



COPIERS AND MANAGED PRINT SERVICES

Led by the State of Colorado

Master Agreement #: 140606

Contractor: **Xerox Corporation**

Participating State or Entity: State of South Dakota, Contract #17372

The following products and services are included in this contract portfolio:

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

1. **Scope:** This Addendum covers the NASPO ValuePoint Master Agreement for Copiers and Managed Print Services led by the State of Colorado, for use by state agencies and other entities located in the Participating State/Entity and authorized by that state's statutes to utilize state contracts with the prior approval of the state's Chief Procurement Officer.
2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective state Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Officer.
3. **Order of Precedence:**
 - a) A Participating Entity's Participating Addendum;
 - b) NASPO ValuePoint Master Agreement Terms & Conditions, including all Exhibits;
 - c) An Order issued against the Master Agreement;
 - d) The Solicitation, RFP-NP-18-001, Copiers and Managed Print Services;
 - e) The Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
 - f) The Contractor's Supplemental Documents, including all Attachments.



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4. Term of the Master Agreement:

- a) **Initial Term:** The Parties' respective performances under the Master Agreement commenced on August 7, 2019, and shall terminate on December 31, 2021, unless terminated sooner, as specified in the Master Agreement, including but not limited to **Section 6.10, Defaults and Remedies.**
- b) **Extension:** The Master Agreement may be extended beyond the original contract period upon the same terms and conditions for up to three (3) consecutive one (1) year additional terms, upon the mutual agreement of the Lead State and Contractor, via written Amendment. The total duration of the Master Agreement, including any extensions, shall not exceed five (5) years.

5. **Master Price Agreement Number:** All purchase orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include the NASPO ValuePoint Master Agreement number: **140606**

6. **Orders:** Any Order placed by a Purchasing Entity for a Product and/or Service available under the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

Orders can be made out to (a) Contractor or (b) Authorized Dealers as approved by Contractor and the Participating State or Entity. To the extent the Purchasing Entity and the Contractor agree on additional terms, the terms will be documented on the Purchasing Entity Order, and signed by both parties.

All orders should contain the following (1) "PO is subject to NASPO ValuePoint Master Agreement, Contract # **140606**, and the Participating Addendum, Contract #17372" (2) Purchasing Entity Name, Address, Contact, & Phone-Number (3) Order amount (4) Type of Order (Purchase, FMV Lease, \$1 Buyout Lease, Straight Lease, Short-Term Lease, or Cancellable Rental) and purchase amount, or monthly payment amount (5) Itemized list of accessories (6) Type of Service program and rates (7) Any Supplemental Documents, including the MPS SOW Template (if applicable).

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

Contractor

Name	Moataz Kamel
Address	Attn: Kelly Fodor, 800 Phillips Rd., Bldg. 209, 800 51, Webster, NY 14580
Telephone	855-964-1513
E-mail	Moataz.Kamel@xerox.com



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Participating Entity

Name	Kathy Stasch
Address	523 E Capitol Pierre, SD 57501
Telephone	605-773-6877
E-mail	kathy.stasch@state.sd.us

8. Participating State or Entity Modifications or Additions to the Master Agreement: These modifications or additions apply only to actions and relationships within the Participating Entity. A Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to their contractual relationship with the Contractor under the Terms and Conditions of the State of Colorado NASPO ValuePoint Master Agreement.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions:

Eligible participants in this agreement include all agencies, institutions, officers, boards, commissions and public universities of the State of South Dakota, and all political subdivisions of the State, including counties, municipalities and public school corporations within the State of South Dakota.

All state agency under the purchases or leases must be routed through the Bureau of Administrations, Office of Procurement Management (OPM). Moratorium exemption approval from the Bureau of Information and Telecommunications (BIT) is required. A purchase order issued by OPM will authorize state agency purchases or leases from this agreement. (This requirement internally applies to state agencies; the contractor is not responsible for enforcement.)

Institutions under the control of the Board of Regents may make direct purchases from this agreement using their own procurement guidelines.

Political subdivisions of the State of South Dakota may purchase directly from the Contractor according to their own procurement procedures.

The Contractor may, at the Contractor's discretion, extend pricing from this agreement to Indian tribal governments and non-profit organizations in South Dakota. Any sales made to Indian tribes and non-profit organizations from this agreement shall be included in any required reports and shall be subject to the NASPO Valuepoint administrative fee.

Section 5.2 Payment of the Master Agreement is modified as follows: Payment and interest on overdue payments will be made consistent with SDCL Ch. 5-26.

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Section 6.13.2 Indemnification- Intellectual Property of the Master Agreement is clarified with the following: "If such a claim is made or appears likely to be made, the Indemnified Party agrees to Permit Contractor to enable Indemnified Party to continue to use the Product, or to modify it, or replace it with one that is a least functionally equivalent."

9. Leases:

Lease Agreements: Any lease entered into by a state agency, institution, public university, officer, board or commission through this agreement shall utilize the "State of South Dakota Lease Agreement-Digital Copiers" provided in Participating Addendum **Exhibit A**, to this participating addendum, which must be processed through the Office of Procurement Management. Political subdivisions may utilize either the State lease agreement form or the Xerox Corporation lease terms included in Master Price Agreement#140606, at their own discretion.

End of Term Notification: Contractor must notify Participating Entity, in writing, of their End of Term options at least sixty (60) to ninety (90) days prior to the end of any Initial Lease or Rental Term. Such notification may include, but not be limited to, the following:

- i. Any acquisition or return options, based on the type of lease or rental agreement;
- ii. Any renewal options, if applicable; and/or
- iii. Hard drive removal and surrender cost, if applicable.

End of Term Options: If a Purchasing Entity desires to exercise a purchase, renewal, or return of the Equipment, it shall give Contractor at least thirty (30) days written notice prior to the expiration of such lease or rental term. Notwithstanding anything to the contrary, if Purchasing Entity fails to notify Contractor of its intent with respect to the exercise of a purchase, renewal, or return of the Equipment, the Initial Lease or Rental Term shall be terminated on the date as stated in the Order and removal of the Product will be mutually arranged.

10. Resellers: All contractors and resellers authorized in the State of South Dakota, as shown on the Xerox Corporation dedicated website for the State of South Dakota, are approved to accept orders, and provide sales and service support on behalf of Xerox Corporation. In such cases, Xerox Corporation will perform all invoicing functions. To the extent Xerox Corporation separately approved a dealer to invoice on behalf of Xerox Corporation (as demonstrated on such website), such dealer is approved to invoice State of South Dakota participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the Master Agreement.

11. Product Installation & Invoicing: Unless otherwise agreed to by both parties, signing the delivery and acceptance ("D&A") certificate constitutes Acceptance of the Product(s) and allows

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Contractor to invoice for the Product(s). Failure to sign the D&A or reject the Product(s) within the foregoing five (5) day period shall be deemed as Acceptance by the Purchasing Entity.

Contractor will provide timely billing and Customer will notify Contractor, in writing, of any billing concern. In order for Contractor to generate accurate service invoices, Purchasing Entities shall provide meter reads within the Contractor(s) requested timeframe.

Invoices that are generated without receiving the proper meter read information from the Purchasing Entity will not be considered inaccurate.

The Purchasing Entity shall provide written notice of any alleged invoicing issue(s) and the Contractor will be allowed a thirty (30) day cure period to address any such issue. Failure on the Contractor(s) part to maintain accurate invoicing shall result in a \$25.00 per instance credit on the following month's invoice.

12. **Not Specifically Priced ("NSP") Open Market Items:** Not Specifically Priced (NSP) items compliment or enhance the Products and/or Services offered under the resulting Master Agreement(s). NSP items will not include:
- i) Interactive White boards;
 - ii) Computers, monitors, or other related items;
 - iii) Fax machines;
 - iv) Overhead Projectors; and
 - v) Cameras.

NSP items may only be acquired through the Contractor(s) or their Authorized Dealer(s) and must be reported quarterly with all other sales under the resulting Master Agreement(s). NSP items must be priced at a minimum discount of 15% from MSRP or List Price. NSP items shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all NSP items in a single Order shall be determined by the Participating State or Entity.

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. 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 the Master Agreement, the language in the Master Agreement 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, as applied to the participating or purchasing entity.



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14. **Maintenance Service Level Agreements:** Purchasing Entities are subject to the Contractor "Maintenance Service Level Agreement" provided in Participating Addendum **Exhibit B**.
 15. **Managed Print Services ("MPS") Level Agreement:** Purchasing Entities are subject to the Contractor "Managed Print Service Level Agreement" provided in Participating Addendum **Exhibit C**. Contractor(s) may not provide MPS maintenance or repair Services on any Devices that are being leased or rented to a Purchasing Entity by another Manufacturer, unless they have a written agreement with the Manufacturer to do so.
 16. **MPS Statement of Work Template:** All MPS engagements shall require the Contractor and Purchasing Entity to complete a detailed statement of work, similar to the format provided as an exhibit to the Master Agreement ("**Exhibit C, Sample MPS Statement of Work**"), and it must be approved by both parties prior to the initiation of any engagement.
 17. **Liquidated Damages:** In the event of Contractor's default, without a waiver of other remedies which exist in law or equity, Contractor shall be required to pay to the Participating State or Purchasing Entity, as liquidated damages and not as a penalty, an amount paid by Entity to Contractor during the 12 Months prior, which is the expected cost of correcting the deficiencies made necessary by such default, neglect or failure and performing the work which the Participating State and/or Purchasing Entity elects to perform or cause to be performed by others. Contractor recognizes the Entity's right to assess Xerox a liquidated damages charge if Contractor fails to provide the contracted services, provided the Entity notifies Contractor in writing of the specific performance shortfall, and allows Contractor 30 calendar days to correct the performance failure to the contracted specification.
 18. **Force Majeure:** Neither party will be in breach of their performance obligations if a force majeure event prevents the party from fulfilling its obligations. The Entity's payment obligation will be suspended with respect to any equipment that is rendered inoperable during a force majeure event if Contractor is prevented from providing maintenance services. The payment suspension will continue until the end of the force majeure event or until Contractor restores the equipment to operating condition. If payment is suspended, the term of the Contract may, upon agreement of the parties, be extended for a period equal to the State's payment suspension.
 19. **Terms:** The Participating State or Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

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



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Participating State: State of South Dakota	Contractor: Xerox Corporation
By: 	By: 
Name: Steven L. Berg	Name: John Howe
Title: Director of Procurement	Title: VP Finance
Date: 	Date: 1/15/2020

[Additional signatures may be required by Participating State]

For questions on executing a Participating Addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	tfosket@naspovaluepoint.org

[Please email fully executed PDF copy of this document to PA@naspovaluepoint.org, to support documentation of participation, and to post in appropriate data bases]

