

## PARTICIPATING ADDENDUM

### NASPO VALUE POINT COOPERATIVE PURCHASING ORGANIZATION FOR COPIERS, PRINTERS & RELATED DEVICES

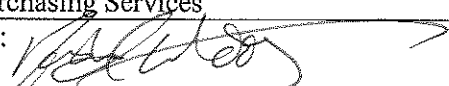
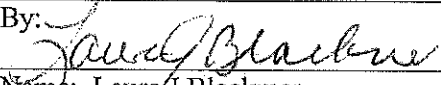
#### MASTER AGREEMENT SHARP ELECTRONICS CORPORATION NEVADA RFP 3091 (hereinafter "Contractor")

And

#### STATE OF OREGON #5583 (hereinafter "Participating State")

This Participating Addendum and the Master Agreement #3091 (administered by the State of Nevada) together with their 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 by signature of both Authorized Purchaser and Contractor as stated in Section 12 Purchase Orders of this PA. The documents that comprise the agreement between Contractor and Participating Entity and Authorized Purchasers shall be interpreted in accordance with the order of precedence set forth in Section 2 of this Participating Addendum.

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

Participating Entity: The State of Oregon, acting through its Department of Administrative Services, Purchasing Services	Contractor: Sharp Electronics Corporation
By: 	By: 
Name: Toby Giddings	Name: Laura J Blackmer
Title: State Procurement Analyst	Title: Senior Vice President - Sales
Date: October 7, 2015	Date: October 7, 2015

**Approved via email by John McCormick, DOJ/Sr AAG  
on 10-5-2015 in accordance with OAR 137-045-0050(15)**

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

#### NASPO VP COOPERATIVE PURCHASING ORGANIZATION

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

On or about April of 2015 the State of Nevada ("Lead State") issued an acceptance of offer to contractor on behalf of the NASPO Value Point ("NASPO VP") and its member states and other purchasing entities to Sharp Electronics Corporation ("Contractor") to provide multifunction copiers and related software. The Lead State and Contractor entered into Master Agreement #3091 ("Master Agreement"). The Master Agreement consists of: the contract terms and conditions, Attachment AA (RFP #3091 and Amendment No. 1), Attachment BB (Service Level Agreement), Attachment CC (WSCA Forms, including Addendum No. 1) and Attachment DD(Contractor's Response).

The State of Oregon ("State" or "Oregon") is a member of NASPO Value Point. The State, by and through the Department of Administrative Services ("DAS"), on behalf of the State of Oregon and its agencies and ORCPP members, has elected to participate in this procurement, subject to the terms and conditions of this Participating Addendum ("Addendum"). This Addendum is effective when all necessary approvals have been obtained and it is signed by State and Contractor ("Effective Date").

The State of Oregon's Participating Addendum consists of the following documents: the Participating Addendum terms and conditions, Exhibit A (DAS-Approved Purchase Order Form); Exhibit B (Insurance Requirements); Exhibit C (Service Level Agreement); Exhibit D (Contractor Reseller List); Exhibit E (Master Lease Agreement); Exhibit F (Pricing and Product List); and Exhibit G (VSR and VCAF Requirements).

**Definitions.** The following terms have the meanings set forth below. Capitalized terms not defined in this Addendum have the meaning ascribed to them in the Master Agreement and its exhibits.

"Authorized Purchaser" means an agency of the State of Oregon or any ORCPP member that submits a Purchase Order to Contractor.

"Capital Lease" means the Authorized Purchaser will select an asset (equipment); the Authorized Purchaser (finance company) will purchase that asset; the Authorized Purchaser will have use of that asset during the lease; the Authorized Purchaser will pay a series of rentals or installments for the use of that asset; the Contractor will recover a large part or all of the cost of the asset plus earn interest from the rentals paid by the Authorized Purchaser; the Authorized Purchaser has the option to acquire ownership of the asset at the end of the term (e.g. paying the last rental, or bargain option purchase price).

\*ORCPP participants are only ones eligible to enter into a Capital Lease.

"Contract" means the agreement between Authorized Purchaser and Contractor formed by the Authorized Purchaser's issuance of a Purchase Order that incorporates by reference the terms and conditions of the Master Agreement and this Addendum. For the avoidance of doubt, a "Contract" may be either a purchase or lease of Products.

"DAS" means the State of Oregon acting by and through the Department of Administrative Services, Procurement Services.

"Master Agreement" means the State of Nevada Master Agreement #3091 between Contractor and the State of Nevada, on behalf of the NASPO VP, and its attachments, which together with this Addendum sets forth terms, conditions and requirements for purchase by Authorized Purchasers of the Products described therein.

"Operating Lease" means a lease whose term is short compared to the useful life of the asset or piece of equipment leased. Commonly used to acquire on a relatively short-term basis with no benefit of ownership or buy-out option at the end of the term.

\*All participants are eligible to enter into an Operating Lease.

“ORCPP” means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the Products available under a participating addendum entered into by the State.

“Participating Addendum,” “Addendum,” or “PA” means the agreement that will establish the terms and conditions for sales of Products and Services to Authorized Purchasers.

“Purchase Order” or “PO” means the purchase order document submitted to Contractor by an Authorized Purchaser that incorporates this Addendum by reference and specifies the quantity and type of Products that Contractor will provide to the Authorized Purchaser under the terms of the Master Services Agreement and this Addendum.

“Service Level Agreement” means the Exhibit C to this Participating Addendum, which describes the service levels that Contractor agrees to provide to Authorized Purchasers with respect to certain services provided by Contractor under this price agreement, as well as the credits due to Authorized Purchasers for Contractor’s failure to meet those service levels.

“State”, for the purposes of this Participating Addendum, means the State of Oregon.

**1. Scope. Order of Precedence.** This Addendum covers the Copiers, Printers & Related Devices available to Authorized Purchasers under the Master Agreement.

Contractor has been awarded devices and services in the following categories as defined in the Master Agreement:

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

Sharp Remanufactured products are also available.

**Order of Precedence.** This Addendum establishes a price agreement between Contractor and State pursuant to ORS 279B.140. All Products described in Section 1 may be procured under this Addendum. This Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Authorized Purchasers. In the event of a conflict between the terms and conditions of this Participating Addendum and the Master Agreement, and notwithstanding Section 1 of the Master Agreement, the following order of precedence applies as to both this Participating Addendum and Contracts entered into under it:

- This Participating Addendum, less its exhibits;
- THE MASTER LEASE AGREEMENT (Exhibit E);
- THE WSCA-NASPO MASTER AGREEMENT #3091 TERMS AND CONDITIONS;
- The Statement of Work to the Master Agreement.
- A Purchase Order issued under this Participating Addendum (See Form Purchase Order set forth in Exhibit A);
- SERVICE LEVEL AGREEMENT (Exhibit C);
- SOLICITATION/REQUEST FOR PROPOSAL #3091;
- NEGOTIATED ITEMS; and
- CONTRACTOR’S RESPONSE TO RFP.

**Following Exhibits are hereby attached and incorporated to this Addendum:**

- Exhibit A: DAS-APPROVED PURCHASE ORDER FORM;

- Exhibit B: INSURANCE REQUIREMENTS ;
- Exhibit C: SERVICE LEVEL AGREEMENT;
- Exhibit D: CONTRACTOR'S AUTHORIZED RESELLER LIST;
- Exhibit E: MASTER LEASE AGREEMENT;
- Exhibit F: PRICING AND PRODUCT LIST ;
- Exhibit G: VSR and VCAF REQUIREMENTS; and

In the event of a conflict between the terms and conditions of this PA and any Exhibit subject to this PA, the terms and conditions of the Exhibit prevail.

**2. Participation.** Only Authorized Purchasers authorized by DAS may make purchases hereunder. Issues of interpretation and eligibility for participation are solely within the authority of DAS. Authorized Purchasers may acquire Products through any of the published acquisition methods available under the Participating Addendum, including Capital and Operating leases.

**3. Master Agreement Number.** All purchase orders issued by Authorized Purchasers shall include the State of Oregon Participating Addendum #5583 and Nevada's (the Lead State) Master Agreement #3091.

**4. Pricing and Volume Discounts.** Separate price sheets for each model of equipment and its accompanying accessories, including all possible pricing options offered are found in Exhibit F PRICING AND PRODUCT LIST. Contractor will also provide the Pricing and Product List one Microsoft Excel workbook with a separate spreadsheet tab for each model. The Pricing and Product list will include:

- A tab for each "Monochrome" model
- A tab for each "Color" model
- A tab for each "High Production" model
- A tab for each "Wide Format" model

Cost per Copy pricing includes all repairs and parts necessary for Authorized Purchaser to operate the Product in accordance with its specifications, and Contractor shall provide such repairs and parts (except for repairs resulting from abuse, misuse or other than normal wear and tear) at no additional charge.

Contractor and Authorized Purchaser may negotiate and accept volume or special pricing discounts for leases or purchases under this Addendum. The discounts may apply to the monthly lease payments, Costs per Copy, or any other charge set forth in Master Agreement or this Addendum.

**5. Billing, Invoices and Payment Provisions.** Contractor shall collect usage readings or machine usage data each month from the operators actually using the equipment ("Key Operators"). Contractor may collect the data using one or more of the following procedures:

- Web-based entries in response to an email prompt
- Email request to a Contractor employee, subcontractor or agent
- Via facsimile sent to each Authorized Purchaser section or office
- Via telephone call to the Key Operator

Unless otherwise agreed, Contractor shall submit to Authorized Purchaser an individual invoice per Product, no more than once monthly on or before the 15<sup>th</sup> day of the month following the lease or purchase of the Product. Contractor may submit an invoice to Authorized Purchaser only after delivery and acceptance of all Products. Charges will begin on the first day of the month and run until the last day of the month. With respect to leases or ongoing services, Contractor may pro-rate the first invoice and the last invoice if the installation and acceptance occurs on other than the first day of the month. Contractor shall send all invoices to the address provided by

Authorized Purchaser in the Purchase Order and as requested by the Authorized Purchaser. As specified by Authorized Purchaser, Contractor shall provide billing via CD, electronically or by Excel spreadsheet. Authorized Purchaser shall provide the format and required information for each invoice, but at a minimum, Contractor shall include in each invoice:

- Purchase order number,
- Quantity and description of Products delivered or Services rendered,
- Serial number,
- Complete street address for the location of the Product,
- Total amount due,
- Address to which payment is to be sent, and
- Contractor shall list rent and CPC charges on separate lines.

All invoices will be in arrears. Authorized Purchaser shall have the right from time to time during any lease period to add accessories (such as: a fax option, additional paper trays or a punch unit) to leased Products. If Authorized Purchaser elects to add an accessory at any time after the initial installation and lease period commencement date, the lease period for the accessory will be adjusted to be coterminous with the Product to which it is an accessory. Contractor shall pro-rate rental amount for the accessory based upon the initial rental term and charge Authorized Purchaser as if the accessory had been acquired at the time of the initial installation.

Contractor shall accept payment by credit card Contractor shall not charge, assess, or collect any additional fee for payment by credit card. Notwithstanding Section 23 of the Master Agreement, all payments by agencies of the State of Oregon are subject to ORS 293.462.

**6. VOLUME SALES REPORTS (VSRs) AND VENDOR COLLECTED ADMINISTRATIVE FEE (VCAF).**

Contractor shall remit to PS a Vendor Collected Administrative Fee (VCAF) and Volume Sales Reports (VSR) as described in Exhibit H VSR and VCAF REQUIREMENTS. The reports and fees due under this Section are in addition to those described in Section 26 of the Master Agreement.

**7. Leases.** In addition to the terms and conditions set forth in this Participating Addendum, Equipment leases are subject to the Terms and Conditions of the Sharp Lease Agreement, as set forth as **Exhibit E MASTER LEASE AGREEMENT**, unless otherwise agreed to in writing by Authorized Purchaser and Contractor. To initiate a lease, Authorized Purchasers may issue a PO and shall reference the type of lease, Operating Lease, or Capital Lease, on the PO. Notwithstanding anything to the contrary in this PA, in the event of a conflict between an executed Lease Agreement and the Master Agreement, the terms of the Lease Agreement will have precedence. The Lease Agreement and each PO for a lease issued prior to the termination of this PA shall survive the termination of this PA and the Master Agreement.

Contractor shall not offer to Authorized Purchaser a finance lease, as that term is defined in the Uniform Commercial Code. Any finance lease offered and entered into by parties is not binding on Authorized Purchaser.

End of term: At the end of a lease term, whether the original un-extended term or an extended term, Authorized Purchaser shall have the option to: (i) renew the lease term, or (ii) return the leased Products to Contractor. Authorized Purchaser may exercise the renewal option by issuing a new Purchase Order no later than the expiration date of the current lease term. Notwithstanding anything to the contrary, if Authorized Purchaser fails to notify CONTRACTOR of its intent to renew a lease term the lease shall

terminate on the date as stated in the lease schedule and Contractor shall remove the Product in accordance with the terms of this Participating Addendum.

**Lease Renewals:** Lease payments due under Operating Leases shall automatically be reduced at time of lease renewal. Authorized Purchasers will provide a PO to renew an Operating Lease, which, if accepted by Contractor, will have the effect of renewing the lease for the period set forth in the PO, on the same terms and conditions, and at a monthly lease payment calculated as follows: (a) for a twelve (12) month extension, for an original lease terms of thirty-six (36) or forty-eight (48) month, a ten (10) % lease payment reduction, or (b) twenty-four (24) month extension, for an original lease term of thirty-six (36) months, a fifteen (15)% lease payment reduction.

**End of term removal for ORCPP participants only:** At the end of a lease term, if the Authorized Purchaser is not an agency of the State of Oregon, Authorized Purchaser shall have the option to: (i) renew the purchase order (ii) purchase the Products or (iii) return the Products. If Authorized Purchaser exercises the option of either renewal or purchase, it shall give Contractor written notice at least thirty (30) days before the expiration of such the lease term. Notwithstanding anything to the contrary, if Authorized Purchaser fails to notify CONTRACTOR of its intent to either renew or purchase the product, the initial lease term shall be terminated on the date as stated in the lease schedule and Contractor will remove the Product in accordance with the terms of this Participating Addendum. At the end of term of any Capital lease, title to the applicable equipment shall transfer to Customer, the equipment will not be returned and the related lease will not be renewed.

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

Contractor

Name	Craig Pulver
Address	Sharp Plaza Mahwah, New Jersey 07495
Telephone	602.300.0962
Fax	
E-mail	pulverc@sharpsec.com

Participating Entity

Name	Stefani Brewster State of Oregon, Department of Administrative Services, Procurement Services
Address	1225 Ferry St. SE Salem, OR 97301
Telephone	(503) 373-0384
Fax	(503) 373-1626
E-mail	Stefani.Brewster@oregon.gov

9. **Subcontractors.**

All Sharp dealers and resellers authorized in the State of Oregon listed in Exhibit D CONTRACTOR'S AUTHORIZED RESELLER LIST, are approved to provide only sales and service support. The Sharp reseller's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. DAS will maintain an Authorized Reseller List for use by ORCPP members that are not agencies of the State of Oregon. If an Authorized Purchaser chooses to purchase from an Authorized Reseller it must use an Authorized Reseller on the Authorized Reseller List maintained by DAS.

**10. Compliance with reporting requirements of the “American Recovery and Reinvestment Act of 2009” (“ARRA”):**

If or when Contractor is notified by an Authorized Purchaser that a specific purchase or purchases are being made with ARRA funds, Contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Authorized Purchaser is responsible for informing Contractor as soon as Authorized Purchaser is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to Authorized Purchaser with the invoice presented to the ordering entity for payment. Contractor, as it relates to purchases under this Addendum, is not a subcontractor or sub grantee, but simply a provider of goods and related services.

**11. Tax Certification.** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown in the Participating Addendum is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; and (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not and has not been, for the six year period prior to the Effective Date of this Participating Addendum, in violation of any Oregon Tax Laws. (For purposes hereof, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and taxes of political subdivisions of the State of Oregon, including local taxes administered by the Department of Revenue under ORS 305.620.)

**12. Purchase Orders.**

- a. Purchase Orders.** Authorized Purchasers may issue Purchase Orders for the Products described in the Participating Addendum. Unless otherwise agreed in a Purchase Order, all Products, including accessories, will be new and never used, provided, however that Authorized Purchasers may accept a demonstration model if Contractor offers it at a reduced price. All Products will be current production models that contractor is actively marketing. All Products shall meet Energy Star rating ascribed to such Products, and all Products shall be installed with energy saving features enabled.

Authorized Purchasers shall use the purchase order form found in Exhibit A, DAS-APPROVED PURCHASE ORDER FORM. Each Purchase Order must contain, on the front page, the following language:

MANDATORY PURCHASE ORDER LANGUAGE:

**THIS LEASE OR PURCHASE IS PLACED AGAINST THE NASPO VP MASTER AGREEMENT #3091. THE TERMS AND CONDITIONS OF THE PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, #5583 APPLY TO THIS LEASE OR PURCHASE AND SUPERSEDE ALL ADDITIONAL OR CONFLICTING TERMS AND CONDITIONS, EXPRESSED OR IMPLIED.**

- b. Effect of Purchase Orders.** Each Authorized Purchaser alone is liable for any Contract made pursuant to Purchase Orders issued by it, and no other Authorized Purchasers is responsible for any leases or purchases made under Purchase Orders issued by another Authorized Purchaser. The State of Oregon expressly disclaims any liability for leases or purchases made by non-

State agency Authorized Purchasers or any other entity that is not an agency of the State of Oregon.

- c. **Verification of Authorized Purchasers.** Contractor is responsible for verifying that it provides Products under this Addendum only to Authorized Purchasers. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/DAS/PFSS/SPO/coop-menu.shtml> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.
- d. **Purchase Order Instructions.** Any Authorized Purchaser may submit Purchase Orders to Sharp Electronics Corporation ORCPP participants that are not agencies of the State of Oregon may work with an Authorized Reseller, which shall be documented on the Purchase Order. Agencies of the State of Oregon may only submit Purchaser Order to Sharp Electronics Corporation, and not to Authorized Resellers.

All Purchase Orders should contain the following

- (1) Mandatory Purchase Order Language stated above,
- (2) Name of Authorized Purchaser, Contact Name, Address, and phone number
- (3) Purchase order amount
- (4) If Leased, type of Lease: Operating Lease (State Agency or ORCPP), or Capital Lease (ORCPP only) and monthly payment
- (5) Itemized list of Products (including accessories)
- (6) Service Program selected and CPC rates.

\*See Exhibit E MASTER LEASE AGREEMENT to review and agree to in conjunction with purchase order.

Unless otherwise agreed upon by both parties in writing, signing the delivery and acceptance certificate constitutes Acceptance of the Product(s) and allows Contractor to invoice for the Product(s). Contractor will provide timely invoices in accordance with this Participating Addendum, and Authorized Purchaser will notify Contractor, in writing, of any billing concern. Contractor will be allowed a thirty (30) day cure period upon receipt of such notification to address any such billing issue. Invoices that require update due to information being received incorrectly or late from the Authorized Purchaser, are not considered inaccurate.

Address Purchase Orders to:	Purchases Remit Payment to:	Leases Remit Payment to:
Attn: Craig Pulver Sharp Electronics Corporation Sharp Plaza Mahwah, New Jersey 07495	Address listed on invoice	Address listed on invoice

For Authorized Reseller Orders, address to and remit payments directly to Contractor as shown on the dedicated Contractor website or, in the case of lease payments, to the address listed on the invoice.

**13. Additional Contractor Duties and Responsibilities.** In addition to the duties and responsibilities set forth in the PA, Contractor shall:

**13.1** For State Agencies subject to DAS procurement authority, meet with DAS' Contract Administrator as needed to resolve issues related to the Addendum and the Purchase Orders for the Products issued by State Agencies subject to DAS procurement authority; and for other Authorized



Purchasers, meet as needed with the Authorized Purchaser's authorized representative to resolve issues related to Purchase Orders for the Products issued by those Authorized Purchasers.

**13.2** Contractor shall understand and direct any State Agency that may want to lease a copier that produces over 60 clicks per minute ("CPM") to DAS EGS/Printing and Distribution for approval, see Section 2.3 of the SLA.

**14. Funds available and authorized/non-appropriation.** The State of Oregon's and its agencies' (each a "State Authorized Purchaser) payment obligations under this Addendum and Contracts entered into under it are conditioned upon the State Authorized Purchaser receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow the State Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any contract formed pursuant to this Addendum. Contractor is not entitled to receive payment under this Addendum or any Contract from any part of Oregon state government other than Authorized Purchaser that entered into the Contract. Nothing in this Addendum or any Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon and its agencies and departments. By submitting a Purchaser Order, each State Authorized Purchaser represents that at the time of issuing the Purchase Order it has sufficient appropriations and limitations for the current biennium to make payments under any Contract issued under this Addendum.

**15. Additional Service Level Agreement Commitments.** Contractor will perform its obligations under this Participating Addendum and each Contract entered into under this Participating Addendum in accordance with Exhibit C SERVICE LEVEL AGREEMENT (SLA), and will pay to Authorize Purchasers any service level credits due Authorized Purchasers as set forth in Exhibit C.

**16. [Reserved]**

**17. Master Agreement Number.** All purchase orders issued by Authorized Purchasers within the jurisdiction of this Addendum will include the Participating State contract number: 5583 and the Lead State Master Services Agreement number: #3091.

This Participating Addendum #5583 (administered by the State of Oregon) and the Master Agreement number #3091 together with their 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, will 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. The terms and conditions of this Addendum and the Master Services Agreement and its exhibits will prevail and govern in the case of any such inconsistent or additional terms within the Purchase Order.

**19. Compliance with Applicable Law.** Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to Contractor and the Work under this Addendum and any Lease or Purchase Order, and an Authorized Purchaser's performance under a Lease or Purchase Order is conditioned on Contractor's compliance with the provisions of ORS 279B.2, 279B.235, 279B.230 and 279B.270. In addition, Contractor warrants Products provided under this Addendum will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division. Contractor also agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section v of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659.425, (d) all regulations and administrative rules established pursuant to the foregoing laws and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**20. Meter Collection Methods.** As part of its services, Contractor may, but only after receiving written permission from the Authorized Purchaser for which it provides the services, provide electronic remote meter

reading and equipment monitoring services using technology. This may allow for automated meter reading and submission, automatic placement of low toner alerts, automatic placement of service calls in the event of a critical Product failure and may enable firmware upgrades. See SLA Section 2.20 Collecting Monthly Copier Usage Readings for details.

## **21. [RESERVED]**

**22. Exam Rights.** Upon the prior written request of an Authorized Purchaser Contractor will permit an exam of the documentation that is reasonably necessary for the Authorized Purchaser to confirm its payment obligations under any invoice pertaining to this Contract. Contractor will assist the Authorized Purchaser in connection with its efforts to verify the completeness and accuracy of the invoices. In no event, however, will Contractor be obligated to disclose any confidential information not directly pertaining to the invoice in question.

**23. Individual Customer.** Each State agency and political subdivision, as an Authorized Purchaser, that purchases Products will be treated as if they were individual customers. Each Authorized Purchaser will be responsible for complying with the terms and conditions of the Master Agreement and this Addendum with respect to purchases made under this Addendum. Each Authorized Purchaser will be responsible for its own charges, fees, and liabilities. Each Authorized Purchaser will have the same rights to any indemnity or to recover any costs allowed in a Contract for its purchases.

## **24. Warranties; Remedies.**

**24.1 Warranties.** Authorized Purchasers are entitled to the warranties, rights, remedies, and benefits under the Master Services Agreement and this Addendum for any leases or purchases made by such Authorized Purchasers pursuant to Purchase Orders. In addition to the warranty provisions of the Master Agreement, Contractor represents and warrants to Participating State and each Authorized Purchaser that:

- Contractor has the power and authority to enter into and perform this Addendum and each Contract formed under this Addendum, and that this Addendum and each such Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- Products will be new, unused, current production models, where applicable, and will be free from defects in materials, design and manufacture for manufacturer's standard warranty period. Where specifications have been made a part of the Master Agreement or Addendum, Contractor further warrants that all Products conform to the specifications and meet or exceed all quality and safety standards set in the Master Agreement or Addendum;
- All Products that are services to be performed under this Addendum or a Contract will be performed in a good and workmanlike manner;
- Contractor shall transfer to Authorized Purchaser all manufacturer warranties covering Products, if any, at time of delivery at no charge; and
- All Products are free and clear of any liens or encumbrances, and that Contractor has full legal title to such Products, and that no other person has any right, title or interest in the Products that is superior to or infringes upon the rights granted to Authorized Purchaser hereunder or under a Contract.
- Contractor will, for the term of this Participating Addendum, comply with the Oregon Tax Laws (as defined in Section 11).

**24.2 Remedies Related to Compliance with Tax Laws.** Contractor's shall be in default of the terms of this Participating Addendum and each Lease or Purchase Order entered into hereunder if Contractor breaches the warranty set forth in Section 24.1 or the certification set forth in Section 11, related to compliance with Oregon Tax Laws, and for such default hereunder Authorized Purchaser may terminate the Purchase Order and each Lease or Purchase Order entered into hereunder and seek damages and other relief available under the terms of this Participating Addendum, the Lease, the Purchase Order or under

applicable law.

## **25. Indemnities.**

**25.1 General Indemnity.** Contractor will defend, save, hold harmless and indemnify the Authorized Purchaser and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the negligent or willful acts or omission of Contractor or its officers, employees, subcontractors or agents under the Addendum or a Contract. The foregoing indemnification obligations are subject to Authorized Purchaser: (i) notifying Contractor in writing promptly of any such claim; (ii) subject to Section 25.3, granting Contractor the sole control over the defense or settlement thereof; and (iii) Authorized Purchaser providing reasonable cooperation in response to Contractor's request for assistance.

**25.2 Infringement Indemnity.** Contractor will, at Contractor's sole expense, defend, save, hold harmless and indemnify Authorized Purchasers and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against any and all costs, damages, attorneys' fees, and any and all costs resulting from, relating to, or arising out of a claim by a third party that any aspect of the Products furnished under a Contract infringes a patent utility model, industrial design, copyright, mask work, trademark, trade dress, or any other legally cognizable intellectual property right of any third party (an "Infringement Claim"). The foregoing indemnity shall be limited to only those Products manufactured by Contractor or, if the Products are services, performed by Contractor. Contractor shall however have no indemnification obligation to the extent it arises out of or is related to: i) the negligent act or omission or willful misconduct on the part of Authorized Purchasers (including the State of Oregon); ii) failure by Authorized Purchaser (including the State of Oregon) to use the Products in accordance with its intended use; or iii) failure by Authorized Purchaser (including the State of Oregon) to comply with applicable laws, rules and regulations. Subject to the limitations of Article XI, §§ 7 and 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Authorized Purchaser shall indemnify, within the limits of and subject to the restrictions in the Tort Claims Act, the Contractor with respect to any Infringement Claims arising solely from (i), (ii) or (iii) above.

**25.3 Participation in Litigation.** Contractor will have control of the defense and settlement of any claim that is subject to Section 25.2; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General for the State of Oregon, nor will Contractor settle any claim on behalf of the State of Oregon without the approval of the Oregon Department of Justice. Any Authorized Purchaser will have the right to have its own counsel and participate in the defense of any Infringement Claim at its own expense. If the Authorized Purchaser reasonably concludes that its interests are not being properly protected, it may at its own expense enter any action. Further, if principles of governmental or public law are involved, the State of Oregon may participate in the defense of any Infringement Claim with respect to those principles. Any participation of the State of Oregon pursuant to this subsection will be at the State of Oregon's expense, but will not relieve Contractor of its obligation to save, hold harmless and indemnify the State of Oregon under this section, provided that the State of Oregon may not settle any Infringement Claim or action without Contractor's prior written consent, which will not be unreasonably withheld. Notwithstanding Contractor's obligation to defend and indemnify Authorized Purchaser, Contractor will have no obligation to pay expenses incurred by Authorized Purchaser (including the State of Oregon) in its participation under this Section.

**25.4 Remedies.** If any Products furnished by Contractor are, in Contractor's opinion, likely to

become the subject of an Infringement Claim, or if an Authorized Purchaser is prevented from exercising its rights under a Contract based on any Infringement Claim or court order arising from any Infringement Claim, then Contractor may, at its option and expense, procure for the Authorized Purchaser the right to continue using the allegedly infringing Products, or replace or modify the Products so that they become non-infringing; provided that the replacement or modified Product meets the specifications set forth in the applicable Contract to the reasonable satisfaction of the Authorized Purchaser. If the foregoing remedies are not available, then Authorized Purchaser will return the Products that are the subject of the Infringement Claim, and Contractor will: (i) if Authorized Purchaser purchased the Products, refund to Authorized Purchaser's all payments, in full, previously made for the Products that are the subject of the Infringement Claim, or (ii) if Authorized Purchaser is leasing the Products that are the subject of the Infringement Claim, agree with Authorized Purchaser to terminate the lease as of the date that Authorized Purchaser first obtained actual knowledge of the Infringement Claim and release Authorized Purchaser from any further payments and all other obligations under the lease Contract.

## **26. Term and Termination of Participating Addendum.**

**26.1 Term.** This Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Addendum in accordance with its terms.

**26.2 Termination of Addendum.** DAS may terminate this Addendum, in whole or in part, immediately upon notice to Contractor, or at such later date as DAS may establish in such notice upon the occurrence of any of the following events:

- a. DAS fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the administration of the Addendum; or
- b. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that DAS no longer has the authority to be a party to the Participating Addendum, or DAS' administration of this Addendum is prohibited; or
- c. Contractor has breached the material provisions of this Addendum or any Lease or Purchase Order issued hereunder and failed to cure within 30 days' written notice thereof.

Upon receipt of written notice of termination, Contractor will cease to accept any Purchase Orders from Authorized Purchasers and take other steps described by DAS as set forth in DAS' notice of termination.

**26.3** Termination under any provision of this Addendum does not extinguish or prejudice DAS' or an Authorized Purchaser's right to enforce this Addendum or any Contract with respect to Contracts that are effective as of the effective date of termination.

## **27. Termination of Individual Leases or Purchase Orders.**

**27.1** An Authorized Purchaser may terminate a Contract at any time by written consent of Authorized Purchaser and Contractor. In the event of any such termination the Authorized Purchaser shall be responsible for the applicable termination charges set forth in Section 27.3 of this Participating Addendum.

**27.2** Authorized Purchaser may terminate individual Contracts, in whole or in part, immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events:

- a. Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Products to be purchased under the

Contract;

b. Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the lease or purchase of Products under a Contract is prohibited, or Authorized Purchaser is prohibited from paying for such Products from the planned funding source;

c. Contractor commits any material breach of this Addendum or a Contract and fails to cure same within 30 days' written notice thereof.

**27.3** Operational leases and Capital leases may be subject to a termination charge. The termination charge may not exceed the present value of the balance of lease payments for leases and may not exceed more than four (4) month service and supply base or 25% of the remaining term, whichever is less, for service and maintenance charges.

**27.4** Upon receipt of written notice of termination, Contractor will stop performance as of the effective date of the termination under the Contract as directed by Authorized Purchaser.

**27.5** Termination of a Contract does not extinguish or prejudice Authorized Purchaser's right to enforce the Contract with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of Authorized Purchaser to indemnification by Contractor. In addition, termination of a Contract does not extinguish or prejudice Authorized Purchaser's right to enforce the warranty, indemnification, governing law, venue and consent to jurisdiction provisions of this Addendum. If a Contract is terminated, Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for Products delivered and accepted by Authorized Purchaser.

**28. Application of Public Records Law.** Contractor acknowledges that any disclosures Contractor makes to DAS or an Authorized Purchaser under this Addendum and Contracts entered into hereunder are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.410 - 192.505, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 - 192.710, and of ORS 646.461 - 646.475. The non-disclosure of documents or of any portion of a document submitted by Contractor to DAS or Authorized Purchaser may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to DAS or Authorized Purchaser's release of documents to entities other than other Authorized Purchasers. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense.

**29. Recycled Products.** All Products will be fully compatible with the use of recycled paper, up to and including 100% post-consumer waste ("PCW") paper. During maintenance or repair, Contractor may not fault the use of recycled paper (up to and including 100% PCW paper) for any equipment failure, as long as Authorized Purchaser uses recycled paper that meets the following specifications:

- Multi-purpose, copy or laser
- 100% PCW content
- Weight is 16 to 24 pounds

Contractor will use, to the maximum extent economically feasible in the performance of this Addendum, recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

**30. Notices.** Except as otherwise provided in a Contract, any formal communications between the parties to or notices to be given under a Contract will be given in writing by personal delivery, or a facsimile transmission of the notice, or mailing the notice, postage prepaid, at the address or number set forth in the Contract. Any communication addressed and mailed will be deemed to have been received five (5) calendar days after mailing. Any communication delivered by facsimile will be deemed to be given when a confirming report for the transmission is generated by the transmitting machine. To be effective against the receiving party, such facsimile

transmission must be confirmed by telephone notice to the receiving party's authorized representative, as set forth in the Contract. Any communication or notice by personal delivery will be deemed to be given when actually received by the appropriate authorized representative.

As between Contractor and State with respect to this Addendum, the Primary Contacts of Contractor and State are set forth in Section 8 above.

**31. Governing Law.** This Addendum and resulting Contracts are governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

**32. Jurisdiction and Venue.** Any claim, action, suit or proceeding (collectively, "Claim") between State or any other agency or department of the State of Oregon, and Contractor, that arises from or relates to this Addendum or a Contract under this Addendum, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A LEASE OR PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as a waiver of the State of Oregon's sovereign immunity with respect to any Claim, whether brought under State or Federal law, or in State or Federal Court.

Any Claims between Contractor and an Authorized Purchaser other than the State of Oregon or a State agency that arise from or are related to individual Contracts or this Addendum will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Authorized Purchaser resides or has its principal office, or at Authorized Purchaser's option, within such other county as Authorized Purchaser will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A LEASE OR PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as a waiver of Authorized Purchaser's sovereign immunity with respect to any Claim, whether brought under State or Federal law, or in State or Federal Court.

The Parties agree that this Section 32 replaces in its entirety Section 35 of the Master Agreement with respect to any claim between Contractor and DAS, the State of Oregon or any Authorized Purchaser.

**33. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Addendum. An Authorized Purchaser may withhold payment under a Contract until Contractor has provided the Oregon Department of Revenue with the required information.

**34. Merger Clause; Waiver.** This Addendum, including the Master Services Agreement and the exhibits attached to this Addendum, constitutes the entire agreement between the parties on the subject matter hereof, and supersedes all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between the parties that are not specified in this Addendum. No waiver, consent, modification or change of terms of this Addendum binds either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Addendum does not constitute a waiver by the State of that or any other provision.

In addition, each Contract, including the terms of this Addendum and the Master Agreement, including their exhibits, along with the applicable Purchase Order, constitutes the entire agreement between the parties to the Contract on the subject matter of the Contract, and supersedes all prior agreements, oral or written. No waiver,

consent, modification or change of terms of a Contract binds either party unless in writing and signed by both parties and, with respect to agencies of the State of Oregon, all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of an Authorized Purchaser to enforce any provision of a Contract does not constitute a waiver by the Authorized Purchaser of that or any other provision of the Contract.

**35. Independent Contractor.** Contractor shall act at all times as an independent contractor and not as an agent or employee of the State of Oregon or any Authorized Purchaser. Contractor has no right or authority to incur or create any obligation for or legally bind the State of Oregon or any Authorized Purchaser in any way. Contractor is not an "officer", "employee", or "agent" of the State of Oregon or any Authorized Purchaser (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements, representations nor commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

**36. Access to Records.** Contractor will maintain all fiscal records relating to this Addendum and Contracts entered hereunder in accordance with generally accepted accounting principles and will maintain any other records relating to this Addendum and Contracts entered hereunder in such a manner as to clearly document Contractor's performance thereunder. The Authorized Purchaser, the State and its agencies, the Oregon Secretary of State Audits Division and their duly authorized representatives will have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this Addendum and Contracts entered hereunder to perform an examination. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon and Authorized Purchasers. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three years, or such longer period as may be required by applicable law following final payment under all Contracts and termination of this Addendum, or until the conclusion of any controversy or litigation arising out of or related to any Contract or this Addendum, whichever date is later.

**37. Severability.** If any term or provision of this Addendum or a Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Addendum or Contract did not contain the particular term or provision held to be invalid.

**38. Survival.** Any terms of this Addendum or a Contract, which by their nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions survive the termination or expiration of this Addendum or the Contract.

**39. Insurance.** Within ten (10) days of the Effective Date, Contractor must provide insurance as set forth in Exhibit B INSURANCE REQUIREMENTS. No Contract may be placed or accepted until proof is provided that these requirements have been met. The requirements set forth in Exhibit B replace any similar requirements set forth in the Master Agreement with respect to this Addendum and Contracts entered into hereunder.

**40. Anticipated Amendments.** The parties may need to amend this Addendum to modify selected terms, conditions, and price(s). This Addendum may be modified by written document only signed by authorized representatives of both parties.

**41. Force Majeure.** Neither party to this Participating Addendum or to any Contract shall be held responsible for delay or default caused by fire, riot, acts of God or war that is beyond that party's reasonable control. Participating State may terminate this Participating Addendum, and an Authorized Purchaser may terminate any Contract to which it is a party after it determines such delay or default will reasonably prevent successful performance of this Participating Addendum or a Contract.