

PARTICIPATING ADDENDUM



COPIERS AND MANAGED PRINT SERVICES

Led by the State of Colorado

Master Agreement #: **140595**

Contractor: **Canon U.S.A., Inc.**

Participating State or Entity: North Dakota

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
- Group F – Scanners
- 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 North Dakota 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 8, 2019, and shall terminate on December 31, 2021, unless terminated sooner, as specified in **Section 6.10, Defaults and Remedies**, of the Master Agreement.
- b) **Extension:** The Master Agreement may be extended beyond the original contract period 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. **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 Purchasing Entity.

6. Participating State or Entity Modifications or Additions to the Master Agreement: The following are items that each Participating State or Entity should consider when drafting a Participating Addendum:

- a) **State specific terms and conditions:** Participating States or Entities may add statutory terms required to execute a Participating Addendum. The Master Agreement Terms and Conditions should be reviewed to ensure there is no conflict with what your state may accept. The Master Agreement Terms and Conditions are intended to be utilized as a baseline for state specific requirements.
- b) **Administrative Fees:** The Master Agreement allows Participating States and Entities to incorporate an administrative fee into the published Master Agreement pricing.
- c) **Supplemental Documents:** The Contractor's Supplemental Documents are attached to the Master Agreement as **Attachment A through Attachment H**. Each Participating State or Entity is responsible for negotiating the terms and conditions of each of these documents, if they so choose. The Lead State has only negotiated the language to the extent it aligns with the Master Agreement Terms and Conditions; however, any further negotiations are at the discretion and responsibility of the Participating State or Entity.
- d) **Authorized Dealers:** All Contractor approved Dealers are listed in **Exhibit D (Authorized Dealers by State)**. The Participating State or Entity may limit the number of Dealers they use, and/or request that the Contractor approve additional Dealers. The Contractor Dealer's participation will be in accordance with the terms and conditions set forth in the Master Agreement.

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- e) **Product Offerings:** The Contractor is authorized to provide Products as referenced on the first page of this template, and as detailed in **Section 4.3, Product Offerings**, of the Master Agreement. Each Participating State or Entity shall determine what Product Offerings they will limit, if any, in their Participating Addendum. Additional consideration should be given to the following:
- **Third-Party Software**
 - **Consumable Supplies**
 - **Remanufactured Equipment**
 - **Open Market Items**
 - **Emerging Technologies**
- f) **Service Offerings:** The Contractor is authorized to provide Services as referenced on the first page of this template, and as detailed in **Section 4.4, Service Offerings**, of the Master Agreement. Each Participating State or Entity shall determine what Service Offerings they will limit, if any, in their Participating Addendum. Additional consideration should be given to the following:
- **Maintenance Agreements:**
 - Automatic renewals are not permitted under the Master Agreement
 - Contractor shall have the ability to blend the Service and Supply costs over a large Equipment fleet
 - **Manual Meter Reads** - As part of its Services, Contractor may, at its discretion and dependent upon device capabilities, provide electronic remote meter reading and equipment monitoring. This may allow for automated meter reading and submission, automatic placement of low toner alerts, automatic placement of service calls in the event of a critical Product failure and may enable firmware upgrades
 - **Customer-Owned Equipment**
 - **Lease Equipment**
 - **Legacy Equipment**
 - **Service Requirements** – Participating States and Entities may negotiate their own Service Level Agreement (SLA) with the Contractor; however, the minimum requirements are outlined in **Section 4.4.3(b)** of the Master Agreement. Additional consideration should be given to the following:
 - **Service Level Calculations**
 - **Reporting**
- g) **Purchase and Lease Programs:** Per **Section 4.5** of the Master Agreement the Contractor is authorized and/or required to provide and adhere to the following:

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- **Acquisition Methods** – Participating States and Entities should determine which options they will allow:
 - Purchase
 - Fair Market Value (FMV) Lease
 - \$1 Buyout Lease
 - Straight Lease
 - Short-Term Lease
- **Leasing Terms and Conditions** – Equipment leases are subject to the Terms and Conditions as set forth in Master Agreement Attachment A (Canon Lease Agreement Terms and Conditions), and as negotiated by the Participating State or Entity.

h) Security Requirements:

- Per **Section 4.6.2, Sensitive Information**, of the Master Agreement, the Participating State or Entity shall define “sensitive information” in their Participating Addendum.
- Per **Section 4.6.5, Hard Drive Removal and Surrender**, of the Master Agreement, the Participating State or Entity shall determine which hard drive disposal options they will require.

i) Shipping and Delivery Requirements

j) Inspection and Acceptance: Per **Section 4.10.3** of the Master Agreement, confirmation of Product Acceptance occurs upon signature of **Exhibit B (Sample D&A Certificate)**, or within five (5) Business Days after Product install, unless otherwise stated in a Participating Addendum.

k) Warranty Requirements – The Contractor must adhere to the warranty requirements as outlined in **Section 4.11** of the Master Agreement; however, Participating States and Entities may negotiate additional requirements with the Contractor.

Participating State or Entity must check one of the boxes below. These modifications or additions apply only to actions and relationships within the Participating State or 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.

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

7. **Equipment Placements.** All purchases or leases made pursuant to this Participating Addendum must meet all of the following requirements:
 - A. Shall be from:



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- i. Group A, Segments 2 through 5
- ii. Group B, Segments 2 through 5
- iii. Group C
- iv. Group D, Segments 1 through 3
- v. Group E, Segments Low through High
- vi. Group F, Segments 1 through 7

B. If from: Group A, Segments A6 through A7; Group B, segment B6; any segment from Group C; or Group D, segment D4, the Participating Entity must obtain advance written approval from Contract Administrator in the form of a Contract Exemption Request prior to order placement. Non-state agencies are not subject to this provision.

- 8. Coterminous.** The term of this Participating Addendum shall be coterminous with the State of Colorado Contract Number 140595.
- 9. Confidentiality.** Contractor shall not use or disclose any information it receives from Participating State under this contract that Participating State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by Participating State. Participating State shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Participating State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code (N.D.C.C.) ch. 44-04. The duty of Participating State and Contractor to maintain confidentiality of information under this section continues beyond the term of this Contract.
- 10. Compliance with public records laws**
Contractor understands that, except for disclosures prohibited in this Contract, Participating State must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records obtained or generated by Contractor under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. Contractor agrees to contact Participating State as soon as reasonably possible upon receiving a request for information under the public records law and to comply with Participating State's instructions on how to respond to the request.
- 11. Spoliation.** Contractor shall notify Participating State of all potential claims that Contractor is aware of that arise as a result of Contractor's performance under this Contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Participating State the opportunity to review and inspect the evidence, including the scene of an accident.
- 12. Cooperative Purchasing Contract.** This Contract is a cooperative purchasing contract established



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pursuant to N.D.C.C. § 54-44.4-13. This Contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C. ch. 39-04.2, and the International Peace Garden. Participation in this open-ended contract is not mandated; therefore, the estimated volume of this Contract is not known.

13. Governing Law and Venue. This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

14. Insurance

Contractor and Authorized Dealer shall secure and/or keep in force during the term of this Contract, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of Contractor or Authorized Dealer.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State.
- 3) The state of North Dakota and its agencies, officers, and employees (Participating State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured, which shall be achieved through use of a blanket endorsement. Participating State shall have all the benefits, rights and coverages of an additional insured under these policies.

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The insurance required in this Contract, excluding Workers' Compensation, through a policy or endorsement, shall include:

- a) Waiver of Subrogation" waiving right to recovery the insurance company may have against the Participating State.
- b) A provision that Contractor's or Authorized Dealer's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Participating State and that any insurance, self-insurance or self-retention maintained by the Participating State shall be in excess of Contractor's or Authorized Dealer's insurance and shall not contribute with it.
- c) Cross liability/severability of interest for all policies and endorsements.
The legal defense provided to Participating State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for Participating State is necessary.
- 4) Contractor shall furnish a certificate of insurance to the undersigned Participating State representative prior to commencement of this Contract. All endorsements shall be provided as soon as practicable.
- 5) Failure to provide insurance as required in this agreement is a material breach of contract entitling Participating State to terminate this Contract immediately.
- 6) Contractor or Authorized Dealer shall endeavor to provide at least thirty (30) days' notice of any cancellation or material change to the policies or endorsements that would prohibit Contractor from maintaining the insurance requirements set forth within.

15. Indemnification. In addition to any indemnity obligations found within the Master Agreement, Contractor agrees that any attorney appointed to represent Participating State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08.

16. Limitation of Liability. Except for direct damages that cannot be limited under N.D.C.C. § 32-12.2-15, in no event shall Contractor, its Authorized Dealers, or the Participating State, including Participating Entities, be liable under this Participating Addendum for any special, incidental, consequential or indirect damages of any kind, regardless of whether such party knew or should have known of the possibility of such damages.

17. Alternative dispute resolution – jury trial

Participating State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating State does not waive any right to a jury trial.

18. Attorney fees

In the event a lawsuit is instituted by Participating State to obtain performance due under this Contract, and Participating State is the prevailing party, Contractor shall, except when prohibited by

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N.D.C.C. § 28-26-04, pay Participating State’s reasonable attorney fees and costs in connection with the lawsuit.

- 19. **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: 140595
- 20. **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 shall be made out to a Canon Authorized Dealer or Canon’s wholly owned subsidiary, Canon Financial Services, Inc. for processing. To the extent the Purchasing Entity and the Dealer 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 # 140595, and the Participating Addendum, Contract # 131” (2) Purchasing Entity Name, Address, Contact, & Phone-Number (3) Order amount (4) Type of Order (Purchase, FMV Lease, \$1 Buyout Lease, Straight Lease or Short-Term Lease) 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).

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

Contractor

Name	Dave Rothauser
Address	One Canon Park, Melville, NY, 11747
Telephone	631-330-5443
E-mail	ISGBIDADMIN@CUSA.CANON.COM

Participating Entity

Name	Chad Keech
Address	600 E Boulevard Avenue, Dept 110, Bismarck, ND 58505
Telephone	701-328-2767
E-mail	ckeech@nd.gov

- 22. **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.



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

Participating State: North Dakota	Contractor: Canon U.S.A., Inc.
By:	By:
Name: Chad Keeh	Name: Shinichi Yoshida
Title: Procurement Officer II	Title: Executive Vice President + G.M. BICG
Date: 4/05/2020	Date: 3/9/20

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]