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State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
25 Capitol Street – Room 100
Concord, New Hampshire 03301
(603) 271-3201 Office@das.nh.gov

Charles M. Arlinghaus
Commissioner

Catherine A. Keane
Deputy Commissioner

Sheri L. Rockburn
Assistant Commissioner

May 29, 2024

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Administrative Services (DAS) to enter into a contract with Apple Computer Inc (VC#176166), 2420 Ridgepoint Dr Ms 198-Ee, Austin, TX 78754, in an amount up to and not to exceed $474,599 for computer equipment, peripherals & related services, with the option to renew for up to an additional three years, through a Participating Agreement (PA) with the National Association of State Procurement Officials (NASPO) Value Point Master Agreement (MA) #23003, effective upon Governor and Executive Council approval through June 30, 2025.

Funding shall be provided through individual agency expenditures, none of which shall be permitted unless there are sufficient appropriated funds to cover the expenditure.

EXPLANATION

The Department of Administrative Services (DAS) reviewed and negotiated in collaboration with the Department of Justice for this requested State of New Hampshire participating agreement. This participating agreement is aligned with the MA set in place by NASPO and the lead state, Minnesota, through the competitive bidding process, sourcing vendors through the NASPO sourcing platform.

The State of Minnesota in partnership with NASPO ValuePoint has awarded cooperative master agreements for computer equipment, peripherals & related services. The Apple Computer Inc MA will allow state agencies and participating entities to purchase from Band 2 of the award: personal computing devices (non-Windows). This MA executed by NASPO and the lead state, Minnesota, through the competitive bidding process for RFP 29720, which received a total of 28 proposals and awarded contracts to 23 suppliers. Awarded July 1, 2023, this MA expires June 30, 2025, with the possibility of a 3-year renewal until June 30, 2028. The DAS has already received Governor & Executive Council approval to contract through the Dell NASPO MA for the Computer Equipment, Peripherals & Related Services, Item #127, dated October 18, 2023, HP NASPO MA, Item #171, dated February 21, 2024, and HPE NASPO MA, Item#170 dated

February 21, 2024 and is requesting State of New Hampshire participation through this PA for Apple Computer Inc.

This is the first request for the State of New Hampshire to join a MA with Apple Computer Inc. Current trends and increased popularity in agency spend, prompt this interest in in contracting for Apple brand personal computers. This NASPO PA will empower agencies within the state as well as municipalities, schools, and other participating entities, to take advantage of discounts per unit as well as cost savings for bulk orders. Internal procurement reporting quantifies historical yearly spend for Apple products at $225,999, accounting for inflation and overall market price fluctuations, as well as advances in technology requirements and new investments, an approximate 1.5-year contract term is requested and supported by DoIT at $474,599.

Contract financials	
Historical Yearly Spend Apple Products	$225,999
Requested Price Limitation for Term of Contract	$474,599

Based on the foregoing, I am respectfully recommending approval of the contract with Apple Computer Inc.

Respectfully submitted,

Charles M. Arlinghaus
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
27 Hazen Dr., Concord, NH 03301
Fax: 603-271-1516 TDD Access: 1-800-735-2964
www.nh.gov/doit

Denis Goulet
Commissioner

January 4, 2024

Charles M. Arlinghaus, Commissioner
Department of Administrative Services
State of New Hampshire
25 Capitol Street – Room 100
Concord, NH 03301

Dear Commissioner Arlinghaus:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a Participating Agreement with Apple Computer Inc., as described below and referenced as DoIT No. 2024-070.

The purpose of this request is to provide statewide computer equipment, peripherals, and related services.

The Total Price Limitation will be $474,599, effective upon Governor and Executive Council approval through June 30, 2025.

A copy of this letter must accompany the Department of Administrative Services' submission to the Governor and Executive Council for approval.

Sincerely,

Denis Goulet

DG/jd
DoIT #2024-070

cc: Rebecca Bolton, IT Manager

NASPO ValuePoint
PARTICIPATING ADDENDUM NO. 8003334
FOR COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES (2023 – 2028)
Led by the State of Minnesota

NASPO ValuePoint®

PARTICIPATING ADDENDUM

This Participating Addendum (the "Participating Addendum") is entered into by and between the STATE OF NEW HAMPSHIRE, acting by and through its Department of Administrative Services ("Participating State"), and APPLE INC., a Delaware corporation with a principal place of business located at One Apple Park Way Cupertino, CA 95014 ("Contractor"). Participating State and Contractor are sometimes referred to herein singularly as a "Party" or collectively as the "Parties").

RECITALS

WHEREAS, the State of Minnesota (the "Lead State"), acting on behalf of member states of the NASPO ValuePoint Purchasing Program, and Contractor entered into the NASPO ValuePoint Master Agreement No. 23003 dated July 1, 2023 (the "Master Agreement"), wherein Contactor agreed to provide computer equipment, peripherals, and other services thereto to Participating Entities upon the terms and conditions set forth in said Master Agreement;

WHEREAS, Participating State is a member of the NASPO ValuePoint Purchasing Program; and

WHEREAS, Participating State desires to participate in Contractor's offering the products and services under the Master Agreement subject to the terms and conditions of the Master Agreement and this Participating Addendum;

NOW, THEREFORE, in consideration of the foregoing recitals, the receipt and sufficiency of which are hereby conclusively acknowledged, the Parties hereby agree as follows:

1. Scope. This Participating Addendum governs Participating State's participation in the Master Agreement by and between Contractor and Lead State. Except as otherwise stated herein, this Participating Addendum shall cover all of the Products, Services, and pricing, offered by Contractor to Participating State under the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating State. 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.

2. Incorporation of Master Agreement. The terms and conditions of the Master Agreement are attached hereto as Schedule 1 and incorporated herein by reference. All undefined capitalized terms used herein shall have the same meanings assigned to them in the Master Agreement. Certain other capitalized terms are defined elsewhere within the text of this Participating Addendum and, throughout this Participating Addendum, those terms shall have the meanings respectively ascribed to them. In the event of any conflict or inconsistency between the terms and conditions of this Participating Addendum and any terms and conditions set forth in the Master Agreement, the terms and conditions of this Participating Addendum shall prevail.

3. Participation; Authorized Purchasers. The Products and Services available for purchase under the Master Agreement by way of this Participating Addendum may be ordered and purchased by all departments, divisions, agencies, public or private educational institutions, institutions of higher education, cities, counties, districts, nonprofit organizations and other executive agencies eligible to use statewide contracts within the State of New Hampshire (each, an "Authorized Purchaser"). A Participating Entity is financially obligated only for Orders made by the Participating Entity as a Purchasing Entity and not for Orders placed by any other Purchasing Entity.

4. Effective Date of Participating Addendum. Notwithstanding any terms and conditions in the Master Agreement to the contrary, this Participating Addendum is subject to the approval of the Governor and Executive Council of the State of New Hampshire, and Participating State shall not be bound by the terms and conditions of this Participating Addendum or the Master Agreement until the date of such approval (the "Participating Addendum Effective Date") By Participating State signing this Participating Addendum, Participating State acknowledges that it has obtained approvals by appropriate officials in accordance with applicable New Hampshire laws and regulations.

5. Term. The term of this Participating Addendum shall begin on the Participating Addendum Effective Date and end on June 30, 2025, unless terminated earlier in accordance with the terms and conditions of the Master Agreement or this Participating Addendum. In the event that Lead State and Contractor agree to extend the term of the Master

Agreement, then Participating State shall have the option to extend the term of this Participating Addendum for an additional term not to exceed the extended term of the Master Agreement.

6. Funds Available and Authorized; Non-Appropriation. Participating State's obligations under this Participating Addendum and the Master Agreement are subject to the availability of sufficient legislative appropriations allotments, or other expenditure authority and, if Participating State is expending federal funds, the availability of such federal funds. In the event of the reduction, elimination, or modification of the appropriation or availability of funding for this Participating Addendum, in whole or in part, Participating State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate this Participating Addendum immediately upon written notice to Contractor. Notwithstanding the foregoing, Authorized Purchaser will fulfill its payment obligations to Contractor for orders placed and delivered and services performed.

7. Non-Exclusivity. This Participating Addendum is not exclusive, and Participating State may acquire the Products and Services available under the Master Agreement and this Participating Addendum from other third parties.

8. Invoice Requirements.

a. To request payment for each Order made hereunder, Contractor shall submit an original invoice to the office of the Authorized Purchaser that submitted the Order. The contents of the invoice must include, at a minimum, the following:

i. Contractor's name and address;

ii. Contractor's payment address;

iii. The Order number; and

iv. A description of the Products and Services that Contractor delivered with, as applicable, the date, serial number, quantity, unit price, and total price of the Products and Services for which payment is sought.

b. If an invoice submitted by Contractor does not meet the requirements of this Section, then the Authorized Purchaser will send a written notice to Contractor that describes the defect or impropriety of the invoice.

c. Participating State's payment will not be due until thirty (30) calendar days after the invoice date. If the Parties mutually agree that there is a bona fide dispute regarding inaccurate quantity or the calculation of the total price of the Products and Services for which payment is sought, payment under dispute will not be due until the dispute is resolved by the Parties in good faith.

9. No Liability Upon Termination. In the event that Participating State terminates this Participating Addendum, Participating State shall not be liable to Contractor for any reason, except for: 1) the payment of the Products and Services ordered hereunder that are performed or delivered, and 2) surviving obligations listed under Section 9 of Master Agreement.

10. Primary Contacts; Notice. The Parties' respective primary points of contact for this Participating Addendum are the individuals named below as follows:

a. Contractor.

Name:	Tim Lim, Senior Contracts Negotiator
Address:	One Apple Park Way, Mail Stop 39-3MAL, Cupertino, CA 95014
Telephone:	(408) 783-7379
Email:	tlim2@apple.com

b. Participating State.

Name:	Gary S. Lunetta
Address:	25 Capital Street, Room 102, Concord, NH 03301
Telephone:	(603) 271-2201
Email:	gary.s.lunetta@das.nh.gov

If one party is required to give notice to the other under the Participating Addendum, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. An electronic transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes.

11. Reporting.
Excluding all orders at an Apple Retail Store, Apple 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:

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 Corrine Tatro at: corrine.e.tatro@das.nh.gov.

Each quarterly usage report shall be submitted electronically in a ".xlsx" or "CSV" format and shall be organized by Authorized Purchaser. In addition, each quarterly usage report shall include, at a minimum, the following information:

a. Participating State's number assigned to this Participating Addendum, if any, and the number assigned to the Master Agreement;

b. The names of all Authorized Purchasers that placed an Order under this Participating Addendum during the reporting period;

c. A description of the Products and Services purchased by each Authorized Purchaser;

d. The total price of all Orders during the reporting period; and

e. Any other information as Participating State may reasonably request, as mutually agreed upon by both parties.

12. Click Through Terms and Conditions. If either Party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to any Products or Services ordered hereunder (each an "Electronic Ordering System"), the Parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of Participating State do not have any actual or apparent authority to create or modify any provision of this Participating Addendum or Master Agreement.

13. Equal Employment Opportunity. Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to this Participating Addendum and the Orders made hereunder:

a. Titles VI and VII of the Civil Rights Act of 1964, as amended;

b. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

c. The Americans with Disabilities Act of 1990, as amended;

d. Executive Order 11246, as amended;

e. The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

f. The New Hampshire Law Against Discrimination, RSA 354-A, as amended;

g. All regulations and administrative rules established pursuant to the foregoing laws; and

h. All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

14. Limitation of Liability. To the fullest extent permitted by law, the Parties agree that in no event will Participating State, together with its officials, agents, and employees, be liable for any indirect, incidental, special, or consequential damages, including, without limitation, lost profits.

15. Sovereign Immunity Preserved. Notwithstanding any terms and conditions set forth herein to the contrary, this Participating Addendum shall not be construed as a waiver of Participating State's sovereign immunity, which is hereby reserved by Participating State. The terms and conditions of this Section shall survive the expiration or termination of this Participating Addendum.

16. Governing Law. The Parties acknowledge and agree that this Participating Addendum and the rights, obligations, and liabilities of the Parties hereunder, including matters of construction, validity, and performance, shall be exclusively governed by the laws of the State of New Hampshire without regard to any choice of law or conflict of law, rules, or provisions (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire.

17. Consent to Jurisdiction and Venue. The Parties hereby irrevocably and unconditionally (a) submit to exclusive personal jurisdiction in the Superior Courts of the State of New Hampshire over any suit, action, or proceeding arising out of or relating to this Participating Addendum, and (b) waive any and all personal rights under the laws of any other state to object to jurisdiction within the Superior Courts of the State of New Hampshire. The Parties agree that the only proper venue for any suit, action, or proceeding arising out of or related to this Participating Addendum shall be in the state courts of the State of New Hampshire.

18. Severability. If any term or condition of this Participating Addendum or the application thereof to any party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Participating Addendum, or the application of such term or condition to the Parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and condition of this Participating Addendum shall be valid and enforceable to the maximum extent permitted by law.

19. Merger. This Participating Addendum, together with the Master Agreement, is intended by the Parties as the final, complete, and exclusive understanding of the Parties hereto. All prior or contemporaneous promises, agreements, and understandings, whether oral or written, are deemed to be superseded by this Participating Addendum, and no Party is relying on any promise, agreement, or understanding not set forth in this Participating Addendum. This Participating Addendum may not be amended or modified except by a written instrument describing such amendment or modification executed by the Parties hereto.

20. 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.

21. Counterparts; Facsimile and Electronic Signatures. This Participating Addendum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Participating Addendum. A facsimile or portable document format (PDF) signature on this Participating Addendum shall be

equivalent to, and have the same force and effect as, an original signature. In accordance with the New Hampshire Uniform Electronic Transactions Act, RSA 294-E, the Parties hereby agree that this Participating Addendum may be signed electronically, including any exhibits, schedules, addenda, or other attachments referenced herein.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date their respective signatures parties below.

Contracting Officer for Participating State	Participating State Telephone Number
Contractor Signature Johnny Mendoza Date: 4/16/2024	Name and Title of Contractor Signatory Johnny Mendoza / Project Coordinator
Participating State Signature Date: 5/10/24	Name and Title of Participating State Signatory
Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)* By:	Director, On:
Approval by the Attorney General (Form, Substance and Execution) *(if applicable)* By: Duncan A. Edgar	On: May 16, 2024
Approval by the Governor and Executive Council *(if applicable)* G&C Item number:	G&C Meeting Date:

Schedule 1

NASPO MASTER AGREEMENT

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MINNESOTA

NASPO ValuePoint™

NASPO ValuePoint Master Agreement No.: 23003

This Contract is between the State of Minnesota, acting through its Commissioner of Administration ("Lead State") and Apple Inc., whose designated business address is One Apple Park Way, Cupertino, CA 95014, USA ("Contractor"). State and Contractor may be referred to jointly as "Parties."

Recitals

1. The State of Minnesota, Department of Administration, Office of State Procurement, on behalf of the State of Minnesota and NASPO ValuePoint Cooperative Procurement Program ("NASPO ValuePoint") issued a solicitation to establish Minnesota NASPO ValuePoint Master Agreement(s) ("Contract") with qualified manufacturers for Computer Equipment (Desktops, Laptops, Tablets, Servers, and Storage, including related Peripherals & Services);

2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and

3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract; and

4. All authorized governmental entities in any state or participating US Territory are welcome to use the resulting Master Agreement through NASPO ValuePoint with the approval of the State Chief Procurement Official. Upon final award of the overarching Master Agreement, Contractors are able to sign Participating Addendums (PA) at the option of Participating States. Participating States reserve the right to add state specific terms and conditions and modify the scope of the contract in their Participating Addendum as allowed by the Master Agreement.

Accordingly, the Parties agree as follows:

Contract

1. **Term of Contract**

   a. Effective date. July 1, 2023, or the date the Lead State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.

   b. Expiration date. June 30, 2025. This Master Agreement may be extended for up to an additional 36 months, in increments as determined by the Lead State, through a duly executed amendment.

   c. If, in the judgment of the Lead State, a follow-on, competitive procurement will be unavoidably delayed beyond the planned date of execution of the follow-on master agreement, this Master Agreement may be extended for a reasonable period of time, not to exceed six months. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

2. **Representations and Warranties**

a. Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law the Lead State is empowered to engage such assistance as deemed necessary.

b. Reserved.

c. Contractor warrants that it possesses the legal authority to enter into this Master Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Master Agreement, or any part thereof, and to bind Contractor to its terms.

3. **Awarded Band(s)**

The solicitation included three product Bands: Band 1, Personal Computing Devices – Windows Operating Systems: Desktops, Laptops, Tablets; and Band 2, Personal Computing Devices – Non-Windows Operating Systems: Desktops, Laptops, Tablets; and Band 3, Servers and Storage. The Contractor is awarded the following Band(s):

Band 2, Personal Computer Devices - Non-Windows Operating Systems

4. **Configuration Dollar Limits**

The following configuration limits apply to the Master Agreement. Participating Entities may define their configuration limits in their Participating Addendum. The Participating Entity's Chief Procurement Official may increase or decrease the configuration limits, as defined in their Participating Addendum. The Participating Entity will determine with the Contractor how to approve these modifications to the Product and Service Schedule.

The dollar limits identified below are based on a SINGLE computer/system configuration. This is NOT a restriction on the purchase of multiple configurations (e.g., an entity could purchase 10 laptops at $15,000 each, for a total purchase price of $150,000).

ITEM	CONFIGURATION
Band One	$15,000
Band Two	$15,000
Band Three	$1,000,000
Peripherals	$10,000
Services	Addressed in the Participating Addendum

5. **Restrictions**

The following restrictions apply to the Master Agreement. A Participating Entity may set further restrictions of products in their Participating Addendum. The Participating Entity will determine with the Contractor how to approve these modifications to the Entity's Product and Service Schedule.

a. Software

1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software and is subject to equipment configuration limits.

2. Any software purchased must be related to the procurement of equipment.

3. Software must be pre-loaded or provided as an electronic link with the initial purchase of equipment, except for the exceptions allowed under Paragraph 5.a.4.

4. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (Band 3) purchased, is allowed and may be procured after the initial purchase of equipment.

b. General Services

1. Services must be related to the procurement of equipment.

2. Service limits will be addressed by each State.

3. Wireless phone and internet service is not allowed.

4. Managed Print Services are not allowed.

c. Cloud Services

1. Cloud Services are restricted to Services that function as operating systems and software needed to support or configure hardware purchased under the scope of the contract and is subject to equipment configuration limits.

2. Any Cloud Service purchased must be related to the procurement of equipment.

d. Third-Party Products

1. Third-Party Products can be offered only in the Bands they have been awarded. All third-party products must meet the definition(s) of the Band(s) in which they are being offered.

2. Products manufactured by another Contractor holding a Minnesota NASPO ValuePoint Master Agreement for Computer Equipment cannot be offered unless approved by the Lead State.

e. Additional Product/Services

1. Hardware and software required to solely support wide area network (WAN) operation and management are not allowed.

2. Lease/Rentals of equipment may be allowed and will be addressed by each State.

3. Cellular Phone Equipment is not allowed.

4. EPEAT Bronze requirement may be waived, on a State case-by-case basis, if approved by the State's Chief Procurement Officer. EPEAT Bronze requirement does not currently apply to storage.

6. **Authorized Representative**

a. Master Agreement Administrator. The Master Agreement Administrator designated by NASPO ValuePoint and the State of Minnesota, Department of Administration is Elizabeth Randa, Acquisition Management Specialist.

Elizabeth Randa, Acquisition Management Specialist
Department of Administration
Office of State Procurement
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

E-mail: elizabeth.randa@state.mn.us
Phone: 651.201.3122

b. Contractor's Authorized Representative. The Contractor's Authorized Representative is Tim Lim, Senior Contracts Negotiator.

Tim Lim, Senior Contracts Negotiator
Apple Inc.
One Apple Park Way, Mail Stop 39-3MAL
Cupertino, CA 95014, USA
Email: tlim2@apple.com
Phone: 408.783.7379

If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the Lead State.

7. **Notices**

If one party is required to give notice to the other under the Master Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. An email shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices to the Lead State shall be addressed to the Master Agreement Administrator.

8. **Exhibits**

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

Exhibit A: NASPO ValuePoint Terms and Conditions
Exhibit B: Minnesota Terms and Conditions
Exhibit C: Requirement
Exhibit D: Price Schedule

9. **Survival of Terms:**

The following clauses survive the expiration or cancellation of this Master Agreement: Survival of Terms; Laws and Regulations; Title of Product; Warranty; Payment; Severability; Assignment/Subcontracts; Records Administration and Audit; Indemnification; Limitations of Liability; Governing Law and Venue; Confidentiality, Non-Disclosure, and Injunctive Relief; Cancellation; Export Compliance; Publicity; Government Data Practices; Administrative Fee; NASPO ValuePoint Reports; and State Audits. Any other Contract term that states it shall survive or by its nature would reasonably be expected to survive expiration or termination, shall survive.

10. **Entire Agreement**

This Contract and any written addenda thereto constitute the entire agreement of the parties to the Master Agreement.

1. **Contractor**
   The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: Johnny Mendoza

Signature: DocuSigned by: Johnny Mendoza 001EBF7500C344E...

Title: Project Coordinator Date: 6/20/2023

2. **State Agency**
   With delegated authority

Print name: Elizabeth M. Randa

Signature: DocuSigned by: Elizabeth M. Randa 742DE739C8ED492...

Title: Acquisition Management Specialist Date: 6/20/2023

3. **Commissioner of Administration**
   As delegated to The Office of State Procurement

Print name: Andy Doran

Signature: DocuSigned by: Andy Doran 68D02A26D7604BA...

Title: IT Acquisitions Supervisor Date: 6/20/2023

Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions

1. **Conflict of Terms/Order of Precedence.**

   a. Any order placed under this Master Agreement shall consist of the following documents:

      1. A Participating Entity's Participating Addendum ("PA");

      2. Minnesota NASPO ValuePoint Master Agreement, as negotiated, including all exhibits; and

      3. Purchase Order.

   For the avoidance of doubt, terms and conditions set forth in a Purchase Order that conflict with or add to the terms of the agreements listed in Paragraphs 1 and 2 above will have no force or effect.

   b. 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 this Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply.

   c. Any URL or policy is incorporated into the Master Agreement only if the Master Agreement expressly identifies that reference. Any Contractor term or condition incorporated by URL or written reference applies to this Master Agreement only to the extent such term or condition is not prohibited by applicable law. Any change to information contained in a URL or referenced policy will not affect any financial obligation, place any additional material obligation on an ordering entity, or materially diminish an ordering entity's ability to use the product or service.

   d. A written Master Agreement (which may include the contents of the RFP and selected portions of Contractor's response incorporated therein by reference) will constitute the entire agreement of the parties to the Master Agreement. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the RFP, or terms listed or referenced on the Contractor's website not otherwise incorporated into the Master Agreement, in the Contractor quotation/sales order, or in similar documents subsequently provided by the Contractor.

   e. Intentionally deleted.

2. **Definitions.**

   a. Reserved.

   b. **Accessory** means a product that enhances the user experience but does not extend the functionality of the computer (e.g., mouse pad or monitor stand). For the purposes of this Contract, accessories are considered peripherals.

   c. Reserved.

   d. **Band** means a category of products. There are three product bands which may be awarded through this Contract. Each product band includes related peripherals and services.

   e. **Components** are the parts that make up a computer configuration.

   f. **Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

g. **Configuration** means the combination of hardware and software components that make up the total functioning system.

h. **Customer** (see Purchasing Entity).

i. **Desktop** means a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected together during installation: (1) the processor, 2) display monitor, and 3) input devices usually a keyboard and a mouse. Desktops, including desktop virtualization endpoints such as zero and thin clients, are included in Bands 1 and 2 of this Contract.

j. Reserved.

k. **Energy Star®** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes it easy to identify energy efficient computers by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at http://www.energystar.gov.

l. **EPEAT** is a type-1 ecolabel for identifying and purchasing sustainable IT products. EPEAT-registered products must meet sustainability criteria detailed in voluntary consensus-based standards that are free and publicly available on the Green Electronics Council's website at www.greenelectronicscouncil.org. Products are classified as Bronze, Silver, or Gold based on meeting criteria that address the life cycle of the products. Product life cycle includes material extraction, hazardous substance reduction, end-of-life management, packaging, and corporate sustainability. Only products listed as Active in the online EPEAT Registry are considered to meet the EPEAT criteria.

m. **FOB Destination** means that shipping charges are included in the price of the item and the shipped item becomes the legal property and responsibility of the receiver when it reaches its destination unless there is acceptance testing required.

n. **FOB Inside Delivery** means the receiver is beyond the front door or loading dock.

o. Reserved.

p. **Laptop** means a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad, and speakers in a single unit. A laptop can be used away from an outlet using a rechargeable battery. Laptops include notebooks, ultrabooks, netbooks, Zero and thin client devices, and computers with mobile operating systems. Laptops are included in Bands 1 and 2 of this Contract.

q. **Lead State** means the State centrally administering any resulting Master Agreement(s).

r. Reserved.

s. **Manufacturer** means a company that, as one of its primary business functions, designs, assembles, owns the trademark/patent for, and markets branded computer equipment.

t. **Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of NASPO ValuePoint, and the Contractor.

u. **Middleware** means the software "glue" that helps programs and databases (which may be on different computers) work together. The most basic function of middleware is to enable communication between different pieces of software.

v. **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

w. Reserved.

x. **Order or Purchase Order** means any purchase order, sales order, or other method used by a Purchasing Entity to order the Products.

y. **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions. A Participating Addendum evidences the Participant's willingness to purchase and the Contractor's willingness to provide equipment under the terms and conditions of this Master Agreement with any and all exceptions noted and agreed upon in the Participating Addendum. Unless otherwise stated in the Participating Addendum, no minimum or maximum sales volume is guaranteed or implied by the Participating Entity.

z. **Participating Entity** means a state (as well as the District of Columbia), city, county, district, other political subdivision of a State properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum. Contractor will not enter into a Participating Addendum with any U.S. territory or nonprofit organization.

aa. **Participating State** means a state that has executed a Participating Addendum.

bb. **Partner** means an Apple Authorized Service Provider.

cc. **Peripherals** means any hardware product that can be attached to, added within, or networked with personal computers, servers, or storage. Peripherals extend the functionality of a computer without modifying the core components of the system.

dd. **Per Transaction Multiple Unit Discount** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Participating Entity or multiple entities conducting a cooperative purchase.

ee. **Premium Savings Package(s) (PSP)** are deeply discounted standard configurations available to Purchasing Entities using the Master Agreement. NASPO ValuePoint reserves the right to expand and modify the PSP throughout the life of the contract. For more information see: https://www.naspovaluepoint.org/portfolio/57/.

ff. **Product** means any equipment, software (including embedded software), documentation, Services, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement.

gg. **Purchasing Entity** means a state (including the District of Columbia), city, county, district, other political subdivision of a state, other domestic public entities, private educational institutions, and nonprofit organizations under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order under the terms of the Master Agreement, or any Participating Addendum thereto, and becomes financially committed to the purchase. Contractor will not accept an Order from any U.S. territory.

hh. **Ruggedized** means equipment specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures, and wet or dusty conditions. Ruggedized equipment may be proposed under the band that most closely fits the equipment being proposed.

ii. **Server** means computer hardware dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. Servers may be either physical or virtual. Servers, including server appliances, are included in Band 3 of this Contract. Server appliances have their hardware and software preconfigured by the manufacturer, and include embedded networking components such as those found in blade chassis systems.

jj. **Services** are broadly classified as installation or de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Agreement. These classifications of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or hardware components), asset management, recycling or disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk or helpdesk, imaging, and any other directly related technical support service required for the effective operation of a product offered or supplied. Contractors may offer limited professional services related ONLY to the equipment and configuration of the equipment purchased through the resulting contracts.

EACH PARTICIPATING ENTITY WILL DETERMINE RESTRICTIONS AND NEGOTIATE TERMS FOR SERVICES THROUGH THEIR PARTICIPATING ADDENDUM.

kk. Reserved.

ll. **Storage** means hardware or a virtual appliance with the ability to store large amounts of data. Storage, including SAN switching necessary for the proper functioning of storage equipment, is included in Band 3 of this Contract.

mm. **Storage Area Network (SAN)** is a high-speed special-purpose network (or subnetwork) that interconnects different kinds of data storage devices with associated data servers on behalf of a larger network of users.

nn. **Tablet** means a mobile computer that provides a touchscreen that acts as the primary means of control. Tablets, including notebooks, ultrabooks, and netbooks with touchscreen capabilities, are included in Bands 1 and 2 of this Contract.

oo. **Takeback Program** means the Contractor's process for accepting the return of equipment or other products at the end of the product's life.

pp. Reserved.

qq. **Third Party Product** is a good sold by the Contractor that is manufactured by another company. Third Party Products are intended to enhance or supplement a Contractor's own product line, and are not intended to represent more than a third of any Contractor's total sales under this Master Agreement.

rr. **Upgrade** means the replacement of existing software, hardware, or hardware component with a newer version.

ss. **Warranty** means the Manufacturer's general warranty tied to the product at the time of purchase.

tt. **Wide Area Network (WAN)** is a data network that serves users across a broad geographic area and often uses transmission devices provided by common carriers.

uu. **"Contractor Product(s)"** means Services, hardware and software products manufactured, distributed or licensed under a Contractor-owned or licensed brand name that Customer has paid to acquire or has properly licensed from Contractor for its own use, but excluding any third party software and all other third party products.

vv. **Confidential Information** means information in any form, disclosed by one party to another party that (i) meets the applicable jurisdiction's definition of confidential, proprietary, or otherwise non-public information; or (ii)(a) is identified by the disclosing party as confidential, and (b) the disclosure of which would materially harm the disclosing party's business or threaten the public's health, safety, or welfare. Confidential Information shall not include any information that: (i) was rightfully in the receiving party's possession prior to disclosing party's disclosure without any obligation to maintain its confidentiality; (ii) was independently developed by the receiving party or its Partners without the use of or reference to Confidential Information; (iii) is now, or hereafter becomes, publicly available other than through disclosure by the receiving party in breach of this Master Agreement or any Participating Addendum; or (iv) is identified by the disclosing party to receiving party as no longer confidential.

3. **Term of the Master Agreement.**

a. The initial term of this Master Agreement is for 2 years from the date of effective date of the Master Agreement. This Master Agreement may be extended beyond the initial term for 36 additional months at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

Unless otherwise stated in the Participating Addendum, the term of any Participating Addendum shall be concurrent with the Master Agreement.

4. **Amendments.**

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without a written amendment to the Master Agreement executed by the Contractor and Lead State.

5. **Participants and Scope.**

a. Canadian Participation. Subject to the approval of Contractor, in its sole discretion, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

b. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum.

c. Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

d. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. A Participating Entity is financially obligated only for Orders made by the Participating Entity as a Purchasing Entity and not for Orders placed by any other Purchasing Entity. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation.

e. NASPO and NASPO ValuePoint are not parties to the Master Agreement.

f. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

g. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located and the Contractor. Participating Entity shall coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

h. Resale. Resale of any products purchased under this Master Agreement is prohibited unless authorized in writing by Contractor's Authorized Representative.

6. **Individual Customers.**
Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

7. **Independent Contractor.**
The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as an agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

8. **Contracting Personnel.**
Contractor must provide adequate contracting personnel to assist states with the completing and processing Participating Addenda. It is preferred that each Contractor be able to provide each Participating Entity with a primary contact person for that Participating Entity.

9. **Changes in Contractor Representation.**
The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing. The Contractor agrees to provide replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal, as determined by the Contractor.

10. **Contractor Verification.**
The Contractor is responsible for delivering products or performing services under the terms and conditions set forth in the Master Agreement. The Contractor must ensure Apple Authorized Service Providers utilized in the performance of this contract adhere to applicable terms and conditions. A Participating Entity in its Participating Addendum may limit the usage of Apple Authorized Service Provider(s) in their jurisdiction and which Apple Authorized Service Provider(s) are used in their jurisdiction.

11. **Contractor Performance Meeting.**
An annual performance meeting may be held each year with the NASPO ValuePoint Sourcing Team. Historically performance meetings have been held in Minnesota, but the Lead State may hold the meetings in person or virtually at the Lead State's discretion.

All contractors that are invited to participate must send their Primary Account Representative, unless an exception is granted in writing by the Lead State. It is possible that not all contractors will be invited to participate in a performance meeting.

12. **Laws and Regulations.**
Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws.

13. **Price and Rate Guarantee Period.**
Contractor's pricing for any order shall not exceed the then current Apple Education Price List. All minimum discounts off Contractor's identified baseline price list must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any adjustment to the minimum discount must be made through an amendment to the Master Agreement.

14. **Premium Savings Package Program.**
The Lead State reserves the right to create a Premium Savings Package Program (PSP) as outlined in the Definitions, Paragraph 2.ee of Exhibit A. Participation by Contractor is voluntary. The details and commitments of the PSP will be detailed as a part of any request for Contractor to participate.

15. **Services.**
Services are at the option of the Participating Entity. Services listed in the Apple Education Price List are subject to the terms of the Participating Addendum and shall be further described in a statement of work. Services not listed in the Apple Education Price List are outside of the scope of this Master Agreement.

16. **Ordering.**

a. 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 and applicable Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement and applicable Participating Addendum.

b. Purchasing Entity may order Products from Contractor by either: (i) ordering electronically through the online portal managed by Contractor, (ii) submitting a purchase order to Contractor, as permitted by Contractor, or (iii) by any other means communicated by Contractor. Purchasing Entity is solely responsible for all purchase decisions, including but not limited to, ensuring the compatibility and appropriateness of all Products. All purchases of Products under this Master Agreement shall be made solely for Purchasing Entity's end use and not for resale. In the event purchasing entity submits orders via an online portal managed by Contractor, Purchasing Entity may also be subject to Contractor's sales policies and the Terms of Use and Privacy Policy located on such online portal. Contractor agrees that the Sales and Return Policies posted on the Apple Store for Education applies to all Purchasing Entities under this Master Agreement.

c. Contractor may change Product offerings and pricing at any time and without notice, provided that any such update is done consistent with the requirements of this Agreement. Prices include standard freight and insurance using a Contractor-selected carrier. Contractor does not guarantee that Products will be available at all times during the Term. Contractor reserves the right to accept or decline any order, in whole or in part. Contractor may cancel any accepted order prior to shipment, if in its sole discretion, Contractor determines that it has insufficient inventory to fulfill such order. Contractor may make partial shipments of Purchasing Entity's orders and will not be liable for any failure to ship complete orders provided Contractor gave reasonable notice to the Purchasing Entity. Purchasing Entity will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries. Contractor will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Purchasing Entity.

17. **Trade-In.**

Trade-Ins are allowed only if authorized by the Participating Entity in a Participating Addendum. If allowed, trade-ins are at the option of the Purchasing Entity and Contractor.

18. **Shipping and Delivery.**

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be FOB Destination. Delivery shall be freight prepaid and allowed (with freight included in the price) to the address, receiving dock or warehouse as specified in the Purchasing Entity's purchase order, unless Purchasing Entity requests to use a carrier that is not a Contractor-designated shipping provider. In those situations in which the "deliver-to" address has no receiving dock or agents, the Contractor must deliver to the person specified on the PO without additional cost. When using a Contractor-designated freight or shipping provider, Contractor will issue credits or replace Products returned due to damage in transit or that are lost in transit.

b. Specific delivery instructions, including FOB Inside Delivery, will be noted on the order form or Purchase Order and are only valid if accepted by Contractor. Contractor will notify the Purchasing Entity in advance of any additional charges for specific delivery instructions, including if Purchasing Entity's selection of a non-Contractor-designated freight provider will result in Contractor including additional charges on its invoice.

c. Costs shall include all packing and crating charges. Each shipment shall be marked and properly identify Purchasing Entity's provided shipping information.

19. **Inspection and Acceptance.**

a. Products shall be deemed accepted upon delivery, provided they conform to the Products ordered in the applicable purchase order or meet the specifications published on www.apple.com, as applicable. If Products do not meet the functionality specified on www.apple.com, Purchasing Entity may exercise its rights under Exhibit A, Section 21 (Warranty), as applicable. Products that do not conform to the Products ordered in the applicable purchase order may be returned at Contractor's expense.

b. Equipment Loan. Upon request, Contractor may provide certain Apple-branded hardware to a Purchasing Entity for evaluation purposes subject to the terms and conditions of an Apple Equipment Loan Agreement. Contractor shall make the terms and conditions of an Apple Equipment Loan Agreement available to Purchasing Entities for review prior to issuance of an Order.

c. The warranty period shall begin upon shipment.

20. **Title of Product.**

a. Ownership. Any ideas, concepts, inventions, know-how, data-processing techniques, software or documentation developed by Contractor personnel (alone or jointly with Purchasing Entity) in connection with Services provided to Purchasing Entity ("Contractor Information") will be the exclusive property of Contractor, except to the extent that such items are a derivative of Purchasing Entity's property. Contractor grants Purchasing Entity a non-exclusive, royalty-free, non-transferable (without right to sublicense) license to use the software or other proprietary rights in Services developed under the Agreement. Contractor may provide Purchasing Entity with specific, customized or unique suggestions or information as part of the Services developed by Contractor, which suggestions or information do not have application to other Purchasing Entities ("Purchasing Entity-Owned Information"). Contractor will identify all Purchasing Entity-Owned Information and furnish that information to Purchasing Entity subject to the qualifications set forth in this Agreement, and Purchasing Entity will own all of Contractor's right(s), title and interest in the Purchasing Entity-Owned Information. Purchasing Entity hereby grants Apple a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, transferable and sublicensable license to use, practice and exploit all Purchasing Entity-Owned Information in connection with any Products.

b. Any and all licensing, maintenance, or order specific agreements referenced within the terms and conditions of this Master Agreement are agreed to only to the extent that the terms do not conflict with the Purchasing Entity's applicable laws.

c. Use of Name. Neither party shall use the other's name, logo, trademarks or service marks in any advertising, communications or publications without the other party's prior written consent except for the use of Apple's name for purposes of this Master Agreement.

d. Software. Products often contain not only hardware but also software, including but not limited to, operating systems and applications. Such software may be included in ROMs or other semiconductor chips embedded in hardware, or it may be contained separately on disks or on other media. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and is protected by patents. Purchasing Entity, as an end user, is licensed to use any software contained in such Products, subject to the terms of the software license(s) accompanying the Products, if any, and the applicable patent, trademark, copyright, and other intellectual property, federal and state laws of the United States.

e. Restrictions. Unless Purchasing Entity has obtained Contractor's prior written consent, Purchasing Entity, in addition to any obligations or restrictions set forth in any software license which may accompany a Product, shall not copy the software if the software is not in the public domain. Purchasing Entity shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof or otherwise change any of the software or its form.

f. Notwithstanding anything to the contrary, in the event of a conflict or inconsistency between the terms of this Master Agreement and any software license, the terms of the software license shall control solely as to the software covered by that license to the extent any terms of the software license are not in conflict with Purchasing Entity's applicable governing law.

21. **Warranty.**

The sole warranty for a Contractor Product purchased hereunder shall be the Limited Warranty. Except for the Limited Warranty, all Contractor Products are sold ""as is"" and without additional warranty or support from Contractor. All Products, other than Contractor Products, are sold ""as is"" and without warranty or support from Contractor, but may be accompanied by a manufacturer's warranty, as more particularly provided in the warranty documentation that accompanies such Products. Upon Purchasing Entity's request, Contractor will provide a copy of the manufacturer's warranty accompanying Products offered by Contractor under this Master Agreement or Participating Addendum.

Nothing in this Master Agreement or Participating Addendum shall be construed as obligating Contractor to provide any warranty-related fulfillment or support for any Products, other than Contractor Products.

EXCEPT FOR THE LIMITED WARRANTY, APPLE MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR SERVICES, AND TO THE MAXIMUM EXTENT PROVIDED BY LAW, APPLE HEREBY DISCLAIMS SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Contractor Products are not intended or suitable for use in situations or environments where the failure or time delays of, or errors or inaccuracies in, the content, data or information provided by Contractor Products could lead to death, personal injury, or severe physical or environmental damage, including without limitation the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support or weapons systems.

22. **System Failure or Damage.**
Intentionally deleted.

23. **Payment.**
Payment is due no later than 30 days from the invoice date. After 45 days from the delivery date the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law.

Payments will be remitted by mail or electronically. Payments may be made via a State or political subdivision "Purchasing Card" presented at time of order, with no additional charge.

Contract prices are exclusive of taxes, duties, and fees. All applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder shall be paid by Purchasing Entities. Proof of tax-exempt status must be on file at Apple's Support Center for any order to be treated as a tax-exempt transaction.

24. **Leasing or Alternative Financing Methods.**
Participating Entities or Purchasing Entities 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 Master Agreement or any Participating Addendum and is between Contractor and the Participating Entity or Purchasing Entity.

25. **Contract Provisions for Orders Utilizing Federal Funds.**
Intentionally Deleted.

26. **Self Audit.**
The Contractor must conduct, at a minimum, a quarterly self-audit, unless approved by the Lead State. The audit will sample a minimum of one tenth of one percent (.001) of orders with a maximum of 100 audits per quarter conducted. For example: Up to 1,000 sales = 1 audit; 10,000 sales = 10 audits; Up to 100,000 sales = 100 audits. This will be a random sample of orders and invoices and must include documentation of pricing. Summary findings must be reported to Lead State with actions to correct documented findings.

27. **Assignment/Subcontracts.**

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of Lead State.

b. The Lead State, or Participating Entity, shall not assign, delegate or otherwise transfer all or any part of this Master Agreement without prior written approval from Contractor. Nothing in this section precludes NASPO or NASPO ValuePoint from carrying out contract administration duties as directed by the Lead State.

28. **Insurance.**

a. Contractor shall have the option to self-insure.

b. Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Lead State and in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

c. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

1. Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence/$2 million general aggregate;

2. Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

d. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

e. Prior to commencement of performance, Contractor shall provide to the Participating Entity a certificate of insurance showing the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating Entity as an additional insured, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating Entity as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

f. During the term of this Master Agreement, the Lead State and Participating Entities may request Contractor provide evidence of coverage (which may be a certificate of insurance) that meets the requirements of this Section. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

g. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

29. **Administrative Fees.**

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all net invoiced sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint

Administrative Fee is not negotiable. If a lower administrative fee percentage is agreed to in any other master agreement resulting from the State of Minnesota and NASPO ValuePoint Cooperative Procurement Program solicitation for Computer Equipment (Solicitation 29720), (i) Lead State will immediately notify Contractor of the lower administrative fee, and (ii) the administrative fee in this Master Agreement shall be adjusted for the subsequent calendar quarters to match the lower administrative fee. The administrative fee percentage and amounts due for the then-current calendar quarter and all previous quarters shall not be affected.

b. Reserved.

c. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Participating Entity may allow the Contractor to adjust the Master Agreement pricing to account for these additional fees for purchases made by Purchasing Entities within the jurisdiction of the Participating Entity.

30. **NASPO ValuePoint Reports**

a. Sales Data Reporting. In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall be required to comply with updated reporting requirements unless Contractor notifies the NASPO ValuePoint contact identified in NASPO ValuePoint's notice in writing within 30 calendar days of receiving such notice that Contractor is unable to comply. Contractor's notice shall include an explanation of why Contractor is unable to comply. Upon receipt by NASPO ValuePoint of Contractor's notice, NASPO ValuePoint and Contractor shall work in good faith to identify mutually acceptable alternative reporting requirements, during which time Contractor shall continue to submit reports in compliance with then-current reporting requirements. If, after 30 days from receipt of Contractor's written notice, NASPO ValuePoint and Contractor are unable to identify mutually acceptable reporting requirements, then Contractor shall comply with the updated reporting requirements identified by NASPO ValuePoint to the extent Contractor is able to. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

b. Summary Sales Data. "Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report. Updates to reporting requirements for Summary Sales Data shall be made in accordance with Exhibit A, Section 30.a.

c. Detailed Sales Data. "Detailed Sales Data" is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data. Updates to reporting requirements for Summary Sales Data shall be made in accordance with Exhibit A, Section 30.a.

d. Reserved.

e. Reserved.

f. Reserved.

g. Reserved.

31. **NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review.**

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor will educate its contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel, to provide time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the Participating Entity.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement.

d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to Exhibit A, Section 42, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to Exhibit A, Section 42 or to terminate for default pursuant to Exhibit A, Section 44.

g. Contractor agrees to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in any Cooperative Purchasing Agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions. For the purposes of this paragraph, Cooperative Purchasing Agreement shall mean a cooperative purchasing program facilitating public procurement solicitations and agreements using a lead agency model. This does not include contracts with any federal agency or any federal contract.

32. **Right to Publish.**

Throughout the duration of this Master Agreement, neither party shall release information that pertains to the Master Agreement without prior written consent. This limitation does not preclude either party or NASPO's publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan, or release of information that is public or otherwise provided by a Participating Entity or Purchasing Entity.

33. **Records Administration and Audit.**

a. The disclosure of records in Participating States relating to Participating addenda and orders placed against the Master Agreement shall be governed by the laws of the Participating State and entity who placed the order.

b. The Contractor shall maintain relevant books, records, and documents directly related to purchases made by Purchasing Entities under to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General) to the extent it's required by applicable federal law or rule, or is required in the grant for federal money used for purchases made under this Master Agreement, and any other duly authorized agent of a governmental agency, to audit, inspect, and examine, relevant documents, books and records directly related to purchases made by a Purchasing Entity under this Master Agreement for the purpose of making audits and examinations. Contractor shall maintain such books, records, and documents for a period of five (5) years from the date of invoice of the transaction to which such books, records and documents relate.

Any inspector or auditor acting on behalf of the Lead State shall comply with the confidentiality terms of this Master Agreement.

c. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records.

d. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

34. **Indemnification**

Provided that Purchasing Entity promptly notifies Contractor in writing, gives Contractor sole control over the defense (as permitted by Purchasing Entity's applicable law), gives Contractor authority over all related settlement negotiations (consistent with Purchasing Entity's applicable law), and does not compromise or settle any claims, then subject to the terms of this paragraph and the exceptions and limitations set forth below, including but not limited to Exhibit A, Section 35, Contractor will defend any proceeding or action brought by a third party against Purchasing Entity to the extent based on a claim that: (i) an Apple Product that Purchasing Entity has paid to acquire from Contractor infringes a U.S. patent, copyright, trademark or misappropriates a U.S. trade secret; or (ii) personal injury or tangible property damage suffered by such third party was caused by Contractor's gross negligence or willful misconduct during the performance of Services.

Notwithstanding the foregoing, Contractor shall not be liable or responsible for, or obligated to defend any claims or damages arising out of or related to: (a) modification of any Contractor Product; (b) combination, operation or use of the Contractor Product with any other equipment, data, documentation, items or products; (c) use of Contractor Product in a manner or for a purpose, or in a location, for which it was not intended; (d) import or export of any Contractor Product in violation of applicable export control requirements, regulations or laws; (e) use or exportation of any Product(s) into any countries identified on any U.S. Government embargoed countries list; (f) use of any Contractor Product in a manner or for a purpose not authorized under the applicable license terms; (g) any other products; or (h) Purchasing Entity, its employees, agents, affiliates, subsidiaries or subcontractor's negligent acts or omissions.

Purchasing Entity shall promptly notify Contractor, in writing, of any claim, demand, proceeding or suit of which Purchasing Entity becomes aware which may give rise to a right of defense under this Exhibit A, Section 34. Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Contractor within 30 days of Purchasing

Entity's first learning of such proceeding. Notice must be in writing and include an offer to tender the defense of the Claim to Contractor. Contractor, if it accepts such tender, may take over sole control of the defense of the Claim.

That control includes the right to take any and all actions deemed appropriate by Contractor in its sole discretion to resolve the Claim by settlement or compromise. Upon Contractor's acceptance of tender, Purchasing Entity will cooperate with Contractor with respect to such defense and settlement. If a Claim is settled and to the extent permitted by law, neither party will publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

In the event of a Claim, Contractor may at its sole option (but shall not be obligated to): (i) procure for Purchasing Entity the right to continue use of the applicable Contractor Product(s); (ii) replace the applicable Contractor Product(s); (iii) modify the applicable Contractor Product(s); or (iv) refund the amount paid by Purchasing Entity to Contractor for the applicable Contractor Product, less depreciation. THE FOREGOING CONSTITUTES PURCHASING ENTITY'S SOLE AND EXCLUSIVE REMEDY AND CONTRACTOR'S ENTIRE LIABILITY FOR ANY CLAIMS ARISING OUT OF THIS SECTION.

35. **Limitations of Liability**

Contractor's, its principals' subcontractors', members', agents' and employees (collectively "Contractor Parties") maximum aggregate liability for all direct damages resulting from, arising out of or relating to this Agreement and all Participating Addenda, the Products used by the State or any Purchasing Entity or Participating Entity and the Services performed under this Master Agreement and pursuant to any Participating Addendum however caused and whether arising under contract, warranty, tort (including negligence), strict liability, statute or any other theory of liability shall not exceed $7,500,000 in the aggregate.

IN NO EVENT, WHETHER AS A RESULT OR BREACH OF CONTRACT, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL CONTRACTOR OR ANY OF THE CONTRACTOR PARTIES BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR ANY OTHER THEORY OF LIABILITY.

THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL BE THE STATES' AND EACH AND EVERY PURCHASING ENTITY'S AND PARTICIPATING ENTITY'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIMS AGAINST CONTRACTOR OR ANY OF THE CONTRACTOR'S VENDORS UNDER OR RELATED TO THIS AGREEMENT AND ALL PARTICIPATING ADDENDA.

THE PARTIES AGREE THAT THE FOREGOING SECTIONS REGARDING WARRANTY, INDEMNITY AND LIMITATIONS OF LIABILITY REPRESENT THE BASIS OF THE BARGAIN AND A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS MASTER AGREEMENT.

36. **License of Pre-Existing Intellectual Property.**

Reserved.

37. **Assignment of Antitrust Rights.**

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

38. **Debarment.**
The Contractor certifies to the best of its knowledge and belief as of the Effective Date of this Master Agreement, that neither it nor its directors or executive officers are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

39. **Governing Law and Venue.**

a. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum shall be governed by and construed in accordance with the laws of the Participating Entity's state. The construction and effect of any Order shall be governed by and construed in accordance with the laws of the Purchasing Entity's state.

b. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against a Participating Addendum or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

40. **Confidentiality, Non-Disclosure, and Injunctive Relief.**
During the term of this Master Agreement, the applicable Participating Addendum, or the applicable Order, and for five (5) years thereafter, a receiving party shall not use a disclosing party's Confidential Information except as required to achieve the objectives of this Master Agreement, a Participating Addendum, or Order, and shall disclose such Confidential Information only to employees or contractors who have a need to know, except where the disclosing party has consented in writing prior to disclosure. Confidential Information may be disclosed by the receiving party to the extent required by law or court order, provided that the receiving party first makes reasonable efforts to give the disclosing party notice of such requirement prior to such disclosure.

41. **Public Information.**
This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

42. **Cancellation.**

a. Termination for Convenience.

1. Unless otherwise stated in the terms and conditions, the Master Agreement may be canceled by either party upon 60 days' notice, in writing, prior to the effective date of the cancellation. Further, Contractor and any Participating Entity may cancel the applicable Participating Addendum upon 30 days' written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation or in the applicable Participating Addendum.

2. Any cancellation under this provision shall not affect the rights and obligations attending accepted orders at the time of cancellation, including rights of payment for goods/services delivered, any rights of a Purchasing Entity to indemnification by the Contractor, and rights attending any warranty or default in performance in association with any order, and requirements for records administration and audit. Cancellation of the Master

Agreement due to Contractor default may be immediate if defaults cannot be reasonably cured as allowed per Default and Remedies term.

b. Termination for Cause.

1. Either party to a Participating Addendum or Order may immediately terminate the Participating Addendum or Order if: (a) the other party commits a criminal offense or engages in fraud or any unlawful business practice; (b) there is a material change in or transfer of the other party's management, ownership, control or business operations, or a party becomes affiliated, by virtue of a material change in management, ownership, or control, with any person or entity, and such affiliation results in imminent harm, or imminent material harm, to the other party's reputation or business operations; or (c) either party's actions expose the other party to any liability or obligation not otherwise contemplated by the contract, or cause the other party to violate the law.

2. Effect of Notice of Contractor's Termination for Cause under Exhibit A, Section 42.b.1. If Contractor terminates a Participating Addendum or Order pursuant to Exhibit A, Section 42.b.1: (i) all unpaid invoices issued by Contractor under the applicable Participating Addendum or Order will be accelerated and become immediately due and payable on the effective date of termination; and (ii) any Purchasing Entity affected by termination of the applicable Participating Addendum or Order will cease placing new orders for Products from Apple on the effective date of termination.

43. **Force Majeure.**

Neither party to this Master Agreement, a Participating Addendum, or an Order will be liable for delay or failure to fulfill its obligations under this Master Agreement, Participating Addendum, or Order to the extent such delay or failure is directly caused by unforeseen circumstances beyond the party's reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, fire, flood, accident, strikes, inability to secure transportation, failure of communications networks, (a "Force Majeure"), provided such party promptly notifies the other party and uses reasonable efforts to correct such failure or delay in its performance. Purchasing Entities may cancel any order delayed by more than thirty (30) days from the scheduled ship date due to a Force Majeure. This clause does not absolve either party of its payment obligations. Overdue account charges will not accrue until the conclusion of the event of Force Majeure.

44. **Defaults and Remedies.**

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

1. Nonperformance of contractual requirements; or

2. A material breach of any term or condition of this Master Agreement; or

3. Any representation or warranty by Contractor in response to the RFP or in this Master Agreement that proves to be untrue or materially misleading; or

4. Institution of proceedings under any bankruptcy, insolvency, court-ordered reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

5. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, except for material breach, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 30 calendar days in which

Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

1. Exercise any remedy provided by law; and

2. Terminate this Master Agreement and any related contracts or portions thereof; and

3. Suspend Contractor from being able to respond to future bid solicitations.

d. In the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

45. **Waiver of Breach.**
Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

46. **Notices.**
If one party is required to give notice to the other under the Master Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile or electronic transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices to the Lead State shall be addressed as follows:

Elizabeth Randa, Acquisition Management Specialist
112 Administration Bldg.
50 Sherburne Avenue
St. Paul, MN 55155
elizabeth.randa@state.mn.us

47. **No Waiver of Sovereign Immunity.**
The Lead State, Participating Entity or a Purchasing Entity to the extent it applies does not waive its sovereign immunity by entering into this Master Agreement or Participating Addendum and fully retains all immunities and defenses provided by law with regard to any action based on this Master Agreement.

48. **Export Compliance.**
This Master Agreement is subject to all laws, regulations, orders or other limitations on the export and re-export of commodities, technical data and software. With respect to any acquisition made under this Contract, the applicable Purchasing Entity agrees, and assumes any associated liability, that it will not export, re-export, resell or transfer any export-controlled commodity, technical data or software: (i) in violation of such limitations imposed by the United States or any other appropriate national government authority; (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses and approvals, at Participating Entity or Purchasing Entity's sole cost and expense; (iii) to any country or national or resident of a country to which trade is embargoed by the United States, or any other relevant national authority; (iv) to any person or firm on any relevant government agency restricted party lists, (examples: United Nations Sanctions list, United States Denial Lists, Office of Foreign Assets Control Specially Designated Nationals List, etc.); or (v) for use in, or to an entity that might engage in, any sensitive nuclear, chemical or biological weapons, or missile technology end-uses unless authorized by the United States Government, and any other relevant government agency by regulation or specific license.

49. **HIPAA.**
Purchasing Entity shall not use the Contractor Products, iCloud Storage APIs and iCloud service, or any component or function thereof, (i) in any way that would involve Contractor creating, receiving, maintaining or transmitting protected health information (as defined at 45 C.F.R § 160.103) or (ii) in any manner that would make Contractor or any other third-party distributor, supplier or provider of those technologies a business associate, as defined under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA") at 45 C.F.R. § 160.103, of the Purchasing Entity or any third party. For the avoidance of doubt, the parties agree that nothing in this Section shall prohibit Purchasing Entity from using Contractor hardware products; provided, however, that the Purchasing Entity ensures that any such use of Contractor hardware products does not involve Contractor creating, receiving, maintaining or transmitting protected health information.

50. **Product Returns.**
Products purchased hereunder shall be subject to Contractor's then-current policies for defective and dead-on-arrival (DOA) Products. Contractor agrees that the Sales and Return Policies posted on the Apple Store for Education applies to all Purchasing Entities under this Master Agreement.

Exhibit B: Minnesota Terms and Conditions

1. **Change Requests.**

The Lead State reserves the right to request, during the term of the Master Agreement, changes to the products offered within the Band(s). Products introduced during the term of the Master Agreement shall go through a formal review process. The process for updating the products offered within a Band is outlined in Paragraph 2 of Exhibit B. The Contractor shall evaluate and recommend products for which agencies have an expressed need. The Lead State shall require the Contractor to provide a summary of its research of those products being recommended for inclusion in the Master Agreement as well as defining how adding the product will enhance the Master Agreement. The Lead State may request that products, other than those recommended, are added to the Master Agreement.

2. **Product and Service Schedule (PSS).**

a. Creating the Product and Service Schedule (PSS). Contractor will maintain a complete listing of all products and services offered under the Master Agreement. The PSS must conform to the contracted minimum discounts. Contractor may create and maintain a separate PSS for a Participating Entity based on the requirements and restrictions of the Participating Entity.

Contractors are encouraged to provide remote learning bundles for K-12 Education. These bundles can be included in the response to the PSS.

b. Maintaining the PSS.

1. In General. Throughout the term of the Master Agreement, on a monthly basis, Contractor may update the PSS to make model changes, add new products or services, or remove obsolete or discontinued products or services. Any updates to the PSS must conform to the Master Agreement requirements, including the scope of the Master Agreement and contracted minimum discounts.

2. Process. Contractor must provide notification to the Lead State of any changes to their PSS using the attached Action Request Form (ARF).

a) The Lead State does not need to approve Contractor's request to make model changes, add their own manufactured products, or remove discontinued or obsolete products or services, and Contractor does not need the Lead State's approval prior to posting an updated PSS.

b) Contractor can only offer Third-Party Products in a Band they have been awarded. The Lead State must approve Contractor's request to add new third-party manufacturers to Contractor's PSS. If the proposed third-party manufacturer holds a NASPO Master Agreement for Computer Equipment, Contractor must obtain written authorization from that manufacturer. Contractor must have the Lead State's approval prior to posting the updated PSS under this Section 2.b.2.b. If Contractor is notified that a proposed third-party manufacturer holds a NASPO Master Agreement for Computer Equipment, Contractor shall provide its letter of authorization to resell.

c) Contractor must maintain a historic record of all past PSSs and make them available upon request.

d) Upon the request of NASPO ValuePoint, the Lead State, or a Participating Entity, Contractor must provide an historic version of any Baseline Price List.

3. **Purchase Orders.**
There will be no minimum order requirements or charges to process an individual purchase order. The Participating Addendum number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract.

4. **Risk of Loss or Damage.**
Intentionally Deleted.

5. **Payment Card Industry Data Security Standard and Cardholder Information Security.**
Contractor's relevant infrastructure that is used to support its obligations under this Agreement including Network Components, Applications, Servers, and Subcontractors (if any) are aligned with the Payment Card Industry Data Security Standard ("PCIDSS"). "Network Components" may include, but are not limited to, Contractor's firewalls, switches, routers, wireless access points, network appliances, and other security appliances; "Applications" may include, but are not limited to, all purchased and custom external (web) applications. "Servers" may include, but are not limited to, all of Contractor's web, database, authentication, DNS, mail, proxy, and NTP servers. "Cardholder Data" is defined in accordance with PCIDSS. Apple Authorized Service Providers shall not accept payment under this Master Agreement; Contractor shall invoice all Orders and all payments under this Master Agreement will be made directly to Contractor.

6. **Foreign Outsourcing of Work.**
The storage and processing of customer data will be performed within the borders of the United States.

7. **State Audits (Minn. Stat. § 16C.05, subd. 5).**
The books, records, documents, and accounting procedures and practices of the Contractor or other party, that are relevant to the Master Agreement or transaction are subject to examination by the contracting agency and either the Lead State's Legislative Auditor or State Auditor as appropriate for a minimum of six years after the end of the Master Agreement or transaction. The Lead State reserves the right to delegate an agent duly authorized by the Lead State to conduct the examination under this section.

8. **Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).**
If the value of this Contract, including all extensions, is $50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the contractor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

9. **Human Rights/Affirmative Action.**
The Lead State requires affirmative action compliance by its Contractors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.

a. Covered contracts and Contractors. If the contract dollar amount exceeds $100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, the Contractor must comply with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600.

b. Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are

contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and parts 5000.3552-5000.3559.

c. Disabled Workers. Minn. R. 5000.3550 provides the Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

(a) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(e) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

d. Consequences. The consequences of a Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the commissioner, refusal by the commissioner to approve subsequent plans, and termination of all or part of the Contract by the commissioner or the State.

e. Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

10. **Equal Pay Certification.**

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized

Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the Lead State may require Contractor to verify its exempt status.

11. **Americans with Disabilities Act (ADA).**
Products provided under the Master Agreement must comply with the requirements of the Americans with Disabilities Act (ADA). The Contractor's catalog and other marketing materials utilized to offer products under the Master Agreement must state when a product is not in compliance. If any descriptive marketing materials are silent as to these requirements, the Contractor agrees that the customer can assume the product meets or exceeds the ADA requirements.

Apple's VPATs identify how Apple products provided through this Master Agreement comply with Section 508 Standards. Apple's VPATs can be located at the following address: https://support.apple.com/accessibility/vpat.

12. **Nonvisual Access Standards.**
Pursuant to Minn. Stat. § 16C.145, the Contractor shall comply with the following nonvisual technology access standards:

a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;

b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;

c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and

d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

Apple's VPATs identify how Apple products provided through this Master Agreement comply with Section 508 Standards. Apple's VPATs can be located at the following address: https://support.apple.com/accessibility/vpat.

13. **Accessibility Standards.**
Contractor acknowledges and is fully aware that the Lead State (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: https://mn.gov/mnit/government/policies/accessibility/.

Apple's VPATs identify how Apple products provided through this Master Agreement comply with Section 508 Standards. Apple's VPATs can be located at the following address: https://support.apple.com/accessibility/vpat.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability.

14. **Conflict Minerals.**
Contractor prepares and files a conflicts mineral report with the Securities and Exchange Commission pursuant to Rule 13p-1 under the Securities and Exchange Act of 1934, as amended. A copy of the report is available free of charge on the Securities and Exchange Commission's website.

15. **Hazardous Substances.**
To the extent that the goods to be supplied by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable state and federal laws and regulations, the Contractor must provide Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.

16. **Copyrighted Material Waiver.**
The Lead State reserves the right to use, reproduce and publish proposals in any manner necessary for State agencies and local units of government to access the responses, including but not limited to photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that the response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the Lead State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response and agrees to indemnify, protect, save and hold the Lead State, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the Lead State in the defense of any such action.

17. **Publicity.**
The Contractor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products or services that are the subject of the Master Agreement without the prior written consent of the State's Assistant Director or designee of Office of State Procurement. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

18. **Performance While Dispute is Pending.**
In the event of a dispute, the parties shall continue without delay to carry out all of their responsibilities under the Master Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Master Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

19. **Organizational Conflicts of Interest.**
An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

a. the Contractor is unable or potentially unable to render impartial assistance or advice to the State;

b. the Contractor's objectivity in performing the work is or might be otherwise impaired; or

c. the Contractor has an unfair competitive advantage.

The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Lead State's Department of Administration's Office of State Procurement that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Lead State may, at its discretion, cancel the Master Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Master Agreement and did not disclose the conflict to the Master Agreement Administrator, the Lead State may terminate the Master Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," "Master Agreement", "Master Agreement Administrator" and "Contract Administrator" modified appropriately to preserve the State's rights.

20. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

a. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions. Instructions for certification:

1. By signing and submitting this proposal, the prospective lower tier participant [responder] is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal [response] is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible lower tier covered transaction, participant, person, primary covered transaction, directors or executive officers, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction [subcontract equal to or exceeding $25,000] with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its directors or executive officers. Each participant may, but is not required to, check the list of parties excluded from federal procurement and nonprocurement programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in

this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and debarment.

b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its directors or executive officers are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

21. **Government Data Practices.**
The Contractor and the Lead State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the Lead State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the Lead State to the Contractor and all data provided to the Lead State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with the Master Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the Lead State. The Lead State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the Lead State.

The Contractor agrees to indemnify, save, and hold the Lead State, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Master Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Master Agreement, the Contractor shall retain responsibility under the terms of this article for such work.

22. **Survivability.**
Certain rights and duties of the Lead State and Contractor will survive the expiration or cancellation of the RFP and resulting Master Agreement. These rights and duties include but are not limited to paragraphs: Indemnification; Limitations of Liability; State Audits; Government Data Practices; Governing Law and Venue; Publicity; and Administrative Fees.

23. **Severability.**
If any provision of the Master Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the Lead State and the Contractor shall be relieved of all obligations arising under such provisions. If the remainder of the Master Agreement is capable of performance it shall not be affected by such declaration or finding and shall be fully performed.

Exhibit C: Requirements

1. **Contractor Verification.**
Contractor is the manufacturer of products in Band 2 ("Personal Computing Devices – Non-Windows Operating System: Desktops, Laptops, and Tablets"). Please refer to www.apple.com for descriptions of all Contractor products.

2. **Warranty and Maintenance.**
See Exhibit A, Section 21 for Contractor's warranty terms.

3. **Website.**
Contractor will maintain a URL to a website specific to the Master Agreement ("the NASPO Store"). The NASPO Store is separate from Contractor's public online catalog and ordering system. The NASPO Store must, at a minimum, provide the following content:

- Designated Baseline Price List(s) (Apple Education Price List)
- Product and Service Schedule (PSS)
- Product specifications, pricing, and configuration aids for the major product categories proposed that can be used to obtain an on-line quote,
- Contact information for order placement, service concerns (warranty and maintenance), problem reporting, and billing concerns
- Links to environmental certification, including but not limited to take-back/recycling programs, EPEAT, Energy Star, etc.
- Information on accessibility and accessible products

Contractor may make changes to the NASPO Store consistent with this Master Agreement. Contractor will make commercially reasonable efforts to make the NASPO store available twenty-four hours a day, seven days per week, except for maintenance times.

Each quarter, Contractor shall provide an ARF reflecting product and/or pricing that have occurred during the prior period.

4. **Environmental Certifications.**
For information on Contractor's commitment to the environment, please visit: https://www.apple.com/environment/

5. **EPEAT Registration or other US EPA Recommended Specification, Standard, or Ecolabel under the Environmentally Preferable Purchasing (EPP) Program.**
The status of each Contractor Product can be determined by reviewing its Product Environmental Report (PER), which is found in the "product environmental report card" section of Contractor's environmental website at https://www.apple.com/environment/. Look for the indicator of the EPEAT indicator or other indicator of EPA approved Specification, Standard or Ecolabel approved for EPP at the bottom of the first page of the PER (e.g. the EPEAT checkmark).

Contractor agrees that products covered by EPEAT as of the Effective Date of the Agreement will not be provided under the Master Agreement unless they have achieved a minimum EPEAT Bronze registration. This requirement does not apply to Band 3.

Contractor may propose the addition of a product that has not yet achieved a minimum EPEAT Bronze registration. The Lead State, in its sole discretion may require Contractor to provide the following documentation to support the addition of the proposed product: a letter from a Green Electronics Council- (GEC-) approved Conformity Assurance Board (CAB) confirming that the verification process is underway.

The Lead State reserves the right to reject the inclusion of such product, or if approved, require Contractor to remove the product at a later date if the product does not achieve a minimum EPEAT Bronze registration. The Contractor must remove any products that subsequently exit the verification process without achieving EPEAT Bronze or greater from the Master Agreement.

6. **Third-Party Products.**

Contractor sells a variety of third-party products that do not bear the Apple Brand name and are sold "as is" and supported by their manufacturers. Contractor's Limited Warranty does not apply to third party products. Purchasing Entities will contact manufacturers of Third Party Products for warranty or maintenance issues on those Third Party Products.

Third-Party Products are intended to enhance or supplement a Contractor's own product line, and are not intended to represent more than a third of Contractor's total sales under this Master Agreement.

7. **Partner Utilization.**

Apple uses Apple Authorized Service Providers and has sole discretion over selection and over use of these Apple Authorized Service Providers. Any Apple Authorized Service Providers used by Apple are required to comply with all applicable federal and state laws and regulations. A Participating Entity in its Participating Addendum may limit the usage of Apple Authorized Service Provider(s) in their jurisdiction and which Apple Authorized Service Provider(s) are used in their jurisdiction.

8. **2019 National Defense Authorization Act, Section 889(f)(3).**

Contractor acknowledges that the 2019 National Defense Authorization Act, Section 889(f)(3) prohibits the US military from purchasing video surveillance and telecommunications equipment from certain Chinese-owned technology firms. While the US states are not subject to this act, there is increasing concern for the security of state data. Contractor certifies that its Products do not contain, include, or utilize any covered technology prohibited under Section 889 of the National Defense Authorization Act, as amended.

Exhibit D: Pricing Schedule

Attached and incorporated into this Master Agreement as Exhibit D is the Price Schedule.

Exhibit D: Price Schedule

NASPO ValuePoint Computer Equipment (2023-2028)
CONTROL SET

Master Agreement: 23003
Contractor Name: Apple, Inc

Awarded Bands:

_____ Band 1: Personal Computing Devices (Windows)
__x__ Band 2: Personal Computing Devices (Non-Windows)
_____ Band 3: Servers and Storage

Band	Category Code	Category Description	Discount off Baseline List
2	2B	Band 2 - Minimum Discount	0.0%
2	2T	Band 2 - Third Party Product Minimum Discount	0.0%

Exhibit D: Price Schedule

Discount Structure

Master Agreement: 23003
Contractor Name: Apple, Inc.
Baseline Price List: Apple Education Price List, posted on Contractor's dedicated NASPO ValuePoint website

Band 2: Personal Computer Equipment (Non-Windows OS)			
Band	**Category Code**	**Category Description**	**Discount off Baseline List**
2	2B	Band 2 - Minimum Discount	0.0%
2	2T	Band 2 - Third Party Product Minimum Discount	0.0%

Exhibit D: Price Schedule

Volume-Based Discounts

Master Agreement: 23003
Contractor Name: Apple, Inc.

All Awarded Bands

1. Per Transaction Multiple Unit Discount(s)

Contractor provides a contractual volume discount program as follows based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity, or multiple entities conducting a cooperative purchase.

Additional discounts based on order quantity and other competitive factors will be made available to Purchasing Entities on a case-by-case basis.

2. Cumulative Discount(s)

Contractor provides a cumulative volume discount as follows based on dollars resulting from the cumulative purchases by all purchases made by Purchasing Entities for the duration of the Master Agreement.

none

3. Other Discount(s)

Additional discount(s) available.

none

Exhibit D: Price Schedule

Master Agreement: 23003
Contractor Name: Apple, Inc.

Each Purchasing Entity will determine if and how services will be offered in the Participating Addendum.

Travel for Services will be negotiated with each Participating Entity in the Participating Addendum.

All Awarded Bands
Contractor's pricing structure(s) may be a fixed rate, an hourly rate, a per unit rate, or any combination thereof.

Exhibit D: Price Schedule

Master Agreement: 23003
Contractor Name: Apple, Inc.

All Awarded Bands

Optional: Lease Rates

Current annual interest rates for lease agreements from Apple Financial Services are between 1% and 3% (but can be higher) depending on various factors, including the amount financed, term, credit ratings and structure. Current rates are valid for 30 days from submission and are subject to change at any time without notice. Moreover, any leasing or financing is subject to final approval from Apple which may include execution of acceptable documentation and evaluation of credit worthiness. Purchasing entities should contact their Apple sales executive or Apple Financial Services representative for applicable rates at the time of purchase. Nothing in this response shall be construed to impose any obligation upon or otherwise commit Apple to enter into a lease agreement. Any lease finance arrangement entered into between the parties is subject to the terms of a separate lease agreement.

Exhibit D: Price Schedule

Prompt Payment Discount

Master Agreement: 23003
Contractor Name: Apple, Inc.

All Awarded Bands

		in 30
		in 15, Net 30
		in 10, Net 30
X		Net 30
	Other (specify):	

State of New Hampshire
Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that APPLE INC. is a California Profit Corporation registered to transact business in New Hampshire on March 13, 2003. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **356980**

Certificate Number: **0006663374**

IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 9th day of April A.D. 2024.

David M. Scanlan

Secretary of State

Corrine E Tatro, Procurement Card Administrator
Division of Procurement & Support Services
Dept of Admin Services, St of NH
25 Capitol Street, Concord, NH 03301

Letter of Confirmation

I, Sam Whittington, as an Assistant Secretary of Apple Inc., hereby confirm that the Certificate of Authority attached hereto, dated January 22, 2024, has not been revoked and remains in effect as of the date hereof.

By: _____
Sam Whittington
Assistant Secretary

Date: April 25, 2024

Apple
1 Apple Park Way
Cupertino, CA 95014

T 408 996-1010
F 408-996-0275
www.apple.com

Certificate of Authority

I, Sam Whittington, an Assistant Secretary of Apple Inc., a California corporation ("Apple"), do hereby certify that, pursuant to Apple's internal policies and procedures, Johnny Mendoza, Project Coordinator, in US Channel and Enterprise Sales Planning and Operations (the "Authorized Signatory"), has authority to sign, on behalf of Apple, the following instruments:

1. All bids and contracts for the sale of Apple products and services to K-12, higher education, government, and commercial customers; and
2. All regulatory compliance documents requested by K-12, higher education, government, and commercial customers, including but not limited to representations, certifications, attestations, and affidavits.

This Certificate of Authority will terminate upon the earliest to occur of (a) the Authorized Signatory ceasing to be employed within the Apple group of companies (the "Group"), (b) the Authorized Signatory ceasing to be employed in the same department within the Group, or (c) the Certificate of Authority being revoked in writing (including by electronic mail) by an authorized representative of the Apple.

This Certificate of Authority is valid for a period of one (1) year from the date of execution, unless earlier terminated or revoked as further described above.

Sam Whittington
Assistant Secretary

January 22, 2024
Date

Apple
One Apple Park Way
Cupertino, CA 95014

T 408 996-1010
F 408 996-0275

www.apple.com

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/10/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MARSH RISK & INSURANCE SERVICES
FOUR EMBARCADERO CENTER, SUITE 1100
CALIFORNIA LICENSE NO. 0437153
SAN FRANCISCO, CA 94111

CN101510234-STND-GAWU-23-24

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : ACE American Insurance Company	22667
INSURER B : Safety National Casualty Corp.	15105
INSURER C : N/A	N/A
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
APPLE INC.
ONE APPLE PARK WAY
CUPERTINO, CA 95014

COVERAGES

CERTIFICATE NUMBER: SEA-004009321-01 REVISION NUMBER: 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			XSLG2763199A	10/01/2023	10/01/2024	EACH OCCURRENCE	$ 2,500,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 2,500,000
	X SIR Value: $1,000,000						MED EXP (Any one person)	$ N/A
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	$ 2,500,000
	X POLICY PRO-JECT LOC						GENERAL AGGREGATE	$ 5,000,000
	OTHER:						PRODUCTS - COMP/OP AGG	$ 9,000,000
								$
B	AUTOMOBILE LIABILITY			CA6676613	10/01/2023	10/01/2024	COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			LDC4047106 [AOS]	10/01/2023	10/01/2024	X PER STATUTE / OTH-ER	
B	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N	N / A		PS4047107 [WI]	10/01/2023	10/01/2024	E.L. EACH ACCIDENT	$ 2,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 2,000,000
							E.L. DISEASE - POLICY LIMIT	$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
EVIDENCE OF INSURANCE

CERTIFICATE HOLDER

STATE OF NEW HAMPSHIRE
ADMIN SERVICES
25 CAPITOL STREET
CONCORD, NH 03301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Marsh Risk & Insurance Services

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