

**PARTICIPATING ADDENDUM**  
**NASPO Valuepoint COOPERATIVE PURCHASING PROGRAM**  
**Computer Equipment**  
**Administered by the State of Minnesota (hereinafter "Lead State")**

MASTER AGREEMENT  
Master Agreement No: MNWNC-102  
Apple Inc.  
(hereinafter "Contractor")  
and  
State of North Dakota  
(hereinafter "STATE", "Participating State" or "Participating Entity")  
ND State Contract #022-MNWNC-102-PA

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

**14. Acceptance Testing.** Acceptance testing is excluded from the State of ND Participating Addendum, (This section modifies Section B, Paragraph 28 of the Master Agreement).

**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/>. (This section modifies Section C, Paragraph 2 of the Master Agreement).

**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 <http://www.apple.com/accessibility/resources/>. (This section modifies Section C, Paragraph 2 of the Master Agreement).

**17. Reports and Administrative Fees:** The Contractor shall submit quarterly reports to the Division of Purchases for all acquisitions, less returned product ("actual, net invoice sales"), made from this Addendum. This report should include as a minimum the agency name, quantity, description and amount. The report shall be submitted 30 days following the end of the Contractor Fiscal quarter, as set forth below, to [topp@nd.gov](mailto:topp@nd.gov).

<u>Period</u>	<u>Due Date</u>
January - March	April 30
April - June	July 31
July - September	October 31
October - December	January 31

**18. 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.

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**6. Partner Utilization.** Each state represented by NASPO Valuepoint participating in this Master Agreement independently has the option of utilizing partners. All Contractor approved partners may be deployed. The Contractor's partners' participation (if any) will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. No partners will be utilized by Contractor under this Addendum. Contractor may contract with an Apple Authorized Service Provider who may perform services on its behalf.

**7. 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) the Master Agreement.

**8. Leasing.** Participating Entity or Purchasing Entity that have the authority may finance their purchases through a lease agreement with Contractor. If financing is through a lease agreement, that agreement is separate from this Addendum and between Contractor and the Participating Entity or Purchasing Entity.

**9. Services.** The terms of the Master Agreement shall apply each time Participating Entity or Purchasing Entity engages Contractor to provide services. All services provided will be described in one or more of the following documents:

- (i) "Service Descriptions" used to describe any services purchased by an entity;
- (ii) Any mutually agreed upon "Statement of Work" ("SOW") executed by the parties.

**10. Delivery.** 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.

**11. Payment.** Provided Participating Entity or Purchasing Entity is qualified for credit with Contractor, payment is due no later than 30 days from the invoice date. Payments may be made via a State or political subdivision purchasing card if presented at time of order.

**12. Insurance.** Contractor shall have the option to self-insure, as long as Contractor maintains an audited net worth (shareholder's Equity) of \$100,000,000.00.

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**Contractor**

**Sales order contact:**

**- 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 (Submit Purchase Orders Only)**

[institutionorders@apple.com](mailto:institutionorders@apple.com) (Education)

[govorders@apple.com](mailto:govorders@apple.com) (Government)

**Contractor contact:**

Ralph Wright

12545 Riata Vista Circle

Austin TX 78727

[ralph.wright@apple.com](mailto:ralph.wright@apple.com)

517-674-7739

**Participating Entity**

Tricia Opp

600 East Boulevard Ave, Dept 012

Bismarck, ND 58505-0310

[topp@nd.gov](mailto:topp@nd.gov)

701-328-1721

**For questions on executing a participating addendum, please contact:**

NASPO Valuepoint

Cooperative Development Coordinator:

Tim Hay

Telephone:

503-428-5705

E-mail:

[thay@NASPO Valuepoint.org](mailto:thay@NASPO Valuepoint.org)

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 Addendum.

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Parties understand that the STATE is required to make disclosures pursuant to North Dakota Public Record Law. Parties agree to contact each other immediately upon receiving a request for information under North Dakota Public Record Law to afford the non-disclosing Party the opportunity to review the disclosure request.

- f. **Severability.** If any provision of the Master Agreement, including this Participating Addendum, is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining provisions is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Master Agreement or Participating Addendum did not contain that provision (this section modifies Section C, Paragraph 31 of the Master Agreement).
- g. **Alternative Dispute Resolution – Jury Trial.** STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.
- h. **Dispute Resolution.** A party must escalate a dispute or controversy by providing written notice to the other. Both Parties agree to attempt to resolve any dispute or controversy in good faith.

To the extent permissible by law, neither party nor its representatives may disclose the existence, content, or results of any dispute resolution under this Section without the prior written consent of all Parties.

- i. **State Audit.** All purchase orders and invoices necessary to properly account for all payments made relevant to this Participating Addendum are subject to examination by the North Dakota State Auditor. CONTRACTOR shall maintain all of these records for at least five (5) years from the invoice date of the transaction under this Addendum and be able to provide them at any reasonable time. STATE or State Auditor shall provide reasonable notice for these records (this section modifies Exhibit B, Paragraph 26 of the Master Agreement).

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

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the use of State Confidential Information; (d) is required to verify the State's compliance with any provisions of this Agreement; or (e) is now, or hereafter becomes, publicly available other than through disclosure by Contractor in breach of this Agreement.

During the Term and for five (5) years thereafter, the State will not use Contractor Confidential Information except as required to achieve the objectives of this Agreement, or disclose such Contractor Confidential Information except to employees or contractors who have a need to know. The State will not make any disclosure or statement of Contractor Confidential Information in connection with the Agreement or its subject matter without Contractor's prior, specific written consent. The State shall not make any public statement regarding any item of Contractor Confidential Information, including but not limited to any matter of business between the State and Contractor, or the nature of any contractual relations between Contractor and the State or any third party. The State may disclose Contractor Confidential Information to the extent required by law, provided that it first makes reasonable efforts to give Contractor notice of such requirement prior to any such disclosure.

Contractor will not use State Confidential Information except as required to achieve the objectives of this Agreement, or disclose such State Confidential Information except to employees, agents or contractors who have a need to know or as required by law. Except as otherwise stated herein, Contractor will not make any disclosure or statement of such information without the State's prior written consent or as required by law.

- e. **Compliance with Public Record Law.** CONTRACTOR understands that, except for disclosures prohibited by this Participating Addendum, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Participating Addendum, except for records that are confidential under this Participating Addendum, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with lawful instructions on how to respond to the request (this section modifies Exhibit A, section B). The State may disclose Contractor confidential information to the extent required by law, provided that it first makes reasonable efforts to give Contractor notice of such requirement prior to any such disclosure and take reasonable steps to maintain and preserve the confidentiality of Contractor Confidential Information.

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- c. **Limitation of Liability.** Exhibit A, Section B "WSCA-NASPO Terms and Conditions", Paragraph 33, Limitation of Liability, is modified by adding the following language:

The parties agree that any and all of Contractor's indemnity obligations shall be subject to North Dakota Century Code §32-12.2-15. The parties also agree that the statute requires that if and when products are defective in accordance with the warranty provision of the Master Agreement, the costs of any and all replacement products will not be limited by the Limitation of Liability section of this agreement. Except as expressly stated in this section, the parties recognize and agree that North Dakota Century Code §32-12.2-15 does not have any other force or effect on the Limitation of Liability of Section B, Paragraph 33 of the Master Agreement.

- d. **Confidentiality.** This section modifies Section B, Paragraph 7 of the Master Agreement.

**"Contractor Confidential Information"** means any and all information in oral or written form that the State knows or has reason to know is confidential information and that is disclosed in connection with this Agreement or to which the State may have access in connection with this Agreement, including but not limited to financial information and data, personnel information, information regarding strategic alliances, costs or pricing data, the identities of customers and prospective customers, and any information relating to new product launch, including the release dates and product specifications. Contractor Confidential Information shall not include any information that: (i) was rightfully in the State's possession prior to disclosure without any obligation to maintain its confidentiality; (ii) was independently developed by the State without the use of or reference to Contractor Confidential Information; (iii) is now, or hereafter becomes, publicly available other than through disclosure by the State in breach of this Agreement. If the State is disclosing any information related to Contractor, State must provide written notice in a reasonable time prior to disclosure to afford Contractor an opportunity to respond.

**"State Confidential Information"** means and is limited to information that is: (i) reduced to a tangible form, (ii) independently developed by the State without the use of or reference to any Contractor Confidential Information, and (iii) provided specifically at Contractor's request after execution of this Agreement and after execution of an acknowledgment signed by Contractor's Sales Director that such information shall be treated as State Confidential Information. State Confidential Information shall not include any information that: (a) is communicated verbally; (b) was rightfully in Contractor's possession prior to disclosure without any obligation to maintain its confidentiality; (c) was independently developed by Contractor without

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These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

**4. Participating State Modifications or Additions to Master Agreement Award – Exhibit A, Section B WSCA-NASPO Terms and Conditions and where applicable, section C - Minnesota Terms**

**Conditions:**

(Other modifications or additions apply only to actions and relationships within the Participating Entity.)

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 a political subdivision of the State of North Dakota. Parties agree that this Addendum is subject to North Dakota State laws and any provision of the Addendum that is in direct conflict with any North Dakota State laws shall be deemed unenforceable.

- a. Payment of Taxes by State.** STATE is not responsible for and will not pay local, State, or federal taxes. STATE's sales tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by CONTRACTOR (this section modifies Section B, Paragraph 24, of the Master Agreement). Notwithstanding the foregoing, should any tax arise from a transaction under this agreement, the Participating Entity shall be responsible for the payment thereof.
- b. Applicable Law and Venue.** 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 brought and solely litigated in the District Court of Burleigh County, North Dakota. Each party consents to the jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens* (this section modifies Section B, Paragraph 12 and Section C, Paragraph 18 of the Master Agreement).

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**1. Scope.** This Participating Addendum allows for purchase of the following Computer Equipment/Services: Desktops, Laptops, Tablets including Related Peripherals & Services led by the State of Minnesota along with a multi-state sourcing team for use by the Participating State's entities, governmental boards and commissions, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, nonprofit entities established on behalf of public entities, tribal agencies, and the International Peace Garden).

The original solicitation contains the requirements and definitions establishing the Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contractor.

The Products and Services available under this Participating Addendum include all Products and Services in scope for the Master Agreement

This Participating Addendum will replace the existing Participating Addendum between Contractor and Participating State/Entity under the WSCA Master Price Agreement Number B27158, when executed by both parties.

The term of this Participating Addendum shall be effective upon the date of final execution below (the "Effective Date") by the State of North Dakota through March 31, 2017, unless otherwise terminated in accordance with the termination provisions of this Participating Addendum. This Participating Addendum may be extended in accordance with the terms and conditions of the Master Agreement.

**2. Participation.** Use of specific NASPO Valuepoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) are authorized pursuant to N.D.C.C. § 54-44.4-13. Issues of interpretation and eligibility for participation are solely within the authority of the State Procurement Office. If a Purchasing Entity is purchasing under this Participating Addendum, Contractor shall assume it has the right to do so.

**3. Order of Precedence.**


- (i) A Participating Entity's Participating Addendum ("PA"). A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of Minnesota NASPO Valuepoint Master Agreement;
- (ii) Minnesota NASPO Valuepoint Master Agreement (includes negotiated Terms & Conditions);
- (iii) The Solicitation including all Addenda; and
- (iv) Contractor's response to the Solicitation.



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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State:	Contractor:
By: <i>Angie Scherbenske</i>	By: 
Name: <i>Angie Scherbenske</i>	Name: <i>Rebecca Whitaker</i>
Title: <i>Procurement Officer II</i>	Title: <i>Manager, Contract Operations</i>
Date: <i>12-23-15</i>	Date: <i>12/21/15</i>
Legal Entity Name: <i>State of ND</i>	
DBA Name: <i>State Procurement Office</i>	
Headquarter Address: <i>14 Floor Capitol tower 600 E. Blvd. Ave Dept. 012 Bismarck, ND 58505-0310</i>	