



**NASPO Value Point Computer Hardware Including
Peripherals and Associated Services**

**State of Arizona
State Procurement Office**
100 North 15th Avenue, Suite 201
Phoenix, AZ 85007

Arizona Participating Addendum

Contract No. ADSP016-098839

Contractor: Apple Inc.

In accordance with A.R.S. §41-2632, AAC R2-7-1002, Cooperative Purchasing, the following document shall relay all additional requirements for the State of Arizona in its use and participation in the NASPO Value Point contract for Computer Hardware, Peripherals and Associated Services, as awarded by the State of Minnesota, Lead State, for this competitively procured contract.

Contractors are strongly encouraged to read this document in its entirety. All requirements stated within this document are allowable under any respective Master contract, and shall be viewed as such. Any attempt to modify or change this document without consent from the State of Arizona shall result in the nullification of this contract.



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State Procurement Office
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Phoenix, AZ 85007

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Offer and Acceptance

State of Arizona
State Procurement Office
100 North 15th Avenue, Suite 201
Phoenix, AZ 85007

OFFER

TO THE STATE OF ARIZONA:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer.

Arizona Transaction (Sales) Privilege Tax License No.:

07-284621-R

Federal Employer Identification No.:
942404110

E-mail: contracts@apple.com

Phone: 408-996-1010

Fax: 866-784-4003

Apple Inc.

Company Name

1 Infinite Loop, MS 318-60PS

Address

Cupertino

CA

95014

City

State

Zip

Signature of Person Authorized to Sign Offer

Printed Name

Title

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization IS/ IS NOT a small business with less than 100 employees or has gross revenues of \$4 million or less.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract No.

ADSP016-098839

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contact release document or written notice to proceed.

State of Arizona

Awarded this

day of

27th July 2013

Procurement Officer

PROCURE AZ GOV



Scope of Work

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Description: **Computer Hardware including Peripherals and Associated Services**

1. Introduction

The State of Arizona, its Agencies, Boards and Commissions (State), as well as authorized Cooperative Members, have an ongoing requirement for the products and services as described herein. This NASPO Value Point Participating Addendum (PA) is developed by and for the State of Arizona. This PA is based on the award of a competitively solicited procurement, performed in concert with NASPO Value Point and the State of Minnesota.

2. Background

In 2014, the State of Minnesota competitively solicited offers from national and regional Contractors for the provision of computer hardware and associated services. Specifically, the categories of equipment are; Desktops, Laptops, Tablets, Servers and Storage. The result of this procurement was the award of thirty-two (32) Master contracts that became effective on April 1, 2015. Per the procedure outlined on the NASPO Value Point website and other materials, an interested participating state, must develop a Participating Addendum (PA) with the Contractors of their choosing.

The Participating Addendum (PA) must adhere to the requirements of the Master Contract as awarded and negotiated by the State of Minnesota. However, each individual PA may stipulate specific requirements, such as terms and conditions and other contract features are mandated or desired by each participating State.

3. State of Arizona Requirements

The State of Arizona shall engage various Contractors through the PA process and award. For this particular PA, the Contractor shall be: **Apple Inc.** As per award, the Contractor shall provide the following equipment as specified in the Contract **MNWN-102**: Desktops, Laptops, and Tablets including accessories/peripherals and associated services.

For clarity, the definitions as used in the Master Contract shall be used, but have been modified for this PA. The definitions are as follows:

Desktop – A personal computer intended for regular use at a single location. Typically comes in several units connected together during installation: (1) processor, (2) display monitor, (3) input devices, i.e., keyboard and mouse. **Desktop virtualization endpoints such as zero and thin clients shall also be included if available from this Contractor.**

Laptop – Is a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad and speakers into a single unit. A laptop can be used away from an outlet using a rechargeable battery. This Band may include notebooks, ultrabooks, and netbooks. Computers with mobile operating systems will also be included under this Band.

Peripherals – A peripheral means any hardware product that can be attached to or added within or networked with computers, servers and storage. Peripherals extend the functionality of a computer without modifying the core components of the system. **Peripherals are defined as including accessories.** Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another Contracted Supplier holding Master Agreement No. **ADSP016-098839**, as of date of execution of this Contract. The Contractor shall provide the warranty service and maintenance for all peripherals manufactured by Contractor.

Accessory – Accessories do not extend the functionality of the computer, but enhances the user experience i.e. mouse pad, monitor stand. **For the purposes of this proposal accessories are considered peripherals.**



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Tablet – A tablet is a mobile computer that provides a touchscreen which acts as the primary means of control. **Tablet band shall include notebooks, ultrabooks, and netbooks that are touchscreen capable.**

Services – Broadly classed as installation/de-installation, maintenance support, *minimal operation training*, migration, and optimization of products offered or supplied. These types of services shall include the following:

- A. Warranty Services;
- B. Equipment Maintenance;
- C. Installation, and De-installation,
- D. Factory Integration (software or equipment components);
- E. Asset Management;
- F. Pre-Implementation Design;
- G. Disaster Recovery Planning and Support; and
- H. Equipment Operation Training

4. Participating Addendum Allowances and Restrictions

This PA shall allow and restrict the following.

- A. Any non-Apple-branded network equipment that may include, routers, switches, security components, telephony, cabling other networking devices is not allowed;
- B. The only allowable software is operating system software and is subject to equipment configuration limits. Commercial off-the shelf (COTS) application software is not allowed;
- C. Software must be pre-loaded or provided as an electronic link with the initial purchase, exception is noted immediately below;
 - C1. Software such as middleware which is not installed on the equipment but is related to storage and server equipment purchased, is allowed and may be procured after the initial purchase of the equipment,
 - C2. Apps for iPads and Mac computers, including apps offered in Contractor's Volume Purchase Program for education institutions and state government entities are allowed.
- D. Imaging, deployment, training Services must be related to the equipment. No additional professional services, such as consulting, regardless of length of engagement, is allowed;
- E. Wireless phone and internet service is not allowed;
- F. Other than cellular equipped tablets, cellular equipment and accessories are not allowed;
- G. Cloud services including acquisitions structured as managed on-site services are not allowed
- H. Managed Print Services is not allowed



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- I. Hosting Services are not allowed;
- J. Software training, or any other training other than equipment operation training, is not allowed;
- K. Employee Purchase Programs are not allowed in this PA; and
- L. Trade-In and Recycle Programs or offerings are not allowed in this PA. Any Ordering Entities that are state entities will adhere to Trade-in and Recycle Programs prescribed by the State.

5. **Product Use Licensing.** Contractor's standard licensing terms accompanying any Apple Product shall control the use of the Apple Product.

6. **Leasing and Rental Options**

Leasing and rental options are allowable for the acquisition of the awarded equipment, if the Contractor provides this option. A Master Lease or Master Rental Agreement will not be negotiated by the State. Each Eligible Agency or Ordering Entity who chooses to pursue either method, shall be responsible for the review, possible negotiations, and signature on any leasing or rental documents. Additionally, it shall be clear that the Eligible Agency or Ordering Entity has the final financial responsibility. The following shall apply to all State agencies, boards and commissions. All cooperative members shall seek guidance from their internal Finance Department for applicability:

- A. Capital and operating lease agreements, as well as straight rental agreements, between the Contractor and any Eligible Agency or Ordering Entity are allowable under this Contract.
 - 1. Capital leases are those agreements which transfer title or ownership of the leased property at the end of the lease or contain a provision for a bargain purchase option; and
 - 2. Operating leases are those agreements where agencies do not obtain title to or ownership of, only the temporary possession and use of, the leased property.
- C. Any State entity entering into a lease agreement as allowed herein shall follow the policies outlined in the State of Arizona Accounting Manual. Any questions as to the State's policy should be directed to the ADOA General Accounting Office. Inquiries can be sent via email to gaopolicy@azdoa.gov.
- D. To ensure compliance with Article 9, Section 5 of the State of Arizona Constitution installment purchase agreements, or those agreements where title to the property is transferred to the lessee at the inception of the agreement, shall be prohibited under this Contract. For the avoidance of doubt, nothing in this Section 7.D shall prohibit capital leases under this Contract.

7. **Configuration Limits**

The dollar limits below are based on a single computer configuration. This is not a restriction on the purchase of multiple configurations. Example – an entity may purchase 10 laptops at \$10K each for a total purchase price of \$100K. Configuration is defined as the combination of hardware and software components that make up the total functioning system. Software purchases are considered a part of the configuration limit on the equipment.

Servers	\$750,000
Storage	\$1,000,000
Desktops	\$10,000
Laptops	\$10,000
Tablets	\$5,000
Peripherals	\$25,000



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8. Reporting

The Contractor shall provide sales reports as outlined in the Master contract and sample Participating Addendum, as provided by NASPO Value Point. More importantly for this PA, is Contractor's compliance to Item 8, Administrative Fee and Usage Reports as stated in the Special Terms and Conditions of this document.

9. ePEAT

The State of Arizona has not waived this requirement. At a minimum the Contractor shall be ePEAT Bronze compliant. Contractor will also charge for any fees due from Ordering Entity by regulation or statute, including, if applicable, fees related to electronic waste recycling.

10. Utilization of Partners

No partners will be utilized by the Contractor under this Addendum.

11. Current Product and Pricing Schedules

The Contractor is responsible to ensure that any changes made to the Product and Pricing Schedules are current and are accurate for all NASPO participants, including the lead state.

13. Website Ordering or Punch-Out Capabilities

With prior written consent of the Contractor, the State may pursue to initiate and implement a web enabled ordering mechanism, including a punch-out feature into the State's e-procurement system, ProcureAZ.

14. Ordering Instruments

Any order for equipment, or services, shall be placed with the Contractor by either a valid purchase order or a government/commercially sponsored procurement card (P Card), at time of order. Contractor shall make reasonable efforts not to accept Private and or individual credit cards.

Any credit card processing fees that may be imposed by the Contractor shall be listed as a separate line item on any invoice. The imposition of processing fees should be carefully considered by the Contractor and should not exceed the following:

- A. For transactions of \$25,000.00 or less, the Contractor may not charge a credit card fee; and
- B. For transactions greater than \$25,000.00, the Contractor may charge a credit card fee that shall not exceed 2.5%.

15. Accessibility Standards

Contractor's VPATs identify how Apple Products comply with Accessibility Standards. Contractor's VPATs can be located at the following address <http://www.apple.com/accessibility/resources/>

16. Nonvisual Access Standards

Contractor's VPATs identify how Apple Products comply with the Nonvisual Access Standards. Contractor's VPATs can be located at the following address



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1. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. 41-2501 Et Seq., the State of Arizona intends to establish a Contract for the materials or services as listed herein.

2. Term of Contract

The term of the resultant Contract shall be effective the date specified on the Offer and Award or Signature page and shall remain in effect unless terminated, cancelled, or extended as otherwise provided herein. The initial term shall be July 1, 2015 to March 31, 2017 in order to coincide with the NASPO ValuePoint Master Contract.

3. Contract Extensions

The Contract term is for the stated period subject to additional successive periods of twelve (12) months per extension with a maximum aggregate including all extensions not to exceed five (5) years, unless the NASPO ValuePoint Master Contract is terminated or expired.

4. Master Contract and Participating Addendum Order of Precedence

As stated in the Participating Addendum of record, as posted on the NASPO Value Point website, the contract order of precedence for this PA is as follows:

- 4.1 State of Arizona Participating Addendum;
- 4.2 Minnesota NASPO ValuePoint Master Agreement;
- 4.3 The Solicitation including all Addendums; and
- 4.4 Contract Vendors response to the Solicitation

5. Non-Exclusive Contract

This Contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

6. Eligible Agencies

This Contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible State Purchasing Cooperative members may participate at their discretion provided that such eligible members are education institutions or state and local government entities. In order to participate in this Contract, a cooperative member shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632.

Membership in the State Purchasing Cooperative is available to all Arizona political subdivisions including cities, counties, school districts, and special districts.



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7. Estimated Quantities

The State anticipates considerable activity resulting from contract(s) that will be awarded as a result of this solicitation; however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by each potential Contractor.

8. Administrative Fee and Usage Reports

Method of Assessment. At the completion of each quarter, the Contractor reviews all sales under their Contract in preparation for submission of their Usage Report. The Contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report, such sales receipts to only include sales to education institutions and state and local government entities. An updated list of State Purchasing Cooperative members may be found at: <https://spo.az.gov/state-purchasing-cooperative>. The Contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from the use of all State of Arizona departments, agencies, commissions and boards, and education institutions and members of the State Purchasing Cooperative, provided that such members are education institutions or state and local government entities.

Submission of Reports and Fees. Within thirty (30) days following the end of the quarter, the Contractor submits their Usage Report and if applicable, a check in the amount of one percent (1%) of their sales receipts from eligible purchasers. Contractor agrees to provide the State its standard usage report, which will contain the following data:

- Sold-to Customer Name
- Apple Customer Number
- Purchase Order Number
- Apple Sales Order Number
- Order Entry Date
- Invoice Number
- Invoice Date
- Quantity
- Unit Price
- Total Price
- Apple Part Number
- Material Description
- Ship-to Name
- Ship-to Address (city, street, state, zip)

The submission schedule for Administrative Fees and Usage reports shall be as follows.

FY Q1, July through September	Due October 31
FY Q2, October through December	Due January 31
FY Q3, January through March	Due by April 30
FY Q4, April through June	Due by July 31

Usage Reports and any questions are to be submitted by email to the state's designated usage report email address:



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Administrative Fees shall be made out to the "State Procurement Office" and mailed to:

**Department of Administration
General Services Division
ATTN: "Statewide Contracts Administrative Fee"
100 N. 15th Avenue, Suite 202
Phoenix, AZ 85007**

The Administrative Fee shall be a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. Statewide contracts shall not have separate prices for State Agency customers and State Purchasing Cooperative customers.

Contractor's failure to remit administrative fees in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract. Contractor shall always be afforded proper advanced notice and ability to cure.

9. Licenses

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

10. Authorization to Purchase

Authorization for the purchase of equipment or services shall be made only upon the issuance of a Purchase Order or a government/commercial procurement card/credit card. The Purchase Order will indicate the contract number and the dollar amount of funds authorized. The Contractor shall only be authorized to perform up to the amount on the Purchase Order or the accepted quotation document. The State shall not have any legal obligation to pay for goods or services in excess of the amount indicated on the Purchase Order or accepted quotation document. No further obligation for payment shall exist unless:

- 10.1 The Purchase Order is changed or modified with an official Change Order that is accepted by Contractor, and/or
- 10.2 An additional Purchase Order is issued for the purchase of good and services under this Contract.

11. Invoicing

All billing notices or invoices shall be sent to the agency whose address appears on the contract release order/purchase order as the 'bill to address' and should contain, at a minimum, the information listed below.

- 11.1 The purchase order number;
- 10.2 Name and address of the contractor;
- 10.3 The Contractor's remittance address;
- 10.4 Contractor's representative to contact concerning billing questions
- 10.5 Contractual payment terms and invoice date;
- 10.6 Applicable taxes; and
- 10.7 Description of work products delivered.



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12. Compliance with Applicable Laws

The Materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements. Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract.

Contractor represents and warrants that at the time of shipment the Materials provided through this Contract shall not knowingly contain viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on users or prevent the Materials from performing as required under the terms and conditions of this Contract.

13. Price Adjustment [Please refer to Exhibit B – Pricing in Master Agreement]

14. Payment Procedures

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor shall complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State shall indicate consent on the form. A written Contract Amendment shall be signed by both parties and a new W-9 form shall be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

15. Order Process

The award of a Contract shall be in accordance with the Arizona Procurement Code. Any attempt to represent any material and/or service not specifically awarded as being under contract with the State is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

16. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the Contract. This provision applies to work performed by subcontractors at all tiers.

17. First Party Limitation of Liability [Please refer to Section B, Paragraph 33. Limitation of Liability in Master Agreement]



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18. Access Constraints and Requirements

Contractor access to State facilities and resources shall be properly authorized by State personnel, based on business need and **will be restricted to least possible privilege**. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA / ASET Policies / Procedures, and Arizona Revised Statutes (ARS) 28-447, 28-449, 28-450, 38-421, 13-2408, 13-2316, 41-770).

Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws.

Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.

19. Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 41-2531 and § 41-2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

20. Insurance Portability and Accountability Act of 1996

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that, to the extent HIPAA applies to the services provided under the Contract, Contractor will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the ADOA-ASET Office, the Statewide Information Security and Privacy Office (SISPO) Chief Privacy Officer and HIPAA Coordinator, and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA to the extent applicable to the services provided under this Contract, including but not limited to, business associate agreements.

If reasonably necessary, the Contractor agrees to sign a "Pledge to Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if reasonably necessary and applicable to the services provided under this Contract, Contractor agrees to attend or participate in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ADOA-ASET/SISPO Chief Privacy Officer and HIPAA Coordinator.

21. **Indemnification [Please refer to Indemnification in the Master Agreement.]**
22. **Intellectual Property Indemnification (Please refer to Indemnification in Master Agreement)**
23. **Insurance [Please refer to Insurance in the Master Agreement.]**



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24. Requirements for A.R.S. § 41-4401, Government Procurement: e-Verify Requirement

The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.")

A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract and the Contractor may be subject to termination of the Contract.

Failure to comply with a State audit process to randomly verify the employment records of Contractors and subcontractors shall be deemed a material breach of the Contract and the Contractor may be subject to termination of the Contract.

The State Agency retains the legal right to inspect the papers of any employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph One (1).

25. Primary Contacts. The primary contact individuals for this Participating Addendum are as follows:

Contractor

Sales Contact Information (for quotes, pricing, and product questions)

- By Phone

Education K12 and HiEd:

1-800-800-2775

1-800-590-0325 (FAX)

State and Local Government:

1-800-793-9378

1-855-438-0486 (FAX)

- By Email (for submission of Purchase Orders Only)

Education K12 and HiEd: institutionorders@apple.com

State and Local Government: govorders@apple.com

Contractor Contact (for questions concerning contractual matters):

Contact: Suzanne Rollin, Contracts Program Manager

Address: Apple Inc.
1 Infinite Loop, MS 318-6OPS
Cupertino, CA 95014

Phone: 408-862-1695

Email: OR

The contacts listed above can be changed by the parties from time to time in writing. Such updates do not require an amendment to this Contract.



Uniform Terms and Conditions

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1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. "*Attachment*" means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. "*Contract*" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. "*Contractor*" means any person who has a Contract with the State.
- 1.5. "*Days*" means calendar days unless otherwise specified.
- 1.6. "*Exhibit*" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. "*Gratuity*" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. "*Materials*" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. "*Procurement Officer*" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. "*Services*" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. "*Subcontract*" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. "*State*" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. "*State Fiscal Year*" means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

Terms. The Participating Entity or Purchasing Entity is agreeing to the terms of the Master Agreement and this Addendum only to the extent the terms are not in conflict with applicable laws of the state where Participating State/Entity is located.

Contractor acknowledges that Participating Entity or Purchasing Entity is an agency of the State or a political subdivision of the State of Arizona. Parties agree that this Addendum is subject to Arizona State laws and any provision of the Addendum that is in direct conflict with any Arizona State laws shall be deemed unenforceable.

- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.



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- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;
 - 2.3.4. Specifications;
 - 2.3.5. Attachments;
 - 2.3.6. Exhibits;
 - 2.3.7. Minnesota ValuePoint Master Agreement (includes negotiated Terms and Conditions);
 - 2.3.8. Documents referenced or included in the Solicitation and all Addendums; and
 - 2.3.9. Contract Vendor's response to the Solicitation
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 3. Contract Administration and Operation**
- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and only five (5) years from the invoice date of the transaction under this Contract, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract. Any Auditor General is subject to agreement to Contractor's standard confidentiality terms upon commencement of such audit.
- 3.4. Acceptance Testing. Contractor shall provide certain Apple-branded hardware to a Participating Entity or Purchasing Entity for evaluation and Acceptance Testing purposes pursuant to the terms and conditions of the Apple Equipment Loan Agreement, which can be found at <http://seed.apple.com/docs/hlatemplate.pdf>



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- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State [Please refer to Ownership in the Master Agreement]
- 3.8. Reserved
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11. Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41. Contractor shall submit a complete and accurate invoice and payment shall be made 30 days from receipt and acceptance of goods or services per Section B, Paragraph 28. Acceptance and Acceptance Testing in Master Contract MNWNC-102.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination. In those situations in which the "deliver-to" address has no receiving dock or agents, the Contractor must be able to deliver to the location specified on the Purchase Order without additional cost. If there is a special case where inside delivery fee must be charged and is clearly specified on Participating Entity or Purchasing Entity's order, the Contractor will notify them in advance in order for the Participating Entity or Purchasing Entity to determine if the additional cost will affect the decision to utilize the Contractor.
- 4.3. Applicable Taxes.
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes. In the event taxes are due, the Ordering Entity shall pay all applicable local sales or use taxes, duties and other



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imposts, if any, due on account of purchases hereunder. Proof of tax-exempt status must be on file at Contractor's support center for any order to be treated as a tax-exempt transaction.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements.

Notwithstanding the foregoing, in the event this contract is canceled due to the non-appropriation of funds described above, the State shall upon the date of cancelation pay for products and services ordered prior to the date of cancelation.

5. Contract Changes

5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability – Refer to Master Agreement, Section C, Paragraph 30 Risk of Loss or Damage



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7. Warranties

- 7.1. Liens.
The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Refer to Master Agreement
- 7.3. Refer to Master Agreement
- 7.4. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.5. Survival of Rights and Obligations after Contract Expiration or Termination Please see Master Agreement Section C Paragraph 33. Survivability.
- 7.6. Orders. Any Order placed by and shipped to a Participating Entity or Purchasing Entity for a Product and/or Service available from Contractor under the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement.

8. State's Contractual Remedies

- 8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. Subject to the Limitation of Liability in Section B, Paragraph 33 of the Master Agreement, the State, in addition to any other rights or remedies,



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shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience. Upon thirty (30) days prior written notice to Contractor, the State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide thirty (30) days' prior written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Dispute Resolution.

In the event of any dispute or controversy between the State and Contractor, the parties shall try to resolve the dispute in a fair and reasonable way. The parties must escalate a dispute by providing written notice to the other and shall first attempt to resolve such dispute or controversy through one senior management member of each party. If the parties' senior management members are unable to resolve such dispute or controversy within sixty (60) days after the complaining party's written notice to the other party of such dispute or controversy, then either party must, by written notice to the other party, request non-binding mediation to be conducted in the state of Arizona. Each party shall bear its own expenses in connection with the mediation, except that Contractor shall pay the fees and expenses of the mediator. All such non-binding mediation proceedings and negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. Except for any outstanding amount due to Contractor by the State under this Addendum, the parties' efforts to resolve any dispute or controversy pursuant to this Section shall not toll or extend the required period for commencing litigation set forth in this Contract.

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.(and administrative review)

11. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007



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12. Entire Agreement; Modifications

Neither Contractor nor Participating Entity or Purchasing Entity will be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in this Addendum. Any different or additional provisions in purchase orders, invoices or similar documents issued by Participating Entity or Purchasing Entity at any time are hereby deemed refused by Contractor and such refused provisions will be unenforceable. Except as otherwise provided in this Addendum, no modification to this Addendum will be binding unless in writing and signed by an authorized representative of each party.