

COPIERS & MANAGED PRINT SERVICES

Led by the State of Colorado

Master Agreement #: **140606**

Contractor: **XEROX CORPORATION**

Participating Entity: **STATE OF ALABAMA**

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

- Group A – MFD, A3
- Group B – MFD, A4
- Group C – Production Equipment
- Group E – Large/Wide Format Equipment
- Supplies *specific to leased or purchased equipment from this agreement
- Software *not covered on existing statewide contracts

Master Agreement Terms and Conditions:

1. Scope: This Participating Addendum covers the *Copiers and Managed Print Services*-led by the State of Colorado for use by state agencies and other entities located in the Participating State authorized by the State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement must be used by all state agencies currently under the purview of the State of Alabama, Division of Purchasing. State agencies that have their own procurement authority have the option to use this agreement. Institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of *Alabama* also have the option to use this agreement. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Lisa A. Perkins
Address:	12468 LaGrange Rd., St. 318, Louisville, KY 40245
Telephone:	502-410-8679
Fax:	
Email:	Lisa.Perkins@Xerox.com



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Participating Entity

Name:	Jennifer Loretz, Senior Buyer
Address:	100 N. Union Street, Ste 192, Montgomery, AL
Telephone:	334-242-7250
Fax:	334-242-4419
Email:	Jennifer.loretz@purchasing.alabama.gov

4. Participating Entity Modifications or Additions to The Master Agreement: Modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

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.

Choice of Law, Venue:

This Participating Addendum and all agreements relating to purchases or leases resulting therefrom will be governed by the laws of the State of Alabama and the sole venue for litigation will be the Circuit Court of Montgomery County, Alabama. No other court shall have jurisdiction.

Immigration:

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

Open Trade/No Boycott:

For the term of this contract, Contractor represents that it is not currently engaged in, and agrees not to engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this State can enjoy open trade.

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Dispute Resolution:

In the event of any dispute between the parties arising from this Participating Addendum and any agreement relating to purchases or leases resulting therefrom, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, contractor's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar Association. Per the Master Agreement, section 5.1.20.c, Purchasing Entity shall still be responsible for remitting payment of all undisputed amounts, including any minimum monthly payment amounts, which are not subject to dispute.

Conflict of Law:

If any provision of this Participating Addendum shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then that conflicting provision in the Participating Addendum shall be deemed null and void.

No Indemnification:

Contractor acknowledges and agrees that, under the terms of this Participating Addendum and agreements relating to purchases or leases resulting therefrom, the State is prohibited from indemnifying the Contractor. The State does not agree to and will not indemnify the Contractor for any reason.

Order of Precedence:

Section 1.3 of the Master Agreement, which includes paragraphs 1.3.1 and 1.3.2, is hereby incorporated into this Participating Addendum by reference.

Assignment:

Contractor acknowledges and agrees that Alabama Code Section 41-16-29 prohibits assignment of contracts without the written consent of the State and the requisitioning agency.

Not to Constitute a Debt to the State:

The terms and commitments contained in this master agreement shall not constitute a debt to the State of Alabama, the incurring of which is prohibited by Section 213 of

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the Office Recompilation of the Constitution of Alabama, 1901, as amended by Amendment No. 26.

Vendor Subscription:

Contract vendors must maintain a Vendor Self Service (VSS) profile and be actively subscribed and remain active with State Purchasing for the life of the contract. Subscriptions may be completed by following the "Pay Subscription Fee" link at <https://procurement.staars.alabama.gov> or follow the Vendor Self Service link at www.purchasing.alabama.gov.

Disclosure Statement:

Section 41-16-82, Code of Alabama 1975 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000. In circumstances where a contract is awarded by competitive bid, the disclosure statement shall be required only from the person receiving the contract and shall be submitted within ten (10) days of the award.

Administrative fee:

Contractor is to pay the State an administrative fee for all sales paid under this contract. This fee will be 1.0% (0.01) of the total dollar amount for all sales paid. The fee is to be remitted the first month of each quarter before the 20th and will represent a single, one-time payment for all sales paid during the prior quarter and as adjusted for errors associated with earlier quarters. This fee is not to be listed as a separate cost on invoices. The Contractor will be required to provide a summary report each quarter before the 20th listing sales paid during the prior calendar quarter. This report is to include the quarter being reported, the Master Agreement number, purchasing entity, sales amount, and fee amount. A report is due even when there is no activity. This report is to be sent electronically to telecom.admin@oit.alabama.gov. A copy of the summary report is to also accompany the payment. The remittance is to be identified with the reporting quarter and Master Agreement number. Failure to comply with provisions of this paragraph will be grounds for termination of the contract(s).

Reports and Payments will be due according to the following schedule:

October, November, December – Due by January 20th

January, February, March – Due by April 20th

April, May, June – Due by July 20th

July, August, September – Due by October 20th

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Remittance is to be payable to the "State of Alabama Department of Finance" and be sent to:

Alabama Department of Finance
Division of Accounting and Administration
PO Box 300658
Montgomery, Alabama 36130-0658

Electronic Payments:

Vendors must accept multiple forms of electronic payment at no additional cost to the State. Payment forms include but are not limited to state issued credit cards, P-cards, EFT or other forms of electronic payment.

Late Payments:

Penalty for agencies paying invoices late may not exceed the rate charged by State of Alabama Comptroller's Office per the Code of Alabama, Section 41-16-3 and as established by the Secretary of the Treasury under the authority of 26 U.S.C. §6621.

Non-appropriation of funds:

Continuation of any agreement between the State and Contractor beyond a fiscal year is contingent upon continued legislative appropriation of funds for the purpose of this bid and any resulting agreement. Non-appropriation of funds shall cause any agreement to become void and unenforceable and no liquidated damages shall accrue to the State as a result. The State will not incur liability beyond the effective date of the non-appropriation which the State will communicate in writing.

Proration:

Any provision of this Contract to the contrary notwithstanding, in the event of failure of the State to make payment hereunder as a result of partial unavailability, at the time such payment is due, of such sufficient revenues of the State to make such payment (proration of appropriated funds for the State having been declared by the governor pursuant to Section 41-4-90 of the Code of Alabama 1975), the contractor shall have the option, in addition to the other remedies of the contract, of renegotiating the contract (extending or changing payment terms or amounts) or terminating the contract.

Order Options:

Groups A, B, and C - Contract users may lease equipment and any necessary accessories for a term of 36-months fixed. There will be no buy-out option at the end of the 36 months. The Contractor will pick up the equipment. The Contractor will

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pick up the equipment and the contract user will procure new equipment from the manufacturer of their choice.

Group E (large/wide format): Contract users have the option to lease equipment and any necessary accessories for a 36-, 48- or 60-month fixed term. Contract users may opt for the buy-out in Group E. Vendors awarded this group may not provide a brand that is already listed on this contract.

All Groups – Contract users may purchase equipment and any necessary accessories outright.

Software – EULAs will be the responsibility of the contract user.

All equipment procured from this agreement must be new or newly manufactured.

Maintenance:

Paper is **EXCLUDED** as part of maintenance coverage for all groups.

State Purchasing Vendor Expo:

Contract holders are required to attend the Vendor Expo in the initial year of this agreement (2020). Participation is optional for the remainder of the contract term.

5. Lease Agreements: Reserved.

Lease Terms: Contract users will not sign lease agreements. The purchase document referencing the NASPO ValuePoint and State agreement numbers will be sufficient. Equipment leases are subject to the Terms and Conditions as set forth in section 4.5.8 and Attachment A of the Master Agreement, unless otherwise agreed to. To initiate a lease, Purchasing Entity may issue a Purchase Order (“PO”) and reference the type of lease (FMV, Straight, or Capital Lease) on the PO or may simply sign other transactional documents deemed acceptable to the parties.

Assignment: Per section 4.5.8.(g) of the Master Agreement: i) Purchasing Entity has no right to sell, transfer, encumber, sublet or assign the Product or any lease or rental agreement without Contractor’s prior written consent (which consent shall not be unreasonably withheld); ii) Purchasing Entity agrees that Contractor may not sell or assign any portion of Contractor’s interests in the Product and/or these Lease or Rental Terms or any Order for leases or rentals, without notice to Purchasing Entity even if less than all the payments have been assigned. In the event of a permitted assignment, the assignee (the “Assignee”) will have such rights as Contractor assigns to them, but none of Contractor’s obligations (Contractor will keep those

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obligations) and the rights of the Assignee will not be subject to any claims, defenses or set offs that Purchasing Entity may have against Contractor.; iii) No assignment to an Assignee will release Contractor from any obligations Contractor may have to Purchasing Entity.

All lease and rental programs must remain with the Contractor or Authorized Dealers through an in-house leasing program, or through the financial branch or subsidiary of the Contractor. In addition, the Contractor and their Authorized Dealers may use Third Party leasing companies, but all billing must be invoiced in the name of the Contractor or Authorized Dealer, and all contractual obligations will still be the responsibility of the Contractor.

End of Term Notification: Contractor must notify a Purchasing 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 option, 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 option, 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.

6. **Resellers:** All resellers authorized in the State of Alabama, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to 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. **The State of Alabama reserves the right to allow resellers to receive orders and invoice at a later date.**

Local authorized dealers should be located within the State of Alabama. The State may allow out of state dealers IF there are no instate dealers located within a 60-mile radius of the contract user.

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7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this 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.

All orders should contain the following “(1) PO subject to NASPO ValuePoint Contract #140606 & State Contract #140606-AL08; (2) Purchaser’s, Address, Contact, & Phone-Number; (3) Purchase order amount; (4) Type of Order/procurement and, if applicable, monthly payment; (5) Itemized list of accessories, if applicable; (6) Service program and rates, if applicable; (7) SOW, if applicable.”

8. 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 Contractor to invoice for the Product(s). Failure to sign the D&A or reject the Product(s) within the foregoing five (5) Business 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.

Per section 4.4.3.c.ii of the Master Agreement, 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.

9. 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.

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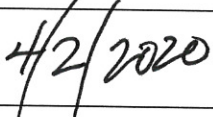
NSP items may only be acquired through the Contractor(s) or their Authorized Dealer(s) and must be reported quarterly with all other sales under the resulting Master Agreement(s). NSP items must be priced at a minimum discount of 15% from MSRP or List Price. NSP items shall not be offered to a Purchasing 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.

10. Showroom Equipment: Upon request by a Purchasing Entity, showroom Equipment for Groups A, B, and C may be converted to a purchase, lease, or rental providing the following conditions are met:
 - a. The meter count on Group A and Group B Devices does not exceed 10,000 copies total (i.e. b&w and color combined); and the meter count on Group C Devices does not exceed 50,000 copies total (i.e. b&w and color combined);
 - b. The Device must be discounted by at least 5% off the Master Agreement pricing for that same Device; and the Purchasing Entity and the Contractor must indicate on the Order that the Device is a showroom model.
11. 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. 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 an 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.
12. Maintenance Service Agreements: Purchasing Entities are subject to the Contractor "Maintenance Agreement Terms and Conditions" provided in Participating Addendum Exhibit A. (This exhibit is also found in the Master Agreement as Attachment F).
13. Force Majeure – A Force Majeure event under Section 6.9 of the Master Agreement does not relieve either party of its obligation to make payments due under the Order.

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

Participating Entity: State of Alabama	Contractor: Xerox Corporation
Signature: 	Signature: 
Name: Michael A. Jones	Name: John Howe
Title: State Purchasing Director	Title: VP Finance
Date: 	Date: 4/1/2020

[Additional signatures may be added if required by the Participating Entity]

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 posting in appropriate data bases.]