

**PUBLIC SAFETY COMMUNICATIONS**  
**SUPPORT EQUIPMENT**

Lead by the State of Washington

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Master Agreement #: 05715

Contractor: **Aeroflex Wichita, Inc.**

Participating State: **STATE OF OREGON, acting by and through the  
Department of Administrative Services ("DAS PS")**

**Master Agreement Terms and Conditions:**

1. Scope: This Addendum covers the Master Agreement #05715 led by the State of Washington for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

The following products or services are included in this Addendum:

- *Test Equipment, Multifunctional Radio Test Set: includes specialized high-accuracy multi-function test instrument for the testing of two way radios. Includes: portable instruments, rugged field service instruments, laboratory instruments, along with related test adapters and accessories.*

The following products or services are not included in this Addendum

- *Any other product or service not expressly provided for in list of the "products or services included" as set forth above.*

This Addendum establishes an agreement to agree between Contractor and Participating State pursuant to ORS 279B.140, including the provisions of the Master Agreement, provided, however, that any amendments to Master Agreement agreed upon between the State of Washington and Contractor do not automatically become a part of this Addendum. DAS PS shall have an opportunity to review all such amendments to the Master Agreement, and if acceptable to DASPS, Contractor and DASPS may negotiate a substantially similar amendment to this Addendum.

The Goods and services offered under the Master Agreement that are available under this Addendum are described above. 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 Addendum and the Master Agreement, the following order of precedence applies:

- (a) this Addendum, less its exhibits;

- (b) Exhibit No. 1 of the Addendum (State Specific Terms and Conditions);
  - (c) Exhibit No. 2 of the Addendum (Insurance);
  - (d) Exhibit No. 3 of the Addendum (Tax Certification);
  - (e) any Purchase Order issued by an Authorized Purchaser pursuant to this Addendum; and
  - (f) the Master Agreement, including its attachments.
2. **Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Oregon. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official ("Authorized Purchasers").
3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

**Contractor**

Name:	Kimberly Taylor
Address:	10200 West York Street, Wichita, KS 67215
Telephone:	316-529-5521
Fax:	N/A
Email:	kimberly.taylor@aeroflex.com

**Participating Entity**

Name:	Mary Mattison
Address:	1225 Ferry Street SE, Salem, OR 97301
Telephone:	503-378-4648
Fax:	503-373-1626
Email:	<a href="mailto:mary.mattison@oregon.gov">mary.mattison@oregon.gov</a>

**4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT**

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

4.1 This Participating Addendum is not exclusive. There may be one or more contractor(s) providing the Goods and services. In the event DAS PS has made an award to one or more of the holders of Master Agreements, Authorized Purchasers must comply with the following selection process:

4.2 Purchasing Entities - Selection Process for State Agencies. From time to time, Purchasing Entities, who are state agencies, may purchase Products or Services from Contractor or other contractors.

4.2.1 Large Purchases. Purchasing Entities, who are state agencies, shall use one of the following selection processes for purchases over \$10,000:

- 1) Highest Ranked Proposer in RFP # 05715: Purchasing Entity or Authorized Purchaser may issue purchase orders or contracts for Products or Services to the Awardee who received the highest total points in RFP # 05715;

OR

- 2) Cost Comparison: Purchasing Entity or Authorized Purchaser may conduct a Product or Service specific comparison among all holders of Participating Addendum (s) based upon price.

OR

- 3) Compatibility: Purchasing Entity or Authorized Purchaser may conduct a Product or Service specific comparison among all holders of Participating Addendum (s) based upon compatibility of existing infrastructure or equipment.

OR

- 4) Availability: Purchasing Entity or Authorized Purchaser may conduct a Product or Service specific comparison among all holders of Participating Addendum (s) based upon availability.

4.2.2 Other Purchases. An Authorized Purchaser subject to DAS PS procurement authority may follow the provisions of ORS 279B for purchases of \$10,000 or under or that may be otherwise exempt from the competitive procurement requirements of the Public Contracting Code.

4.3 Purchasing Entity or Authorized Purchaser must document its selection process in its procurement file.

4.4 Contractors chosen in accordance with one of the above selection processes are final, per Purchasing Entity's or Authorized Purchaser's decision.

5. Lease Agreements: **"Reserved"**

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

7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.
8. Tax Compliance: Contractor has complied with the tax laws of this State and the applicable tax laws of any political subdivision of this State. Contractor shall, throughout the duration of this Addendum and any extensions, comply with all tax laws of this State and all applicable tax laws of any political subdivision of this State. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to Goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any violation of this Section 8 constitutes a material breach of this Addendum and any Contract issued under this Addendum. Further, any violation of Contractor's warranty set forth in Exhibit No. 3 also shall constitute a material breach of this Addendum and any Contract issued under this Addendum. Any violation shall entitle DAS PS or Authorized Purchaser to terminate this Addendum or the applicable Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Addendum, a Contract, at law, or in equity, including but not limited to:

- Termination of this Addendum or the applicable Contract, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Authorized Purchaser's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods or Services or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and DAS PS or Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

This Addendum will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Addendum or any Contract or (ii) exercising a right of setoff against Contractor's compensation under this Addendum or any Contract for any amounts that may

be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

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

Participating State: The State of Oregon, acting by and through the Department of Administrative Services, Procurement Services	Contractor: Aeroflex Wichita, Inc.
Signature: 	Signature: 
Name: DARWIN D. Kumpula	Name: Kimberly Taylor
Title: MANAGER	Title: Contract Manager
Date: 12 JULY 2017	Date: 29 mar 2017

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

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	907-723-3360
Email:	tfosket@naspovaluepoint.org

***[Please email fully executed PDF copy of this  
document to***

***PA@naspovaluepoint.org***

***to support documentation of participation and posting  
in appropriate data bases.]***

## **EXHIBIT NO. 1**

### **Changes to Master Agreement**

#### **State-Specific Constitutional, Statutory and Other Requirements**

**1. 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.

"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.

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

"ORCPP" means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the goods and services available under a price agreement or master agreement entered into by the State.

"Master Agreement" means the State of Washington Master Agreement #05715 between Contractor and the State of Washington, on behalf of the member states of the National Association of State Procurement Officials and the Western States Contracting Alliance, and its attachments, which together with this Addendum sets forth terms, conditions and requirements for purchase by Authorized Purchasers of the goods and services described therein.

"Purchase Order" 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 goods or services that Contractor will provide to the Authorized Purchaser under the terms of the Master Agreement and this Addendum.

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

#### **2. Purchase Orders.**

**2.1 Purchase Orders.** Authorized Purchasers may use their own forms for Purchase Orders. State agencies may also use the general State-approved Purchase Order referencing the Master Agreement Number. To the extent that the terms of any form differ from the terms of this Addendum, the terms of this Addendum supersede such contrary

terms. Each Purchase Order from an Authorized Purchaser that is not a State agency must contain, on the front page, the following language:

**THIS PURCHASE IS PLACED AGAINST THE STATE OF WASHINGTON MASTER AGREEMENT NO. 05715 THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, CONTRACT NO. 7640 APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.**

**2.2 Effect of Purchase Orders.** The State is only liable for purchases made by State of Oregon agencies that issue Purchase Orders. Other Authorized Purchasers are responsible for any purchases under Purchase Orders they issue. The State expressly disclaims any liability for purchases made by non-State agency Authorized Purchasers or any other entity.

**2.3 Verification of Authorized Purchasers.** Contractor is responsible for verifying that it provides goods and services 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/Procurement/Pages/Orcppmember.aspx> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.

**3. Payment Provisions.** All payments are subject to ORS 293.462.

**4. Funds available and authorized/non-appropriation.** The State of Oregon's and its agencies' payment obligations under this Addendum are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Contract issued under 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. Nothing in this Addendum or 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. Authorized Purchaser represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Contract issued under this Addendum.

**5. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF)**

**5.1 Volume Sales Reports (VSRs):**

**5.1.1** Contractor shall submit a Volume Sales Report (VSR) no later than thirty (30) calendar days from the end of each calendar quarter, which contains:

Complete and accurate details of all receipts (sales and refunds) for the reported period;

The information as identified in the DAS PS document titled Volume Sales Report Template - Data Requirement, Format and Layout; and Such other information as DAS PS may reasonably request.

Contractor shall send a VSR to DAS PS each quarter, whether or not there are sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter."

**5.1.2 Data Medium and Delivery Medium:** Contractor shall provide VSRs in MS Excel (.xls) format. VSRs must be submitted by e-mail. Delivered print outs of VSRs are not acceptable. Hard copies of VSRs on CDs are only acceptable if the size of the file precludes transmission by email. Approval from the Contract Administrator must be obtained for deviations from these requirements.

**5.1.3 Receipt/Acceptance:** The first VSR submitted by the Contractor must be submitted to the DAS PS Contract Administrator for review and approval. Approved first VSRs and subsequent VSRs must be submitted to [VCAF.REPORTING@oregon.gov](mailto:VCAF.REPORTING@oregon.gov). A separate section follows describing the administrative charge if it is applicable. The Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Addendum shall not preclude DAS PS from challenging the validity thereof at any time.

**5.1.4** DAS PS reserves the right to terminate this Addendum if volume sales reports are not received as scheduled on in the prescribed format.

## **5.2 Vendor Collected Administrative Fee (VCAF):**

### **5.2.1 Vendor Collected Administrative Fee (VCAF) PERCENTAGE:**

The Vendor Collected Administrative Fee (VCAF), is a charge equal to One Percent (1.0 %) of Contractor's Gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter.

**5.2.2 VCAF Amount / Payment Due Date:** During the term of this Addendum and for the sales during the last calendar quarter of the term of this Addendum, the Contractor shall remit VCAF payment to DAS PS within forty-five (45) calendar days after the end of each calendar quarter.

**5.2.3** Contractors may not reflect the VCAF fee as a separate line item charge to Authorized Purchasers. Contractor's proposed prices shall reflect all Contractor's charges to Authorized Purchasers. For the purposes of this Addendum, quarters end March 31, June 30, September 30, and December 31. DAS PS will invoice the Contractor for the VCAF on a State generated invoice from the information submitted on the VSR. Contractor is responsible for timely reporting and payment, regardless of entity that actually reports or makes VCAF payment to DAS PS.

**5.2.3.1 Payment Format:** The fee shall be in the form of a check remitted to:



State of Oregon  
Department of Administrative Services  
Attn: Shared Financial Services/PS  
155 Cottage Street NE  
Salem, Oregon 97301

Any other form of payment must be specifically approved by the Contract Administrator.

**5.2.3.2 Interest:** Any payments Contractor makes or causes to be made to DAS PS after the due date as indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. DAS PS' right to interest on late payments shall not preclude DAS PS from exercising any of its other rights or remedies pursuant to this Addendum or otherwise with regards to Contractor's failure to make timely remittances.

**5.3 Audit:** DAS PS, at its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's Records, as defined herein, and other pertinent data, to determine and verify the figures reported in any VSRs furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest thereon at the rate provided in Section 5.2.3.2. At DAS PS' request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by DAS PS.

**5.4 Limitation of Liability:** Contractor acknowledges and agrees that the State shall bear no liability on Contracts entered into for purchases by non-State Agencies, which liability the State expressly disclaims. With regard to non-State Agencies, Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Goods or Services and the resulting contractual relationship, if any, with each such contracting party.

**6. Warranties.** Authorized Purchasers are entitled to the warranties, rights, remedies, and benefits under the Master Agreement and this Addendum for any purchases made by such Authorized Purchasers pursuant to Purchase Orders. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to Authorized Purchaser that:

**6.1** Contractor has the power and authority to enter into and perform this Addendum and that this Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

**6.2** Goods 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 RFP, Contractor

further warrants that all Goods conform to the specifications and meet or exceed all quality and safety standards set in the RFP;

**6.3** all Services to be performed under this Addendum will be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality shall be employed in the performance of this Addendum;

**6.4** Contractor shall transfer to Authorized Purchaser all manufacturer warranties covering Goods or Products, if any at time of delivery at no charge, and

**6.5** all Goods or Products, if any, are free and clear of any liens or encumbrances, and that Contractor has full legal title to such Goods or Products, and that no other person has any right, title or interest in the Goods or Products which is superior to or infringe upon the rights granted to Authorized Purchaser hereunder.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Master Agreement. All warranties provided in this Addendum are cumulative and will be interpreted expansively so as to afford Authorized Purchaser the broadest warranty protection available.

## **7. Indemnities.**

**7.1 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 claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the activities of Contractor or its officers, employees, subcontractors or agents under the Addendum.

**7.2 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 incurred in any settlement negotiation or final settlement agreement resulting from, relating to, or arising out of a claim that any aspect of the goods or services furnished under a Purchase Order 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").

**7.3 Participation.** Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 7.1 and 7.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 7.1 or Section 7.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Authorized Purchaser 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, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

**7.4 Remedies.** If any goods or services 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 this Addendum 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 goods or services, or replace or modify the goods or services so that they become non-infringing; provided that the replacement or modified good or service meets the specifications set forth in the applicable Purchase Order to the satisfaction of the Authorized Purchaser. If the foregoing remedies are not available, then Authorized Purchaser will return the allegedly infringing goods or terminate the allegedly infringing services, and Contractor will refund Authorized Purchaser's payments, in full, for the allegedly infringing goods or services.

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

**8.1 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.

**8.2 Termination.** DAS PS may terminate this Addendum, in whole or in part, at any time upon thirty (30) days prior notice to Contractor. In addition, DAS PS may terminate this Addendum, in whole or in part, immediately upon notice to Contractor, or at such later date as DAS PS may establish in such notice, for any reason, or upon the occurrence of any of the following events:

8.2.1 State fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Addendum; or

8.2.2 Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under this Addendum is prohibited or the State is prohibited from paying for such goods from the planned funding source.

Upon receipt of written notice of termination, Contractor will stop performance under all Purchase Orders as directed by State.

**8.3** Termination under any provision of this Addendum does not extinguish or prejudice State's or an Authorized Purchaser's right to enforce this Addendum or a Purchase Order 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 the State or an Authorized Purchaser to indemnification by Contractor. If this Addendum or a Purchase Order is so terminated, the State or an Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by the Authorized Purchaser.

**9. Termination of Individual Purchase Orders.**

**9.1** Individual Purchase Orders may be terminated at any time by written consent of Authorized Purchaser and Contractor or Authorized Purchaser may, at its sole discretion, terminate individual Purchase Orders, in whole or in part, upon 30 days written notice to Contractor.

**9.2** Authorized Purchaser may terminate individual Purchase Orders, 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:

**9.2.1** Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;

**9.2.2** Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or Authorized Purchaser is prohibited from paying for such goods from the planned funding source; or

**9.2.3** Contractor commits any material breach of this Addendum or a Purchase Order

**9.3** Upon receipt of written notice of termination, Contractor will stop performance under the Purchase Order as directed by Authorized Purchaser.

**9.4** Termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the Purchase Order 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 Purchase Order 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 Purchase Order is so terminated, Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by Authorized Purchaser.

**10. Compliance with Applicable Law.** Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Work under this Contract, and an Authorized Purchaser's performance under a Purchase Order is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230, and 279B.270. In addition, Contractor warrants goods and services 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.

**11. Application of Public Records Law.** Contractor acknowledges that any disclosures Contractor makes to Authorized Purchaser under this Addendum 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 Authorized Purchaser may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to Authorized Purchaser's release of documents to Entities other than participating agencies or other State agencies. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense,

**12. Recycled Products.** Contractor will use, to the maximum extent economically feasible in the performance of this Contract, 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)).

**13. Notices.** Except as otherwise provided in a Purchase Order, any formal communications between the parties to or notices to be given under a Purchase Order will be given in writing by personal delivery of a facsimile transmission, email transmission or mailing the notice, postage prepaid, at the address or number set forth on the Purchase Order. Any communication so addressed and mailed will be deemed to have been received five (5) calendar days after mailing. Any communication delivered by facsimile or email 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 or email transmission must be confirmed by telephone notice to the receiving party's authorized representative, as set forth in the Purchase Order. 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 above.

**14. 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.

**15. 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 Purchase Order 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 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 State agency that arise from or are related to individual Purchase Orders 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.

**16. 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 Contract. An Authorized Purchaser may withhold final payment under a Purchase Order until Contractor has provided the Oregon Department of Revenue with the required information.

**17. Merger Clause; Waiver.** This Addendum, including the Master Agreement and the exhibits attached to this Addendum, constitutes the entire agreement between the parties on the subject matter hereof, and supersede all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between these 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.

**18. Independent Contractor.** Contractor shall act at all times as an independent contractor and not as an agent or employee of Authorized Purchaser. Contractor has no right or authority to incur or create any obligation for or legally bind Authorized Purchaser in any way. Contractor is not an "officer", "employee", or "agent" of 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, or 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.

**19. Access to Records.** Contractor will maintain all fiscal records relating to Purchase Orders in accordance with generally accepted accounting principles and will maintain any other records relating to Purchase Orders 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 to perform examination and audits and make excerpts and transcripts. 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 six years, or such longer period as may be required by applicable law following final payment and termination of this Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum, whichever date is later.

**20. Severability.** If any term or provision of this Addendum 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 did not contain the particular term or provision held to be invalid.

**21. Survival.** Any terms of this Addendum, 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.

**22. Insurance.** Within ten (10) days of the Effective Date, Contractor must provide insurance as set forth on Exhibit No. 2. No Purchase Orders may be placed or accepted until proof is provided that these requirements have been met.

**23. 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.

## **Exhibit No. 2 - INSURANCE**

- 1 REQUIRED INSURANCE:** Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit prior to performing under any Contract and shall maintain it in full force and at its own expense throughout the duration of this Addendum and all warranty periods Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS PS.

**1.1 WORKERS COMPENSATION:**

All employers, including Contractor, that employ subject workers, as defined in Oregon Revised Statute (ORS) 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

**1.2 COMMERCIAL GENERAL LIABILITY:**

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the DAS PS:

**Bodily Injury/Death:**

\$ 1,000,000.00 Per occurrence limit for any single claimant; and

\$ 2,000,000.00 Per occurrence limit for multiple claimants

AND

**Property Damage:**

\$ 1,000,000.00 Per occurrence limit for any single claimant; and

\$ 2,000,000.00 Per occurrence limit for multiple claimants

**1.3 AUTOMOBILE LIABILITY:**

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of



insurance of not less than the following amounts as determined by the DAS PS:

**Bodily Injury/Death:**

\$ 1,000,000.00 Per occurrence limit for any single claimant; and

\$ 2,000,000.00 Per occurrence limit for multiple claimants

**Property Damage:**

\$ 1,000,000.00 Per occurrence limit for any single claimant; and

\$ 2,000,000.00 Per occurrence limit for multiple claimants

**1.4 EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance is acceptable. If Contractor is using excess/umbrella insurance to meet the minimum insurance requirement, Contractor's certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

**2 ADDITIONAL INSURED:**

The Commercial General Liability insurance and Automobile Liability insurance required under this Addendum shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Addendum. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**3 "TAIL" COVERAGE:**

If any of the required professional liability insurance is on a "claims made" basis, Contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Addendum, for a minimum of 24 months following the later of (i) Contractor's completion and DAS PS' acceptance of all Services required under this Addendum, or, (ii) The expiration of all warranty periods provided under this Addendum. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Addendum. Contractor shall provide to DAS PS, upon DAS PS' request, certification of the coverage required under this section.

**4 CERTIFICATE(S) OF INSURANCE:**

Contractor shall provide to DAS PS Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under

this Addendum. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any. The Contractor shall immediately notify DAS PS of any change in insurance coverage.

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**Exhibit No. 3**

**CONTRACTOR TAX CERTIFICATION**

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Contractor's correct taxpayer identification;

Federal Tax Number 48-0777904

Oregon Tax Number none

2. 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.

3. S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Effective Date of this Addendum and any Contract, Contractor faithfully has complied with:

- (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor: Aeroflex Wichita, Inc.

Signature Wesley Knight Date 29-MAR-2017