

**Participating Addendum
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
between
State of North Dakota
and
Apple Inc.**

This Participating Addendum is entered into by State of North Dakota ("Participating Entity") 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:

Abby Dschaak
Procurement Officer
aadschaak@nd.gov
701-328-1721

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or July 1, 2023, 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.** This Participating Addendum, established pursuant to N.D.C.C § 54-44.4-13, may be used by all state agencies, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, and the International Peace Garden . Participating Entity has sole authority to determine which additional entities authorized by state statute are eligible to use this Participating Addendum.
- IV. GOVERNING LAW.** This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.
- V. SCOPE.** Contractor is authorized to sell products/services in Band 2 Personal Computer Devices (Non-Windows OS). 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.
- VI. SERVICES.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities. All services provided will be described in one or more of the following documents:
- a. "Services Descriptions" used to describe any services purchased by an entity;
 - b. any mutually agreed upon Statement of Work ("SOW") executed by the parties.

Participating Addendum for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES

Between **State of North Dakota** and
Apple Inc.

VII. LEASING AND RENTAL. Leasing is not allowed under this Participating Addendum. In the event the Parties decide to lease products in Band 2, as described in the Master Agreement, such leasing shall be subject to a separate agreement mutually agreed to by the Parties.

VIII. TRADE-IN, TAKEBACK AND OTHER ENVIRONMENTAL PROGRAMS. Trade-in, takeback and/or recycling of products by agencies covered by this Addendum are subject to approval of OMB State Surplus Property pursuant to N.D.C.C. § 54-44.4.6.

IX. REPORTING:

Excluding all orders at an Apple Retail Store, the Contractor agrees to provide a quarterly report on net sales of products and services under this Agreement (less any charges for taxes and/or shipping) in accordance with the following schedule:

Quarter:	Period Ending:	Report Due Date:
First	July - September	October 31
Second	October - December	January 31
Third	January - March	April 30
Fourth	April - June	July 31

Apple shall indicate the contract number with the quarterly sales report. Reports will be submitted via email to Abby Dschaak, Procurement Officer, at: aadschaak@nd.gov.

X. TERMINATION. (Supplements Master Agreement, Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions, item #42): Termination for Lack of Funding or Authority:

Participating Entity, by written notice to Contractor, may terminate the whole or any part of this Participating Addendum under any of the following conditions:

- a. If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
- b. If federal or state laws or rules are modified or interpreted in a way that the services or good are no longer allowable or appropriate for purchase under this Participating Addendum or are no longer eligible for the funding proposed for payments authorized by this Participating Addendum.
- c. If any license, permit, or certificate required by law or rule, or by the terms of this Participating Addendum, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Participating Addendum under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

XI. INDEMNIFICATION. (Supplements Master Agreement, Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions, item 34)

Participating Addendum for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES

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(a) Any reference to "gross" is deleted.

(b) Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08.

XI. LIMITATIONS OF LIABILITY. (Supplements Master Agreement, Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions, item 35)

Contractor's maximum aggregate liability for all direct damages resulting from, arising out of, or relating to this Agreement is set forth in the NASPO Master Agreement, Exhibit A, Section 35 (the "Liability Cap"). To maintain compliance with N.D.C.C. § 32-12.2-15, when Contractor's total sales under this Agreement reach 40% of the Liability Cap, the State may (i) terminate this Agreement in accordance with the termination provisions herein to prevent the contract spend from exceeding 50% of the Liability Cap, or (ii) propose an amendment to this Agreement to increase the Liability Cap which must be mutually agreed upon between the Parties.

XII. INSURANCE. (Replaces Master Agreement, Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions, item 28.c.1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.

XIII. 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.

XIV. ORDERS. Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

XV. 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:

Abby Dschaak
Procurement Officer
600 East Boulevard Ave, Dept 012
Bismarck, ND 58505
aadschaak@nd.gov
701-328-4912

XVI. 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

Participating Addendum for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES

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Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

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.

CONTRACTOR:

Johnny Mendoza
Signature

Johnny Mendoza
Printed Name

Project Coordinator
Title

2/6/2024
Date

PARTICIPATING ENTITY:

Abigail Dschaak
Signature

Abigail Dschaak
Printed Name

State Procurement Officer
Title

2/6/2024
Date