NASPO ValuePoint

PARTICIPATING ADDENDUM

MULTI-FUNCTION DEVICES AND RELATED SOFTWARE, SERVICES AND CLOUD SOLUTIONS

Led by the State of Colorado

Master Agreement #: **188733**

Contractor: **LEXMARK INTERNATIONAL, INC.**

Participating Entity: **STATE OF SOUTH DAKOTA – CONTRACT 17840**

The following Products and Services are included in this contract portfolio:

- Group B – MFD, A4
- Group D – Single-function Printers
- Group G – Software
- Group H – Consumable Supplies
- Group I - Managed Print Services (MPS)
- Sub-Group G1 – Software Related Services
- Sub-Group D1 – Specialty Printers
- Accessories for Discontinued Base Units
- Maintenance Services for new, remanufactured, refurbished, and legacy devices

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the *Multi-Function Devices and Related Software, Software and Cloud Solutions portfolio* led by the State of Colorado, for use by state agencies and other government entities located in the Participating **State of South Dakota** authorized by that 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 may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the **State of South Dakota**. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

   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.

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

Contractor

Name:	Ross Kezelman
Address:	740 W New Cir Rd, Lexington, KY 40511
Telephone:	818-292-0708
Email:	ross.kezelman@lexmark.com

Participating Entity

Name:	Missy Schuetzle
Address:	Office of Procurement Management 523 East Capitol Avenue Pierre, South Dakota 57501
Telephone:	605-773-4277
Fax:	605-773-4840
Email:	missy.schuetzle@state.sd.us

4. Participating Entity Modifications or Additions to The Master Agreement:

[XX] The following changes are modifying or supplementing the Master Agreement terms and conditions.

Attachment A State of South Dakota Terms and Conditions

5. Lease and Rental Agreements: Any lease entered into by a State agency, institution, public university, officer, board, or commission through this agreement may utilize the lease terms included in the Master Price Agreement at their own discretion. Leases that require authorization by the Office of Procurement Management will be reviewed and approved on a lease by lease basis.

Lease and Rental Terms: Equipment leases and rentals are subject to the Terms and Conditions as set forth in the Master Agreement and Lexmark International Inc.'s applicable Supplemental Documents, which are attached to the Master Agreement, unless otherwise agreed to by a Participating State or Entity. To initiate a lease or rental, Purchasing Entity may issue a Purchase Order ("PO") and reference the type of lease (FMV Lease, Straight Lease, Capital Lease) on the PO or may simply sign other transactional documents deemed acceptable to the parties, providing Contractor does not provide the Purchasing Entity with any documents (besides EULA's) that have not been approved by the Lead State.

Assignment: Contractor may assign, solely for financing purposes, upon written notification to the **State of South Dakota**, their right title and interest in and to: (i) the Products subject to the Lease Agreement; (ii) all payments and other amounts due and to become due thereunder with respect to the Products; and (iii) all rights and remedies under this Participating Addendum with respect to the Products, such payments and other amounts due. Any such assignment however, does not excuse Contractor from fulfilling their obligations outlined in the terms and conditions of either the NASPO ValuePoint Master Agreement #188733 or the

Participating Addendum. Contractor intends to assign, solely for financing purposes, rights as set forth immediately above and this paragraph constitutes the required written notification to the **State of South Dakota**.

All lease programs must remain with the Contractor, Authorized Dealers, Contractor's leasing partners, or third-party financial institutions throughout the term of the agreement.

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, 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.

6. <u>Authorized Dealers</u>: All Contractors and resellers authorized in the **State of South Dakota**, are listed in Contractor's Authorized Dealer List, which is available on the NASPO ValuePoint website, and are approved to accept orders and provide sales, service support, and invoicing 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.

7. <u>Orders</u>: Any order placed by a 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.

   All orders should contain the following (1) "PO subject to **NASPO ValuePoint Contract # 188733 & State Contract #17840"** (2) Purchaser's Address, Contact, & Phone-Number (3) Purchase order amount (4) Type of Lease or rental and monthly payment (5) Itemized list of accessories (6) Service program and rates (7) Attached SOW Template if applicable.

8. <u>Product Installation & Invoicing</u>: Unless otherwise agreed to by both parties, signing the delivery and acceptance ("D&A") certificate constitutes Acceptance of the Device(s) and allows Contractor to invoice for the Device(s). Failure to sign the D&A or reject the Device(s) within the foregoing five (5) day period shall be deemed as Acceptance by the Purchasing Entity.

   Contractor will provide timely billing and Purchasing Entity 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 Contractors 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, and may be purchased as a stand-alone option. 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 or their Authorized Dealers and must be reported quarterly with all other sales under the resulting Master Agreement. NSP items must be priced at a minimum discount of 15% from MSRP or List Price. 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 Group B may be converted to a purchase or lease providing the following conditions are met:
    a. The meter count on Group B Devices does not exceed 10,000 copies total (i.e. b&w and color combined); and
    b. The Device must be discounted by at least 5% off the Master Agreement pricing for that same Device; and
    c. 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, unless otherwise agreed to in an Order. 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, unless otherwise agreed to by a Participating State or Entity. 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.

12. Maintenance Service Level Agreements: Purchasing Entities are subject to the Contractor's Standard Service Levels as outlined in the Master Agreement, Contractor's Supplemental Documents, or as otherwise negotiated by the Participating State or Entity.

13. Managed Print Services ("MPS") Level Agreement: Purchasing Entities are subject to the Contractor's "Statement of Work Template" provided in Master Agreement **Attachment 4,** or a similar format approved by both parties. Contractor 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. All MPS engagements shall require the Contractor and Purchasing Entity to complete a detailed statement of work, which must be approved by both parties prior to the initiation of any engagement.

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

Participating Entity: **South Dakota**	Contractor: Lexmark International, Inc
Signature:	Signature: Ross Kezelman
Name: **Steven L. Berg**	Name: Ross Kezelman
Title: **Director, Office of Procurement Management**	Title: Senior Contracts Manager, Government
Date: 4/8/24	Date: 4/8/2024

For questions on executing a participating addendum, please contact:
NASPO ValuePoint

Cooperative Portfolio Manager:	Joel Atkinson
Telephone:	(850) 848-1250
Email:	jatkinson@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.]

ATTACHMENT A

STATE OF SOUTH DAKOTA
CONTRACTUAL PROVISIONS

1. It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of this contract into which this attachment is incorporated.

2. All contractual agreements are subject to, governed by, and construed in accordance with the laws of the State of South Dakota. Any action, suit, or other proceeding under, pursuant to, or governed by this contract shall be brought and maintained in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

3. The vendor/contractor agrees that the continuation of this contract is dependent on receipt of an appropriation from the South Dakota Legislature. In the event that the Legislature does not provide an appropriation of funds for any fiscal year, or if funds become unavailable because of federal funds reduction, then and in that event, this contract shall be null and void and shall expire at the end of the last fiscal year in which funding shall be available for this contract to the State and the State agency involved. Vendor/contractor agrees that a termination for lack of funds pursuant to this paragraph shall not result in a claim against the State, nor against any State agency, agent, officer, or employee.

4. Neither the State of South Dakota, nor any State agency, agent, officer, or employee shall hold harmless or indemnify any vendor/contractor for any loss or damage beyond the amounts provided for tort claims against the State by South Dakota law. Neither the State, nor any State agency, agent, officer, or employee shall assume liability to any third person by means of a contract or agreement. The State has not, and shall not, waive or give up any immunity or protection afforded to the State of South Dakota by the Eleventh Amendment to the Constitution of the United States, and no provision of this agreement shall be interpreted as, or be deemed as, a waiver of such Amendment, nor of any immunity afforded by it to the State of South Dakota.

5. Vendor/contractor agrees to comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to providing goods or services pursuant to this agreement, and vendor/contractor will be solely responsible for obtaining current information about such requirements.

6. Notwithstanding any language to the contrary, no interpretation shall be allowed that would find the State of South Dakota or any State agency has agreed to any binding arbitration, nor to the payment of damages or liquidated damages upon occurrence of a contingency. The State of South Dakota does not and shall not agree to pay any attorneys' fees or late charges in excess of those provided for in the South Dakota Prompt Payment Act, SDCL chapter 5-26.

7. This contract shall not require the State of South Dakota to purchase any insurance, nor shall the State of South Dakota be obligated to provide for any self-insurance beyond that required by South Dakota law relating to tort claims. Vendor/contractor shall be required to provide adequate insurance for: (1) Commercial General Liability; (2) Professional Liability; (3) Business Automobile Liability; and (4) Workers' Compensation, all as required by South Dakota Law, as otherwise set out in this Agreement, or adequate to cover all risks of performance under this agreement.

ATTACHMENT A

STATE OF SOUTH DAKOTA
CONTRACTUAL PROVISIONS

8. Vendor/contractor hereby agrees to indemnify and hold the State of South Dakota, and its agents, agencies, officers, and employees, harmless from and against third-party actions, suits, damages, liability, or other proceedings that may arise as the result of performing services or providing goods under this contract, as set forth in the Master Agreement. This provision does not require vendor/contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its agents, agencies, officers, or employees.

9. Vendor/contractor hereby agrees to defend the State of South Dakota and save the State of South Dakota, its agents, agencies, officers and employees, harmless from third party claims alleging infringement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in the performance of this agreement, or which the vendor/contractor is not the patentee, assignee, or licensee, as set forth in the Master Agreement.

10. Compliance with SDCL Ch 5-18A. Contractor certifies and agrees that the following information is correct:

    The bidder or offeror is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

    It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

    The successful bidder or offeror further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

11. Pursuant to Executive Order 2020-01, for contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars ($100,000.00) or more, by signing this Agreement vendor/contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do

business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Vendor/contractor further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

12. Contractor (i) understands that neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to any Agreement entered into as a result of this RFP. By signing an Agreement pursuant to this RFP, offeror hereby certifies that the Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

13. Vendor/contractor will not provide to the State any computer or telecommunication hardware or video surveillance hardware, or any components thereof, or any software that was manufactured, provided, or developed by a covered entity. As used in this paragraph, "covered entity" means the following entities and any subsidiary, affiliate, or successor entity and any entity that controls, is controlled by, or is under common control with such entity: Kaspersky Lab, Huwaei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any entity that has been identified as owned or controlled by, or otherwise connected to, People's Republic of China. Vendor/contractor will immediately notify the State if vendor/contractor becomes aware of credible information that any hardware, component, or software was manufactured, provided, or developed by a covered entity.