* ***