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 ALABAMA**

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

- Group B – MFD, A4
- Group G – Software - *Not covered on existing statewide contracts
- Group H – Consumable Supplies - *Specific to leased or purchase equipment from this agreement

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 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 currently under the purview of the State of Alabama, Division of Procurement. 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. Term:

☒ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

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

Contractor

Name:	Angela Schlegel, Lexmark International, Inc.
Address:	
Telephone:	(720) 415-8704
Email:	angela.schlegel@lexmark.com

Participating Entity

Name:	Sonya Bryan, Buyer
Address:	100 North Union Street, Suite 192, Montgomery, AL 36104
Telephone:	334-353-8379
Fax:	
Email:	Sonya.bryan@purchasing.alabama.gov

5. 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.

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

Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

6. Subcontractors: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.
7. Orders: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing 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 the order.

Contract period:
Establish a 12-month contract for the State of Alabama with an option to extend for a second, third, fourth, & fifth 12-month period, with the same pricing, terms and conditions, or until the current NASPO Master Agreement expires, whichever comes first. The third, fourth, fifth 12-month period, if agreed by both parties, would begin the day after the second, third, or fourth 12-month period expires. Any successive extension must have written approval of both the state and supplier no later than 30 days prior to expiration of the previous 12-month period. In no event shall the term of this contract extend beyond the then current term (or renewal term) of the NASPO ValuePoint Master Agreement Number 188733 as amended.

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.

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.

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.

Compliance with Ala. Act No. 2023-409.

In compliance with Ala. Act No. 2023-409, by signing this contract, Supplier provides written verification that Supplier, without violating controlling law or regulation, does not and will not, during the term of the contract engage in economic boycotts as the term “economic boycott” is defined in Section 1 of the Act. Under Section 2 of the Act, the written verification may be waived if the contracting governmental entity determines based on cost and quality factors that such a waiver is clearly in the best interest of the public.

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.

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, in the incurring of which is prohibited by Section 213 of the Office Recompilation of the Constitution of Alabama, 1901, as amended by Amendment No. 26.

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.

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 a bidder beyond a fiscal year is contingent upon continued legislative appropriation of funds for the purpose of this bid and any resulting agreement. Non-availability of funds at any time 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 payment of accrued agreement payment.

Proration:

Any provision of a contract resulting from this bid 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.

Administrative Fee:

Awarded bidder(s) are 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 awarded bidder(s) 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

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

State Purchasing Vendor Expo:

Contract holders are required to attend the next scheduled Vendor Expo of this agreement. Participation is optional for the remainder of the contract term.

Order Options:
Groups A and B - 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 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.

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.

8. Lease and Rental Agreements: Reserved.

Lease and Rental Terms: Contract users will not sign lease agreements. The purchase document referencing the NASPO VP and State agreement numbers will be sufficient Equipment leases are subject to the Terms and Conditions as set forth in 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: Contractor may assign, solely for financing purposes, upon written notification to the State of Alabama, Division of Procurement, 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 Alabama, Division of Procurement.

All lease and rental 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.

9. Authorized Dealers: All Contractors and resellers authorized in the State of Alabama, 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.

10. Orders: 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 #188733-AL07" (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.

11. Product Installation & Invoicing: 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.

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, 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.

13. Showroom Equipment: Upon request by a Purchasing Entity, showroom Equipment for Groups A and B 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
    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.

14. 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.

15. Maintenance Service Level Agreements: Purchasing Entities are subject to the Contractor "Maintenance Service Level Agreement" provided in Participating Addendum Exhibit A. (This Exhibit A is also found in the Master Agreement as Attachment 2).

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

Participating Entity:	Contractor: Lexmark International, Inc
Signature: Christine Cook Digitally signed by Christine Cook Date: 2024.09.04 16:30:55 -05'00'	Signature: Ross Kezelman
Name:	Name: Ross Kezelman
Title:	Title: Senior Government Contracts Manager
Date:	Date: 9/3/2024

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

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.]