

**TERMS OF REFERENCE FOR THE LEASE OF DIGITAL
MULTIFUNCTION COPIERS (MONOCHROME)**

1. The Office of the Solicitor General (**OSG**) obligates and binds itself to pay the **OWNER** for the use and rental of forty (40) units of digital multifunction copiers (monochrome) with network printer and scanner plus a possible additional two (2) units upon request by the **OSG**. The forty (40) units of digital multifunction copiers must be delivered within thirty (30) days from receipt of the Notice to Proceed.
2. In computing the rental, the same must be within the ceiling/maximum rate of Php 1.20/copy, 12% VAT inclusive, no minimum copy volume requirement, and inclusive of one (1) regular full-time operator/technician reporting to the **OSG** Monday to Friday, from eight o'clock in the morning to five o'clock in the afternoon, without any cost or payment on the part of the **OSG**.
3. Rental Service Charges shall be computed from the date of installation of the machines as evidenced by the delivery receipt form signed by the authorized representative of the **OSG**.
4. The representatives of the **OSG** and the **OWNER** shall, in each month on the date of closing shown on the meter reading card, enter the meter reading for the month in the card, and certify the truthfulness and accuracy of said meter reading.
5. Unit copy charge is based on the number of net copies reported monthly on the meter reading ticket.
6. All accounts shall be payable monthly to the **OWNER** within fifteen (15) days from receipt of the billing statements, provided there are no errors or discrepancies noted by the authorized representative of the **OSG**. In case of errors or discrepancies in the billing statements, the authorized representative of the **OSG** shall notify the representative of the **OWNER** within three (3) days from receipt of the billing statements. The accounts shall be payable to the **OWNER** within fifteen (15) days from receipt of the correct billing statements.
7. Acknowledgment of the receipt of consumables by the **OSG's** authorized representative is sufficient to establish the **OWNER's** claim of delivered consumables.
8. In case of any violation by a third party of the property rights of the **OWNER**, regardless of any reason, including, but not limited to, execution, provisional attachment and disposition of any kind of the digital multifunction copiers, the **OSG** shall immediately inform the **OWNER**, and the **OSG** shall be free from any liability not being privy to the third party's claim against the **OWNER**. The contract between the **OSG** and the **OWNER** shall, however, remain in full force and

effect. The **OWNER** shall continue performing its obligations under the contract and shall immediately replace the machines, as the case may be. A period of two (2) days from notice is deemed sufficient in order for the **OWNER** to replace the machines.

9. The **OWNER** shall guarantee that the machines are in good working condition upon delivery and have no defect arising from design, materials or workmanship or from any act or omission of the **OWNER** that may develop under normal use.
10. The **OWNER** shall make such inspections, adjustments and maintenance as may be required to keep the machines in good working condition and as may be required by the **OSG**. Such inspections, adjustments and maintenance shall be free of charge. Replacement parts for the machines shall be supplied by the **OWNER** free of charge. Repairs shall likewise be effected by the **OWNER** without any charge.
11. Servicing shall be done during regular working hours only and must be within two (2) hours from the time a request is made to the **OWNER's** full-time operator/technician in the **OSG**. Repairs with replacement of parts must be performed within twenty-four (24) hours from the time the full-time operator/technician of the **OWNER** determined the need for such replacement of parts. In a situation where repairs are no longer sufficient in order for the machine to function in good working condition, the **OWNER** shall automatically provide a service unit in good working condition as replacement within two (2) days from the time the full-time operator/technician of the **OWNER** determined the need for replacement of the unit.
12. The **OSG** will be allowed a maximum copy spoilage of two percent (2%) of the gross copies per month with the resulting value rounded off to the next higher whole number, or the actual number of spoiled copies, whichever is higher, upon presentation of spoilage to the **OWNER's** authorized representative.
13. The **OWNER** shall provide training to **OSG** personnel assigned to operate the machines, free of charge.
14. The machines shall be installed at a place approved by both the **OWNER** and the **OSG**, and when relocating the machines to a location other than that agreed/approved by the parties, the **OSG** shall first notify and obtain the consent of the **OWNER**. The **OWNER** shall carry out the relocation while all the expenses for such relocation shall be borne and paid for by the **OSG**.
15. The contract between the **OSG** and the **OWNER** shall be for a term of one (1) year from _____ to _____, subject to a probationary period, which reckons from the first three (3) months of the contract. During said period, the **OSG** shall observe the performance of the digital multifunction copiers. On or before the end of the probationary period, the **OSG** shall decide whether to continue with the contract. If the performance of the copiers is satisfactory, the **OSG** will continue with

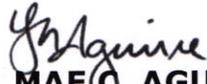
the contract. If the performance is unsatisfactory, the **OSG** has the right, power and authority to terminate the same.

16. If the **OWNER** fails to satisfactorily perform any of its obligations under the contract within the specified period or on the date and time agreed upon by both parties, the **OWNER** shall pay the **OSG** liquidated damages in an amount equal to one-tenth of one percent (0.1%) of the cost of the unperformed portion of the contract for every day of delay. The liquidated damages shall be imposed until the **OWNER** satisfactorily complies with its contractual obligations. The **OSG** need not prove that it has incurred actual damages to be entitled to liquidated damages.
17. Subject to the procedure prescribed by law, the **OSG** may terminate the contract under any of the following conditions:
 - a. Outside of *force majeure*, the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract. The **OSG** may rescind or terminate the contract and impose appropriate sanctions over and above the liquidated damages to be paid. The same is without prejudice to other courses of action and remedies available to the **OSG** under the circumstances.
 - b. As a result of *force majeure*, the **OWNER** is unable to perform any of its obligations under the contract, amounting to at least ten percent (10%) of the contract price, after sixty (60) calendar days from receipt of notice from the **OSG** stating that the circumstance of *force majeure* is deemed to have ceased.
 - c. The **OWNER** fails to satisfactorily perform any of its obligations under the contract.
 - d. The Solicitor General has determined the existence of conditions that make contract implementation no longer economically and financially viable or technically impractical or unnecessary, such as, but not limited to, fortuitous events and changes in law and national government policies.
 - e. It is determined *prima facie* that the **OWNER** has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation.
18. All digital information printed, copied and scanned shall not be saved or stored in the hard disk. However, the user may opt for the use of the storage feature. In the event that such storage feature is selected by the user, an automatic data erasure or disk wiping measure must be enabled by the **OWNER**. Said measure shall automatically erase and overwrite all saved data every quarter or upon a period agreed upon by the parties.
19. During the period of the lease, the **OSG** shall not allow the removal of any hard disk or similar device that may contain data from the **OSG's** facilities by the **OWNER** or any of its representatives unless the purpose of such removal is for repair or upgrade. In case of repair or upgrade, the **OWNER** must first secure the written consent of the

authorized representative of the **OSG** for the removal of the hard disk or any similar device.

20. Upon termination or expiration of the contract, the **OWNER** shall delete the contents of the hard disk of each digital multifunction copier in the presence of an authorized representative of the **OSG**. The **OWNER** shall issue a Certification under oath stating that all contents or stored data have been deleted from the hard disks of all copiers and no back-ups or copies of the same exist. Upon acceptance and approval of the Certification, the **OSG** shall return the copiers and accessories to the **OWNER** by allowing the latter, on a date and time agreed upon by both parties, to enter the **OSG** premises for the purpose of retrieving said copiers and accessories.
21. Any and all disputes arising from the implementation of the contract shall be submitted to arbitration in the Philippines according to the provisions of Republic Act (R.A.) No. 876, otherwise known as the *Arbitration Law*, and R.A. No. 9285, otherwise known as the *Alternative Dispute Resolution Act of 2004*. Provided, that by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.
22. If any condition or provision of the contract is held invalid or declared to be contrary to law, the validity of the other conditions or provisions shall not be affected thereby.
23. The **OWNER's** bid price shall be considered as a fixed price and therefore not subject to price adjustment and escalation during contract implementation, except under extraordinary circumstances as determined by the National Economic and Development Authority (NEDA), upon recommendation of the **OSG**, and upon prior approval of the Government Procurement Policy Board (GPPB). A contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis if the cost of the contract is affected by any applicable new laws, ordinances, regulations or any acts of the Government of the Philippines, promulgated after the bid opening.

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