

**PARTICIPATING ADDENDUM to
WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION
COPIERS, PRINTERS & RELATED DEVICES 14-19
MASTER AGREEMENT (Nevada RFP 3091)
Administrated by the State of Nevada (hereinafter "Lead State")**

Between

Sharp Electronics Corporation
(hereinafter "Contractor")

And

The State of North Dakota
(hereinafter "STATE", "Participating State" or "Participating Entity")

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1. Scope: This addendum covers the Copiers, Printers & Related Devices 14-19 lead by the State of Nevada for use by state agencies and other entities located in the Participating State/Entity authorized by that state's statutes to utilize state/entity contracts with the prior approval of the state's chief procurement official. The State's chief procurement official has authorized local governmental entities within the State to enter into this Participating Addendum.

Contractor has been awarded devices and services in the following categories:

- Group A – Convenience Copiers
- Group B – Production Copiers

2. Participation: Use of specific WSCA-NASPO cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State Modifications or Additions to Master Agreement:

(1) Equipment Placements. All purchases, leases or rentals made pursuant to this Participating Addendum must meet all of the following requirements:

A. Shall be from:

- i. Group A Segments 2 through 5
- ii. Group B, Segments 6 through 9

B. If from Group B segments B6 through B9 the Participating Entity must have obtained advanced 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.

(2) Coterminous. The term of this participating addendum shall be coterminous with the State of Nevada Contract Number 3091.

(3) Confidentiality. CONTRACTOR shall not use or disclose any information it receives from

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STATE under this contract that 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 STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

(4) Compliance with public records laws

CONTRACTOR understands that, except for disclosures prohibited in this Contract, 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 STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request. Notwithstanding anything to the contrary in sections 3 and 4 herein, the STATE agrees to contact CONTRACTOR immediately upon receiving a request for information under the public records law and to comply with CONTRACTOR's instructions on how to respond to the request.

(5) Spoliation. State and Contractor shall notify the other party of all potential claims that arise or result from this contract. State and Contractor shall also take all reasonable steps to preserve all physical evidence and information in its possession that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the other party the opportunity to review and inspect the evidence, including the scene of an accident.

(6) Cooperative Purchasing Contract. This contract is a cooperative purchasing contract established pursuant to North Dakota Century Code (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

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established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C chapter 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.

(7) 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*.

(8) Insurance

Contractor shall secure and keep in force during the term of this agreement, 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 \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$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 as an endorsement on the workers compensation or commercial general liability insurance.

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 the CONTRACTOR.
- 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-"

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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 duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the CONTRACTOR.

The insurance required in this agreement, through a policy or endorsement, shall include:

- a) Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
- b) A provision that CONTRACTOR's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- c) Cross liability/severability of interest for all policies and endorsements.
The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
- d) Providing the policy remains in effect, the insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- 5) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 6) Failure to provide insurance as required in this agreement is a material breach of contract entitling STATE to terminate this agreement immediately.

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(9) **Indemnification.** In addition to any indemnity obligations found within the Master Agreement, CONTRACTOR agrees that any attorney appointed to represent the 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.

(10) **Alternative dispute resolution – jury trial**

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. STATE does not waive any right to a jury trial.

(11) **Attachment O, Additional Vendor Guarantees**

1.6.2 Loaner Unit/Backup Production- If any unit is inoperable for a period in excess of 72 hours, Vendor shall provide the Customer with:

A loaner unit of similar speed and capabilities until such time as the unit(s) covered by this agreement are operable.

4. **Leases.** State agencies, institutions and other eligible participating entities of the Participating State (hereinafter referred to as "Participating Entity") may finance their purchase subject to the terms and conditions contained in the Master Price Agreement (including terms and conditions in the incorporated Request for Proposal) or, at the Participating Entity's option, a third party leasing company not associated with Contractor. If a third party lease or financing agreement is entered into, that agreement is separate from this Participating Addendum between Contractor and Participating Entity.

(a) **Lease Renewals, End of Term Options and Title to Leased Products.** At the end of the applicable Lease term, Leases (*other than Capital Leases*) may be (1) renewed as provided in the Lease Terms; (2) end user may elect to purchase the equipment subject to Fair Market Value Leases; or (3) return the equipment, pursuant to Section 13 in Exhibit A (Sharp Master Lease Agreement). In the case of a renewal, or purchase of the equipment, the customer must provide written notice at least thirty (30) days prior to the expiration

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date of the lease. Notwithstanding anything to the contrary in RFP 3091 or the Master Agreement, title to leased Products shall remain with Contractor unless and until the Purchasing Entity's payment of the applicable purchase option price. At the end of a *Capital Lease*, assuming all contractual obligations have been met, title of the equipment will be transferred to the end user.

Note: If the Purchasing Entity elects to retain the hard drive of any Product upon return of the Products to Contractor, *Purchasing Entity shall pay Contractor a hard drive replacement fee of \$500 per unit of Product.*

- (b) Termination Charges. See NASPO ValuePoint #3091 Master Lease Agreement
- (c) NON-APPROPRIATION OF FUNDS. Customer intends to remit to Lessor all Lease Payments and other payments for the full Term specified in the applicable Lease Order if funds are legally available. In the event Customer is not granted an appropriation of funds at any time during the Term for the Product or for product which is functionally similar to the Product and operating funds are not otherwise available to Customer to pay Lease Payments and other payments due and to become due under the Lease, and there is no other legal procedure or available funds by or with which payment can be made to Lessor, and the non-appropriation did not result from an act or omission by Customer, Customer shall have the right to return the Product in accordance with these Lease Terms and terminate the Lease on the last day of the fiscal period for which appropriations were received without penalty or expense to Customer, except as to the portion of the Lease Payments for which funds shall have been appropriated and budgeted. At least thirty (30) days prior to the end of Customer's fiscal period, Customer's chief executive officer (or legal counsel) shall certify in writing that: (a) funds have not been appropriated for the fiscal period; (b) such non-appropriation did not result from any act or failure to act by Customer; and (c) Customer has exhausted all funds legally available to pay Lease Payments.

5. Primary Contacts: The primary contact individuals for this participating addendum are as follows (or their named successors):

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Contractor

Name	Sharp Electronics, Craig Pulver, Government Account Executive
Address	One Sharp Plaza Suite 1, Mahwah, NJ 07495
Telephone	201-529-8200 602-300-0962
Fax	201-529-9454
E-mail	pulverc@sharpsec.com

Local Contract

Name	Sharp Electronics, xxxxxxxxxxxxxxxx, Government Account Executive
Address	
Telephone	
Fax	
E-mail	

Participating Entity

Name	Chad Keech
Address	State Procurement Office, 600 East Boulevard Avenue , Dept 012, Bismarck, ND
Telephone	701-328-2767
Fax	701-328-1615
E-mail	ckeech@nd.gov

6. Subcontractors:

All contactors dealers and resellers authorized in the State of North Dakota, as shown on the dedicated contractors (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO Master Price Agreement. The contractors dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA-NASPO Contract # 3091 (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount. Please channel your PO through one of our authorized resellers so they can arrange for proper ordering

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and installation of your unit.

8. Price Agreement Number:

All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: **131** and the Lead State price agreement number: 3091.

9. Individual Customer:

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the Master Agreement resulting from RFP number 3091 (administered by the State of Nevada) 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 Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master 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 unless accepted in writing by both Purchasing Entity and Contractor. The terms and conditions of this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

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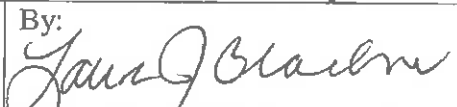
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Participating State: North Dakota	Contractor: Sharp Electronics Corporation
By: 	By: 
Name: Chad Keech	Name: Laura J Blackmer
Title: Procurement Officer II	Title: Senior Vice President – Sales
Date: 10/2/2015	Date: 10/2/2015

[Additional signatures as required by Participating State]

If Customer have questions about this Participating Addendum or the participation process, please contact:

WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION

Name	Paul Stembler, Cooperative Development Coordinator
Telephone	651-206-3858
E-mail	paul.stembler@wsca-naspo.org

[Fully executed PDF copy of this document should be emailed to PA@wsca-naspo.org to support documentation of participation and posting in appropriate data bases]