

PARTICIPATING ADDENDUM

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

MASTER PRICE AGREEMENT

Xerox Corporation
A63311

State of Wyoming

1. Scope:

State of Wyoming, various state agencies, departments, educational institutions, municipalities, schools, and any other political subdivisions thereof ("Buyer") may purchase Xerox Products available in the then current WSCA product offering, which reflects a discount off of retail prices. This agreement is not a purchase order, nor does it guarantee any purchases to be made by the State of Wyoming, various state agencies, departments, educational institutions, municipalities, schools, and any other political subdivision thereof.

2. Changes:

The ordering entity will provide payment to Xerox within 30 days of the date of invoice. Xerox may charge the ordering entity any interest available under Wyoming law for payments that are more than 45 days after the date of the invoice. The additional terms and conditions contained in Exhibit A, attached are hereby incorporated by reference. In the event that any provision of this agreement is contrary to Wyoming law, such provision shall be null and void. This agreement shall be governed by Wyoming law.

3. Primary Contact:

The primary participating entity contact for this participating addendum is as follows:

Name: Dean Jeffries

Participating Entity Name: State of Wyoming-Department of A&I
General Services Division-Procurement Section

Address: Herschler Building, 2nd floor East
125 w. 26th Street
Cheyenne, WY 82002

Telephone: 307-777-6718

Fax: 307-777-5852

E-mail: djeffr@state.wy.us

The primary Contractor contact for this participating addendum is as follows:

Name: Diane Rivera

Contractor: Xerox Corporation

Address: 2660 SW Parkway, Wilsonville, OR 07070

Telephone: 503-685-3328

Fax: 503-685-2660

E-mail: diane.rivera@office.xerox.com

4. Servicing Subcontractors:

No subcontractors will be used.

All orders and payment will be issued directly to Xerox

The Master Price Agreement Number MUST be shown on all Purchase Orders issued against this Agreement.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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8. **Signatures.** In witness thereof, the parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

This Contract is not binding on either party until approved by the Division of Procurement Services, Department of Administration & Information, and the Governor of the State of Wyoming, if required by Wyo. Stat. '9-2-1016(b)(iv).

The effective date of this Contract is the date of the signature last affixed to this page.

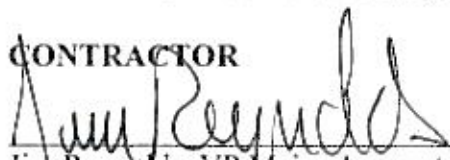
AGENCY



Mac Landen, Procurement Manager

7/27/06
Date

CONTRACTOR



Jim Reynolds, VP Major Accounts

8/29/06
Date

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

 #4335

Donald Gerstein, Sen. Asst. Attorney General

7/20/06
Date

Exhibit A
Wyoming General Conditions

1. **Acceptance.** Xerox shall notify Buyer if Buyer's purchase order is not accepted by Xerox. Any items received by Buyer and not rejected within 30 days of the date of the invoice shall be deemed accepted by Buyer.
2. **Product Demonstrations/Presentations.** Xerox shall make presentations and demonstrations of Xerox products covered by this contract available in Cheyenne, Wyoming. All presentation and demonstration costs incurred by Xerox shall be borne by Xerox. Xerox will also make evaluation equipment available to Buyer via a separate Product Evaluation Agreement. Buyer will be subject to the terms and conditions of the Product Evaluation agreement for all approved evaluation equipment.
3. **On-Site Service.** Xerox shall make on-site service available to Buyers in the United States in accordance with the then current terms and conditions set by Xerox and /or the third party service provider. For an annual fee, Buyer may become an Xerox Service Provider.
4. **Partial Shipments.** Xerox will not make partial shipments of any Xerox branded equipment on a single Xerox order, unless authorized by Buyer.
5. **State of Wyoming Information Technology Architecture standards.** Xerox will only ship items that are compliant with the current State of Wyoming Information Technology Architecture Standards. The State of Wyoming shall make Xerox aware of such standards.
6. **General Provisions.**
 - A. **Amendments.** Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.
 - B. **Americans with Disabilities Act.** The Contractor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, *et seq.*, and/or any properly promulgated rules and regulations related thereto.
 - C. **Applicable Law/Venue.** The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
 - D. **Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Contractor shall not use this

Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Agency.

E. Assumption of Risk. The Contractor shall be responsible for any loss of state or federal funding, either administrative or program dollars, due to Contractor's failure to comply with state or federal requirements. The Agency shall notify the Contractor of any state or federal determination of noncompliance.

F. Audit/Access to Records. The Agency and any of its representatives shall have access to any books, documents, papers, and records of the Contractor which are pertinent to this Contract. The Contractor shall, immediately upon receiving written instruction from the Agency, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by the Agency.

G. Availability of Funds. Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Contractor, the contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Agency to terminate this Contract in order to acquire similar services from another party.

H. Award of Related Contracts. The Agency may undertake or award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.

I. Compliance with Laws. The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

J. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Agency for its release.

K. Disputes/Remedies. In seeking to resolve any dispute relating to this Contract, the Agency does not waive its sovereign immunity. Any dispute or claim arising out of or relating to this Contract may be assigned to non-binding mediation upon mutual agreement of the parties, in accordance with the Wyoming Supreme Court's rules for alternative dispute resolution. The parties to the dispute shall bear their respective costs for the mediation. The

rights and remedies of the parties provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.

- L. Entirety of Contract.** This Contract, consisting of two (2) pages, Attachment A, consisting of five (5) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- M. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Agency, and shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any agreement to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.
- N. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.
- O. Indemnification.** [Deleted]
- P. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the State of Wyoming for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency, or to incur any obligation of any kind on the behalf of the State of Wyoming or the Agency. The Contractor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.

- Q. Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, the Agency may, at its discretion, terminate this Contract without liability to the Agency, or deduct from the contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- R. Nondiscrimination.** The Contractor shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. '27-9-105 *et seq.*), and the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.* The Contractor shall assure that no person is discriminated against based on the grounds of sex, race, religion, national origin or disability in connection with the performance of this Contract.
- S. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.
- T. Notice and Approval of Proposed Sale or Transfer of the Contractor.** The Contractor shall provide the Agency with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notice provision of this Contract.
- U. Ownership of Documents/Work Product.** All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Contract are at all times the property of the Agency.
- V. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Agency for any violation or alleged violation of such patent, trademark, copyright, license or other restrictions.
- W. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract, until this Contract has been reduced to writing, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information, and approved by the Governor of the State of Wyoming if required by Wyo. Stat. '9-2-1016(b)(iv)(D).

- X. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.
- Y. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- Z. Sovereign Immunity.** The State of Wyoming and the Agency do not waive sovereign immunity by entering into this Contract, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. ' 1-39-104(a) and all other state law.
- AA. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.
- BB. Termination of Contract.** This Contract may be terminated, without cause, by the Agency upon ninety (90) days written notice. This Contract may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.
- CC. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.
- DD. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.
- EE. Waiver.** The waiver of any breach of any term or condition in this Contracts shall not be deemed a waiver of any prior or subsequent breach.

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