Participating Addendum Number NVP_23003
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
between
The State of Montana
and
Apple Inc.

This Participating Addendum is entered into by the State of Montana ("Participating Entity", "State") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 23003, executed by Contractor and the State of Minnesota for Computer Equipment, Peripherals & Related Services ("Master Agreement"):

Apple Inc. ("Contractor")
One Apple Park Way
Cupertino, CA 95014

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Tim Lim
Senior Contracts Negotiator
tlim2@apple.com
408-783-7379

Participating Entity's contact for this Participating Addendum is:

Grace Waring
Contracts Officer
Cooppurchasing@mt.gov
406-444-2516

II. TERM. This Participating Addendum is effective as of the date of the last signature below or February 1, 2024, whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

III. PARTICIPATION AND USAGE. The NASPO ValuePoint Master Agreement and this Participating Addendum may be used by all State agencies, public or private educational institutions, institutions of higher education, cities, counties, districts, nonprofit organizations, other, political subdivisions, and other entities authorized to use statewide contracts in the State of Montana. Participating Entity has sole authority to determine which additional entities authorized by state statute are eligible to use this Participating Addendum

IV. GOVERNING LAW. The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws and any litigation concerning this PA must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

V. SCOPE. Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms and conditions of the Master Agreement and the rights and obligations set forth therein, as applied to the Contractor and Participating Entity and Purchasing Entities. For the avoidance of doubt, the Master Agreement contains Minnesota statutory requirements applicable only to the Lead State. Such provisions are not applicable to any Participating Entity other than the Lead State.

a. Services. All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities. All services provided, as defined in the NASPO ValuePoint Master Agreement, will be described in one or more of the following documents:

1) "Services Descriptions" used to describe any services purchased by an entity;

2) any mutually agreed upon Statement of Work ("SOW") executed by the Parties.

b. **Contractor Partners**. The Contractor must ensure Apple Authorized Service Providers utilized in the performance of this PA adhere to applicable terms and conditions.

VI. **AMENDMENTS AND CONFLICTS.** Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by the Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.

VII. **ORDER OF PRECEDENCE.** The following attachments are incorporated by reference into this Participating Addendum. The order of precedence shall be as follows:

a. Attachment A: State's Modifications and Additions to Master Agreement Terms and Conditions.
Attachment B: Reserved.

b. NASPO Value Point and Participating Entity, Master Agreement No: 23003

VIII. FEDERAL REQUIREMENTS. Purchases under this PA will not be made with federal funds.

IX. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

Apple Inc.
U.S. Contract Operations
One Apple Park Way, MS/581-CNTR
Cupertino, CA 95014
contracts@apple.com

For Participating Entity:

Grace Waring
Contracts Officer
Grace.waring@mt.gov
406-444-2516

X. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

(Remainder of page intentionally left blank.)

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

PARTICIPATING ENTITY:	**CONTRACTOR:**
DocuSigned by: John Thomas 49E3FEF749664B6...	Johnny Mendoza
Signature	**Signature**
John Thomas	Johnny Mendoza
Printed Name	**Printed Name**
Chief Procurement Officer	Project Coordinator
Title	**Title**
5/8/2024	05/2/2024
Date	**Date**

DocuSigned by: Katy Brandis
3C947270DF6E49A...

Signature
Legal Counsel

5/7/2024

Date

DocuSigned by: Kevin Gilbertson
2D9081032F49415...

Signature
Chief Information Officer

5/8/2024

Date

Chief Information Officer Approval:
The State retains the right under section 2-17-514, MCA, to terminate this PA for non-compliance with Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard, subject to section 42 (Cancellation) of the Master Agreement.

Attachment A:
State's Modifications and Additions to Master Agreement Terms and Conditions

The following terms and conditions govern during the term of the Participating Addendum (PA).

1. PAYMENT TERM

All contractors are required to provide banking information at the time of PA execution in order to facilitate State electronic funds transfer payments.

2. U.S. FUNDS

All prices and payments must be in U.S. dollars.

3. REFERENCE TO PA

The Purchase Order number MUST appear on all invoices pertaining to the PA Contract, provided however, Purchasing Entity provides the Purchase Order number when submitting an order to Contractor.

4. STATE OF MONTANA ADMINISTRATIVE FEE AND REPORTING.

Reporting

Excluding all orders at an Apple Retail Store, Apple agrees to provide a quarterly report (Excel) at a minimum on purchasing entity, description of items purchased, date of purchase, contract price, and extended price for each transaction, net sales of products and services under this Agreement (less any charges for taxes and/or shipping) in accordance with the following schedule:

Period:	**Report Due Date:**
July - September	October 31
October - December	January 31
January - March	April 30
April - June	July 31

Apple shall indicate the Contract number with the quarterly sales report. Reports will be submitted via email to Grace Waring at: cooppurchasing@mt.gov.

The State of Montana assesses an Administrative Fee of one and one-quarter percent (1.25%) for all net sales (sales less credits and returns) made under this Contract. Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described below. The Administrative Fee must be submitted by ACH along with email notification to State of Montana Contracts Officer. This Administrative Fee is effective upon execution of this PA. If a lower Administrative Fee is agreed to in any future State of Montana NASPO Computer Equipment, Peripherals & Related Services PA, then: (i) the State will notify Contractor upon renewal of the Master Agreement of the lower Administrative Fee; and (ii) the Administrative Fee in this Participating Addendum shall be adjusted for the subsequent calendar quarters to match the lower Administrative Fee.

5. Reserved.

6. TAXES

6.1. **Payment**. Contractor shall pay all property and sales taxes, if any.

6.2. **Exemption.** State of Montana is exempt from Federal Excise Taxes (#81-0302402), except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.l. 111- 148, 124 Stat. 119].

6.3. **Certificate.** All purchasers under this PA shall provide Contractor with a tax exemption certificate for all purchases.

7. Reserved.

8. INSURANCE

Contractor shall provide the Participating Entity the same insurance as it has provided the State of Minnesota in the Master Agreement and include the Participating Entity as an additional insured on these policies as it has the State of Minnesota. Electronic delivery of certificates of insurance and any endorsements shall be sent to the Primary Contact for the Participating Entity.

Contractor warrants that it performs all services using reasonable care and skill and according to its current description (including any completion criteria) contained in this Contract. State agrees to provide timely written notice of any failure to comply with this warranty so that Contractor can take corrective action.

9. RECORD ACCESS AND RETENTION

9.1. **Access to Records.** Contractor shall provide State, the Montana legislative auditor, or its authorized agents sufficient access to records necessary to audit for Contract compliance. State may terminate this Agreement, without incurring liability, for Contractor’s refusal to allow access as required by this Section (18-1-118, MCA.)

9.2. **Retention Period.** Contractor shall retain all records related to this Contract for 5 years following the termination or expiration of this Contract.

10. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

Contractor shall not assign, transfer, or subcontract any portion of this Contract without the express written consent of State, which shall not unreasonably withhold consent. (Section 18-4-141, MCA.)

State shall not assign, delegate, or otherwise transfer all or any part of this PA without prior written consent of Contractor, which shall not be unreasonably withheld.

10.1. **Reserved.**

10.2. **Reserved.**

10.3. **Reserved.**

10.4. **Reserved.**

10.5. **Reserved.**

10.6. **Reserved.**

10.7. **Reserved.**

10.8. **Reserved.**

11. PUBLIC INFORMATION

A. This Contract and all related documents are subject to disclosure pursuant to Montana public information laws.

B. Under Montana public information laws, this Contract, referenced documents, including pricing documents, are all deemed public information.

12. CIO OVERSIGHT

Per Section 2-17-514, If the Department of Administration (DOA) determines that this **Participating Addendum** is not in compliance with the State Strategic information technology plan provided for in 2-17-521, the agency information technology plan provided for in 2-17-523, or the statewide information technology policies, framework, controls, standards, procedures, and guidelines provided for in 2-17-505 and 2-17-512, DOA may terminate this Participating Addendum. The Chief Information Officer (CIO) for the State of Montana, or designee, may perform oversight activities **of Participating Entity**. Such activities**, solely as it relates to Participating Entity,** may include the identification, analysis, resolution, and prevention of deficiencies that may occur while performing services. The CIO may require the issuance of a right to assurance or may issue a stop work order.

13. Reserved.

14. BLIND OR VISUALLY IMPAIRED

No state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

15. Reserved.

15.1. **Reserved.**

15.2. **Reserved**

15.3. **Reserved.**

16. Reserved.

17. COMPLIANCE WITH LAWS

In performing its duties in this Contract, Contractor shall comply with all applicable federal and state laws.

In accordance with 49-3-207 MCA, and Executive Order No. 04-2016, Contractor agrees that, as applicable:

A. The hiring of persons to fulfill Contractor’s duties in this Contract will be made based on merit and qualifications; and there will be no discrimination based on race, color, sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

Contractor will require Authorized Service Providers to comply with Section 17 (A) above.

B. Nondiscrimination Against Firearms Entities/Trade Associations. Contractor shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Contractor shall not discriminate during the term of the contract against a firearm entity or firearm trade association. This Section shall be construed in accordance with 30-20-301, MCA.

18. CONTRACT TERMINATION

18.1. **Reserved.**

18.2. **Reserved.**

18.3. **Reduction of Funding**

State must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period (18-4-313(4), MCA). If state or federal government funds are not appropriated or otherwise made available through the State's budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this Section, including but not limited to general, special, or consequential damages such as lost profits or revenues. Notwithstanding the foregoing, Purchasing Entities will also fulfill their payment obligations to Contractor for orders placed and delivered and services performed.

18.4. **Terrorism, Suspension or Debarment, or Otherwise Ineligible**

State has the absolute right to terminate the Contract without recourse in the following circumstances:

A. Contractor is listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control;

B. Contractor is suspended or debarred from doing business with the federal government as listed in the System for Award Management maintained by the General Services Administration; or

C. Contractor is found to be ineligible to hold the Contract under the laws of State.

19. Reserved.

19.1. **Reserved.**

19.2. **Reserved.**

19.3. **Reserved.**

20. Reserved.

21. Reserved.

22. Reserved.

22.1. **Reserved.**

22.2. **Reserved.**

22.3. **Reserved.**

22.4. **Reserved.**

23. Reserved.

24. CHOICE OF LAW AND VENUE

Montana law governs this Contract. The parties agree that any litigation concerning this this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in the Master Agreement's Sections on Defense, Indemnification/Hold Harmless.

Nothing in these provisions shall be construed as a waiver of the soveriegnty or governmental immunity the State enjoys, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or consent to jurisdiction based thereon.

25. AUTHORITY

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

26. SEVERABILITY

A declaration by any court or any other binding legal source that any provision of the Contract is illegal, and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

27. WAIVER

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

28. PUBLIC DISCLOSURE

29. Contractor may publicize the Contract term, scope, and price without prior written approval. However, Contractor may not use the State seal, any State logo, or claim any State endorsement as to the Contract without prior written approval by State.

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