

STATE OF VERMONT PARTICIPATING ADDENDUM # 43355
FOR NASPO VALUEPOINT PURCHASING PROGRAM: PUBLIC SAFETY COMMUNICATIONS
PRODUCTS, SERVICES AND SOLUTIONS

Led by the State of Washington

Master Agreement #00318

Contractor: Nokia of America Corporation

Contractor's NASPO ValuePoint Webpage: <https://www.naspovaluepoint.org/portfolio/public-safety-communications-products-services-and-solutions/nokia-of-america-corporation>

1. **Parties.** This Participating Addendum is a contract between the State of Vermont, through its Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter "State" or "Vermont"), and the Contractor identified above. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** This Participating Addendum authorizes the purchase of Public Safety Communications Products, Services and Solutions from Contractor pursuant to the Master Agreement identified above, which is hereby incorporated by reference. Contractor's awarded categories are:
 - a. **Category 5.1 MICROWAVE: CARRIER GRADE, PACKET DATA (NATIVE IP)**
 - b. **Category 5.2 MICROWAVE: NETWORK GRADE**
 - c. **Category 5.5 MICROWAVE: CARRIER GRADE, NATIVE TIME DIVISION MULTIPLEX (TDM)**
3. **Definitions.** Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Master Agreement between the Lead State and the Contractor.
4. **Purchasing Entities.** This Participating Addendum may be used by (a) all departments, offices, institutions, and other agencies of the State of Vermont and counties (each a "State Purchaser") according to the process for ordering and other restrictions applicable to State Purchasers set forth herein; and (b) political subdivisions of the State of Vermont and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education as authorized under 29 V.S.A. § 902 (each an "Additional Purchaser"). Issues concerning interpretation and eligibility for participation are solely within the authority of the State of Vermont Chief Procurement Officer. The State of Vermont and its officers and employees shall have no responsibility or liability for Additional Purchasers. Each Additional Purchaser is to make its own determination whether this Participating Addendum and the Master Agreement are consistent with its procurement policies and regulations.
5. **Contract Term.** The period of Contractor's performance shall begin on March 1, 2022 end upon expiration of the Master Agreement, unless terminated earlier in accordance with the terms of this Participating Addendum or the Master Agreement. An amendment to this Participating Addendum shall not be necessary in the event of the renewal or extension of the Master Agreement.
6. **Available Products and Services.** All products, services and accessories listed on the Contractor's NASPO ValuePoint Webpage may be purchased under this Participating Addendum.

7. **No Lease Agreements.** Contractor is prohibited from leasing to State Purchasers under this Participating Addendum. Additional Purchasers are not subject to this prohibition and may negotiate lease agreements with Contractor if the terms of the Master Agreement permit leasing.

8. Requirements for Ordering.

- a. Orders made under this Participating Addendum must include a Purchase Order for the Product and/or Services. Orders funded by federal funds may include additional terms as necessary to comply with federal requirements. Prior to the State or Additional Purchasers placing a purchasing order with the Contractor where such purchase order is funded in whole or in part by federal funds, State or Additional Purchasers shall notify Contractor 30 days in advance, in writing, so Contractor can confirm acceptance of any additional federal terms.
- b. State Purchasers must follow the ordering procedures of the State Contract Administrator to execute orders against this Participating Addendum, which shall include, as applicable, obtaining approval from the State CIO and/or Attorney General's Office prior to making purchases under this Participating Addendum.
- c. All orders placed under this Participating Addendum must include the Participating Addendum Number on the Purchase Order. For the avoidance of doubt, each Order is a firm offer and must (i) identify the Purchasing Entity by full name and address; (ii) itemize the quantity, part number and description of the Equipment that Purchasing Entity desires to purchase, the Licensed Material that State desires to license, and/or the Services that State desires to engage Contractor to perform; (iii) state the price of the itemized Products and Services, (iv) identify the "bill-to" address, (v) identify the "ship-to" address, (vi) set forth the requested delivery dates (and any shipping instructions) and/or performance dates, consistent with Contractor's standard published intervals, (viii) provide a State contact name and telephone number, and (ix) explicitly refer to the number of this Participating Addendum State's "bill-to" and "ship-to" address must be located within the United States. All Orders are subject to review and written acceptance by Contractor. Each Order is subject only to the terms and conditions of this Participating Addendum and the applicable quotation. Terms and conditions contained in an Order, which are inconsistent with this Participating Addendum or applicable quotation, including any pre-printed terms and conditions on such Order, are ineffective and void, unless such other Order terms and conditions are mutually agreed upon by the parties.

9. Payment Provisions and Invoicing.

- a. Product offerings and complete details of product pricing, including discounts, applicable to this Participating Addendum are set forth in the Price Schedule maintained on-line at Contractor's NASPO ValuePoint Webpage listed above.
- b. Purchasing Entities may solicit the Contractor for deeper discounts than the minimum contract pricing as set forth in the Price Schedule (e.g., additional volume pricing, incremental discounts, firm fixed pricing or other incentives).
- c. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored except as authorized in the Master Agreement, Section 5.2(b) whereby shipping charges must be mutually agreed upon by between the

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Purchasing Entity and the Contractor, and shall be added as a separate line item on the Contractor's invoice.

- d. In the discretion of the Purchasing Entity, retainage may be specified in a Purchase Order, in an amount mutually agreeable to the parties.
 - e. Payment terms are Net 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documentation. Invoices shall itemize all work performed during the invoice period, including, as applicable, the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment. As applicable, a copy of the notice(s) of acceptance shall accompany invoices submitted for payment.
 - f. Invoices shall be sent to the address identified on the Purchasing Entity's Purchase Order and shall specify the address to which payments will be sent. The State of Vermont Participating Addendum Number and Purchasing Entity's Purchase Order Number shall appear on each invoice for all purchases placed under this Participating Addendum. Contractor will issue invoices as follows: (i) for Products, upon shipment; (ii) for non-recurring Services, including engineering and installation Services, as such Services are completed; and (c) for recurring Services, including maintenance, technical support, and network management Services, upon commencement of such Services.
 - g. Reimbursement of expenses is not authorized. All rates set forth in a Purchase Order shall be inclusive of any and all Contractor fees and expenses.
 - h. Unopened Products can be returned with no restocking fee up to 10 days from the date of receipt.
 - i. The State Purchasing Card may be used by State Purchasers for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve State Purchasers from adhering to all procurement laws, regulations, policies, procedures, and best practices.
10. **Reporting.** Contractor shall submit quarterly reports electronically in the same format as set forth under the Master Agreement, detailing the purchasing of all items under this Participating Addendum. Contractor's reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.
- a. The reports shall be an excel spreadsheet transmitted electronically to SOV.ThePathForward@vermont.gov.
 - b. Reports are due for each quarter as follows:

Reporting Period	Report Due
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31

October 1 to December 31	January 31
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- c. Failure to meet these reporting requirements may result in suspension or termination of this Participating Addendum.
11. **Prior Approvals.** In accordance with current State law, bulletins, and interpretations, this Participating Addendum shall not be binding until it has been approved by the Vermont Attorney General's Office, the Secretary of Administration, and the State's Chief Information Officer.
12. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Participating Addendum shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
13. **Termination.** This Participating Addendum may be terminated by the State at any time upon 30 days prior written notice to the Contractor. Upon termination or expiration of this Participating Addendum, each party will assist the other in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any order executed prior to the effective date of termination or other expiration of this Participating Addendum.
14. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Participating Addendum. The primary contacts for this this Participating Addendum are as follows:
- a. **For the Contractor:**
- Name: Eric Negley
Phone: 770/289-1432
Email: eric.negley@nokia.com
- b. **For the State:**
- Name: State of Vermont, Stephen Fazekas
Address: 133 State Street, 5th Floor , Montpelier, VT 05633-8000
Phone: 802/279-7075
Fax: 802/828-2222
Email: Stephen.fazekas@vermont.gov
15. **Additional Terms and Conditions.**
- a. Notwithstanding any contrary language anywhere, in no event shall the terms of this contract or any document furnished by Contractor in connection with performance under this contract obligate the State to (1) defend or indemnify Contractor or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of Contractor or any third party.
- b. If required by an order made by a State Purchaser under this Participating Addendum, the terms and conditions of the State of Vermont Business Associate Agreement, revised May 2019 (available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>) shall be

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incorporated by reference and apply to the order; however, State Purchaser shall notify Contractor in advance, in writing, to allow Contractor to determine acceptance of the terms and conditions prior to order acceptance. This provision shall not apply to Additional Purchasers.

- c. Contractor is required at all times to comply with all applicable federal and state laws and regulations pertaining to information security and privacy.
- d. **Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Contractor in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. Contractor irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. Contractor agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Contractor agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- e. **Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.
- f. **False Claims Act:** Contractor acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* Contractor's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Contractor's liability.
- g. **Whistleblower Protections:** Contractor shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, Contractor shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to Contractor or its agents prior to reporting to any governmental entity and/or the public.
- h. **Fair Employment Practices and Americans with Disabilities Act:** Contractor agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by Contractor under this Agreement.
- i. **Set Off:** The State may set off any sums which Contractor owes the State against any sums due Contractor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures set forth in 32 V.S.A. § 3113.

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- j. **Taxes Due to the State:** Contractor certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- k. **Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.
- l. **Certification Regarding Debarment:** Contractor certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds. Contractor further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>
- m. **Confidentiality (Negotiated):** Contractor acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq (VAPRA). Pursuant to 9 V.S.A. § 317(c)(9), the State acknowledges that Contractor's and its affiliated companies' and their respective licensors' trade secrets, meaning confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information (collectively, "Contractor's Trade Secrets") are exempt from public inspection and copying. Contractor authorizes the State to use Contractor's Trade Secrets, which Contractor in its discretion may disclose or make available to the State, solely to exercise the State's rights and to perform its obligations under this Participating Addendum and the Master Agreement. The State shall hold and maintain all of Contractor's Trade Secrets in confidence as permitted by the VAPRA.
- n. **Marketing (Negotiated):** Contractor shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
- o. **Non-Appropriation (Negotiated):** If an order made under this Participating Addendum extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support the order, the State Purchaser may cancel the order at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. If the order is funded in whole or in part by Federal funds, and those Federal funds become unavailable or reduced, the State Purchaser may suspend or cancel the order immediately and shall have no obligation to pay from State revenues. Notwithstanding the aforementioned, Contractor shall be paid for goods and services accepted by the State prior to the effective date of the non-appropriation cancellation.

- p. **Continuity of Performance:** In the event of a dispute between Contractor and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.
- q. **State Facilities:** If the State makes space available to Contractor in any State facility during the term of this Agreement for purposes of Contractor's performance under this Agreement, Contractor shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.
- r. **SOV Cybersecurity Standard 19-01:** All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-line at the following URL: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>.
- s. **Force Majeure (Negotiated):** Neither the State nor the Contractor shall be liable to the other for any failure or delay of performance of any obligations under this Participating Addendum to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs unless such strike or lock-out affects an entire region, nation or industry) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Participating Addendum, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.
- t. **Software License Agreement.** Pursuant to the Master Agreement, Contractor hereby provides its software license agreement. Agency shall use all Licensed Materials in accordance with this Section. "Licensed Materials" refers to Software and Documentation. Upon delivery of any Licensed Material and subject to Agency's payment of the applicable fees for such Licensed Material and compliance with the other terms and conditions of this Agreement, Contractor grants to Agency, and Agency accepts, a personal, nonexclusive, nontransferable license to use the portions of the Licensed Material for which activation has been authorized by Contractor, solely on or with the single unit or arrangement of Equipment for which the Licensed Material was delivered, for Agency's internal use in the United States.

Agency acknowledges and agrees that: (a) Contractor may have encoded within the Software optional functionality, features and/or capacity, which may be accessed only through the purchase of the applicable license extension from Contractor at an additional price (no licenses are granted to such functionality, features and/or capacity unless Agency purchases the applicable license extension); and (b) Agency may need to obtain a new or additional application key from Contractor to use such Software.

This Agreement applies to all updates, upgrades, maintenance releases, revisions and enhancements for the Licensed Materials which Contractor may supply to Agency from time to time.

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Agency may copy Licensed Materials as reasonably necessary for backup and archival purposes if the copies contain all of the Contractor proprietary notices contained in the original Licensed Materials. All copies of all Licensed Materials (including partial copies) are Contractor Confidential Information. All rights, title and interest in and to the Licensed Materials, including all intellectual property rights, remain vested in Contractor, its suppliers and licensors, and Agency is granted only a limited license to use the Licensed Materials in conjunction with the Equipment, as set out in this Section.

Agency shall not directly or indirectly: (a) modify, copy, transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any Licensed Material or portion thereof; (b) encumber, time-share, rent or lease the rights granted herein; (c) manufacture, adapt, create derivative works of, localize, port or otherwise modify any Licensed Material or portion thereof; (d) disclose or otherwise make available any Licensed Material or portion thereof to any third party; (e) enable any Software functionality, feature or capacity which Contractor licenses as a separate product, without Contractor's prior written consent; (f) take any action that may result in the Software becoming subjected to the terms of a license that requires it to be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge; or (g) use any Licensed Material or portion thereof except in accordance with this Section.

Upon request and not more frequently than annually, the State agrees to provide Provider with a certified report concerning the State's use of any software licensed for State use pursuant this Agreement. Provider agrees that any non-compliance indicated by the report shall not constitute infringement of Provider's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance. This clause shall not be interpreted to provide an independent right to access State systems where there is no such right expressed in Provider Documents.

Certain Software may be delivered with its own specific license ("Additional License"). In such a case, the terms of the Additional License will be delivered to Agency, such as in a separate license.txt file or as part of a tear-open document, and will govern use of the Software by Agency, subject to the terms of this Participating Addendum and the Master Agreement. Contractor's licensors are third party beneficiaries of this Agreement with respect to their Licensed Materials.

If Agency's license or Additional License is cancelled or terminated, or when Agency no longer uses the Licensed Materials, Agency shall return or destroy the Licensed Materials and all copies and certify to Contractor that it has done so.

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By signing below Contractor agrees to offer the products and services on the Master Agreement at prices equal to or lower than the prices listed on the Master Agreement.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

By Nokia of America Corporation

Date: 3/2/2022

Date: 01 March 2022

Signature:  EC8F68F55FBC42C...

Signature: Eric W. Negley

Name: Jennifer M.V. Fitch

Name: Eric W. Negley

Title: Commissioner - Buildings and
General Services

Title: Commercial Contract Manager

By Nokia of America Corporation

Date: March 1, 2022

Signature: Robert M Fennelly

Name: Bob Fennelly

Title: Head of Enterprise Sales-Eastern Region