

PARTICIPATING ADDENDUM ("Addendum") to the
STATE OF OREGON on behalf of the
Member states of the
WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION
OFFICE SUPPLIES AND SERVICES Toner, Paper, Recycled-Content/Green Products
and other Miscellaneous Products

MASTER AGREEMENT
Master Agreement No: PA 5737

Office Depot, Inc.
(hereinafter "Contractor")

BETWEEN Contractor
And

The State of Oregon, acting by and through
the Department of Administrative Services, Procurement Services
(hereinafter "Participating State")

1. Scope and Order of Precedence: This addendum covers the *Master Agreement for Office Supplies* led by the State of Oregon 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.

This Addendum establishes an agreement to agree between Contractor and Participating State pursuant to ORS 279B.140. All goods and services offered under the Master Agreement may be procured under this Addendum. This Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Purchasing Entities or Authorized Purchasers. In the event of a conflict between the terms and conditions of this Participating 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 Sample Vendor Collected Administrative Fee (VCAF) Report;
 - (d) any Purchase Order issued by an Authorized Purchaser pursuant to this Addendum;
- and
- (e) the Master Agreement, including its attachments.

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

Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State Modifications or Additions to Master Agreement: Attached hereto as Exhibit No. 1 are the State Specific Terms and Conditions.

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

4. Lease Agreements: NOT APPLICABLE.

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

Contractor:

Name	Jim Chatfield
Address	6600 Military Trail, Boca Raton, FL
Telephone	503-781-2970
Fax	503-781-2970
E-mail	Jim.chatfield@officedepot.com

Lead State and Contract Administrator

Name	Pam Johnson, CPPB, OPBC, OCAC
Address	1225 Ferry St. SE, Oregon 97301
Telephone	(503) 378-4731
Fax	(503) 373-1626
E-mail	Pam.johnson@oregon.gov

Participating Entity:

Name	Pam Johnson, CPPB, OPBC, OCAC
Address	1225 Ferry St. SE, Oregon 97301
Telephone	(503) 378-4731
Fax	(503) 373-1626
E-mail	Pam.johnson@oregon.gov

6. Subcontractors: All Contractor dealers and resellers authorized in the State of Oregon, as shown on the Contractor's dedicated (cooperative contract) website, are approved to

provide sales and service support to participants in the WSCA-NASPO Master Agreement. The Contractor's dealer's or reseller's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. Not Exclusive; Selection Process:

7.1 This Participating Addendum is not exclusive. Participating State is free to enter into Participating Addendum with one or more of the other awardees in the Office Supplies and Services solicitation as set forth in the RFP #102-2035-13.

In the event of a multiple award of Master Agreements under this RFP, the State of Oregon may elect not to enter into a Participating Addendum with each of the Awardees. In the event the State of Oregon elects not to enter into a Participating Addendum with each of the Awardees, the State of Oregon may enter into Participating Addendum with the three highest ranked Proposers who provide Products or Services on a national level, and in addition, the State of Oregon may enter into a Participating Addendum with the three highest ranked Proposers who provide Products or Services in the State of Oregon only.

7.2 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.

7.3 Purchasing Entities, *who are state agencies*, shall use one of the following three selection processes:

1) **Highest Ranked Proposer in RFP #102-2035-13:** Purchasing Entity may issue purchase orders or contracts for Products or Services to the Awardee who received the highest total points in RFP #102-2035-13;

OR

2) **Highest Ranked Proposer in Market Basket Comparison:** Purchasing Entity, on an annual basis (beginning upon the Effective Date of the Participating Addendum and then on each anniversary date thereafter) may make a selection to be effective for the entire contract year period, as follows:

- (a) Purchasing Entity may create its own market basket comprised of up to 100 most used Products or Services;
- (b) Purchasing Entity may then define the criteria most important to it in the selection of a provider, such as: price, functionality, accounting/invoicing issues, use, availability, past performance;
- (c) Purchasing Entity shall request quotes from each of the providers for the upcoming contract year period;
- (d) Purchasing Entity shall then evaluate and score the market basket from each provider; and
- (e) Purchasing Entity shall acquire the Products and Services from the highest ranking provider from its market basket scoring.

OR

3) **Cost Comparison:** Purchasing Entity may conduct a Product or Service specific comparison based upon price.

7.4 Purchasing Entity must document its selection process in its procurement file.

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

8. **Orders:** Any Order placed by a Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

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

Participating State: <i>Oregon</i>	Contractor:
By: <i>Ginny Beckwith</i>	By: <i>Tim Burgett</i>
Name: <i>Ginny Beckwith</i>	Name: <i>Tim Burgett</i>
Title: <i>Procurement Manager</i>	Title: <i>VP West Region</i>
Date: <i>12/19/2014</i>	Date: <i>12/19/2014</i>



[Additional signatures as required by Participating State]

Check the Box if Participating State/Entity is an existing customer purchasing from the OfficeMax platform

For questions on executing a participating addendum, please contact:

Pam Johnson, CPPB, OCAC, OPBC

EXECUTION COPY

Department of Administrative Services
Enterprise Goods and Services
Procurement Services
1225 Ferry St. SE
Salem, OR 97301
(503) 378-4731
Pam.johnson@state.or.us

Contract Administrator or:

Cooperative Development Coordinator	Tim Hay or Paul Stembler
Telephone	503-428-5705 or 651-206-3858
E-mail	thay@wsca-naspo.org or pstembler.org

[Please email fully executed PDF copy of this document to
PA@wsca-naspo.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. An Authorized Purchaser is also referred to as a Purchasing Entity.

“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 entered into by the State.

“Master Agreement” means the State of Oregon Master Agreement # PA 5737 between Contractor and the State of Oregon, on behalf of the member states of the WSCA/NASPO, 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” or “Participating 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 must contain, on the front page, the following language:

THIS PURCHASE IS PLACED AGAINST THE STATE OF OREGON MASTER AGREEMENT/CONTRACT NO. PA 5737 THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, CONTRACT NO. PA 5737 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/PFSS/SPO/coop-menu.shtml> 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.

A sample VCAF Report is attached hereto as Exhibit 2.

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@state.or.us. 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 Two Percent (2.0 %) 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, DAS-EGS, PS
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's 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, as 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 2.11.2.7. At DAS PS'S 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. Unless otherwise required by statute, audits and records inspection shall be limited solely to review of non-confidential and non-proprietary records. Audits shall be performed no more than once per calendar year, and no audits shall occur after the date that is one year following termination or expiration of this Participating Addendum. Contractor has the right to dispute the results of any audit. Any resulting underpayment may be offset by any overpayment. In the event that a third party auditor is used, Contractor reserves the right to approve such auditor, which approval shall not be unreasonably upheld. Additionally, the auditor must execute Contractor's non-disclosure agreement.

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:

- a. 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;
- b. Goods or 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, Contractor further warrants that all Goods or Products conform to the specifications and meet or exceed all quality and safety standards set in the Master Agreement;
- c. 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;
- d. Contractor shall transfer to Authorized Purchaser all manufacturer warranties covering Goods or Products, if any at time of delivery at no charge, and
- e. 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 third party 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, except to the extent due to the negligence or willful misconduct of the indemnified party(s).

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 third party 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"), except to the extent relating to or arising from the Indemnified Party's misuse, alteration or other modification of the goods or services.

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. DAS PS and Contractor may terminate this Addendum upon mutual agreement. 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:

- a. 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

- b. 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:

- a. 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;
- b. 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
- c. Contractor commits any material breach of this Addendum or a Purchase Order and does not cure such material breach within ten (10) business days or any later cure period allowed by DAS PS.

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 good 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 mailing the notice, postage prepaid, certified mail at the address or number set forth on the Purchase Order, and for Contractor, any legal notice shall be also delivered to Office Depot, Inc. 6600 N. Military Trail, Boca Raton, FL 33496, Attn: Office of the General Counsel. Any communication so addressed and mailed will be deemed to have been received five (5) calendar days after mailing. Any communication or notice by personal delivery or express courier 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 supersedes 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 of three 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. Unless otherwise required by statute, audits and records inspection shall be limited solely to review of non-confidential and non-proprietary records. Audits shall be performed no more than once per calendar year, and no audits shall occur after the date that is one year following termination or expiration of this Participating Addendum. Contractor has the right to dispute the results of any audit. Any resulting overcharges may be offset by any undercharges. In the event that a third party auditor is used, Contractor reserves the right to approve such auditor, which approval shall not be unreasonably upheld. Additionally, the auditor must execute Contractor's non-disclosure agreement. Audits shall be at the expense of DAS PS.

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. Anticipated Amendments. The parties may need to amend this Addendum to modify selected terms, conditions, and price(s). This Addendum maybe modified by written document only and executed by Contractor and DAS PS.