

PARTICIPATING ADDENDUM
[hereinafter "Addendum"]
For
WSCA/NASPO PC Contracts 2009-2014
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES
MASTER PRICE AGREEMENT NUMBER B27158

Between
APPLE Inc
[hereinafter "Contractor"]
and
STATE OF SOUTH CAROLINA, INFORMATION TECHNOLOGY MANAGEMENT OFFICE
(ITMO), a unit of South Carolina Budget and Control Board's
Division of the Procurement Services
[hereinafter "Participating State"]
Participating State/Entity Contract Number **5000009004**

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1. Scope

This Addendum covers the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts. Apple is authorized under this WSCA agreement to sell the following:

Desktop (per unit/configuration shall not exceed \$100,000.00)

Laptop (per unit/configuration shall not exceed \$100,000.00)

Monitors (NTE \$50,000.00 each)

Printers (High speed, medium speed, desktop, multifunction per unit/configuration shall not exceed \$50,000.00)

Servers (individual units/configurations shall not exceed \$300,000.00)

LAN (from PC to wall only)

This Addendum is between ("Contractor") and all participating South Carolina public procurement units (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) or governmental bodies (as defined by S.C. Code Ann. § 11-35-310(18), as amended). The State acknowledges it is the responsibility of each Purchasing Entity to order only those items allowed under this Addendum and that Apple shall incur no liability for accepting and processing any order that contains products not allowed under this Addendum.

2. Participation

Use of specific WSCA/NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an 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 State Chief Procurement Official.

3. Changes:

Unless otherwise stated, terms used herein shall have the definitions assigned by Master Price Agreement B27158. NOTE: Any and all *applicable* references of Minnesota (MN) are to be changed to read South Carolina (SC).

A. Definitions:

"ITMO" means the Information Technology Management Office established by South Carolina Code Section 11-35-820, as amended.

LAN: If installation is included with LAN equipment it applies from PC to wall only.

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B. **DELETE** the definition of PDAs and any and all references to "PDAs". They are not allowed in this S.C. participating addendum.

C. **Delete** under Peripherals – Any and all references to "**Whiteboards**". Whiteboards may be ordered under SC State Term Contract for Audio Visual equipment.

D. This Addendum is a "Participating Addendum" as defined in the Master Price Agreement, forms a part of the Master Price Agreement, and supersedes the Master Price Agreement. In the event of a conflict between a provision of the MPA and a State of South Carolina statute, the South Carolina statute shall prevail. Otherwise, the provision of the MPA shall remain in full force and effect.

E. Pursuant to Section 11-35-4810, South Carolina public procurement units, both state and local (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) are authorized to participate in cooperative purchasing.

F. Pursuant to Section 11-35-510 of the South Carolina Code of Laws, ITMO is authorized to act as the statutory procurement agent for every state governmental body (as defined by S.C. Code Ann. § 11-35-310(18), as amended). Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of such state governmental bodies.

G. Participation by local public procurement units (as defined by S.C. Code Ann. § 11-35-4610(3), as amended) in the Master Price Agreement is optional. By submitting an order and receiving delivery of an item pursuant to the Master Price Agreement, a local public procurement unit manifests its intent to be and is bound by the Master Price Agreement, including this addendum, unless the local public procurement unit has entered into a separate Participating Addendum.

H. South Carolina Prompt Payment Statute: The obligations of any SC Participant are governed by Section 11-35-45 of the South Carolina Code of Laws, if the participant is a "governmental body," as that term is defined in Section 11-35-310(18).

I. This Addendum, any order against the Master Price Agreement, and any dispute, claim, or controversy relating to the either shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina. Any claim by Contractor against any SC Participant shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that no act by a SC Participant shall constitute waiver of either the SC Participant's sovereign immunity or the SC Participant's immunity under the Eleventh Amendment of the United State's Constitution.

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J. Tax Exempt: In order to exempt the State from the obligation to withhold taxes from payments due, Contractor shall, upon request by the State, register as required by South Carolina Code Section 12-8-550, as amended, and submit the appropriate form (Nonresident Taxpayer Registration Affidavit – Income Tax Withholding) in accordance with its instructions.

K. Products and Services NOT Provided by this Participating Addendum: Authorized purchasers may purchase, and contractors may supply, "Services" only as defined herein. For the purposes of this agreement, "Services" includes only those Services directly related to the installation and configuration of the equipment and **operating** software i.e. Microsoft, Windows, etc., to allow the equipment to function in accordance with the manufacturer's specifications and those services related to maintenance of the equipment either to fulfill the Contractor's warranty or any services related to the routine maintenance of the equipment or service. "Services" **do not include** Professional Services for custom application design, or development, or other professional consulting services unrelated to the installation and/or configuration of equipment and/or software authorized under the Addendum.

Other items excluded from being purchased from this contract are as follows:

Application Software (The State of S.C. has a separate contract for Application Software.)
Consulting Services,
Copiers (The State of SC has a separate contract for Copiers)
Design Services,
Digital Projectors (The State of SC has a separate contract for AV equipment)
Internet Based Educational Training Services,
Instructional Packages
IT Temporary Professional Services, (The State of SC has a separate State Term Contract)
Mainframe (no mainframes of any types)
Middleware,
Networking Hardware except for Network Interface Cards (NIC) and the cables necessary to attach a personal computer to the network. (The State of SC has a separate Networking Hardware contract),
PDAs,
Tablet PC,
Storage,
Ipod
Whiteboards (The State of SC has a separate contract for AV equipment)
World Wide Web Services,

L. Item Substitution: No Substitutes will be allowed on Purchase Orders received from South

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Carolina procurement units without permission from the issuing procurement unit.

M. Reports: All contract holders will be required to process monthly usage reports. The monthly reports shall be submitted by the end of the month for the previous month's actual sales. If "No Sales" are achieved for a specific month, then "zero" 0 must be reported for that specific month.

The report will capture specific information required to meet the needs of the State's reporting requirements. The State will work with each contract holder to ensure they understand how to process reports. The specific format required (at this time is the existing report format used by all WSCA participants previously) will be decimated to each contract holder and must be used to create a template to expedite the input process. The Primary Point of contact for reporting purposes is Jay Lopez, **803-737-0283**, jlopez@itmo.sc.gov.

Periodic failure to provide this report by the end of every month may result in taking the contract link down from the website and/or termination of the contract. Consistent failure to meet this requirement will result in termination of the contract.

N. Administrative Fee: The Information Technology Management Office (ITMO) issues and maintains State term contracts for the benefit of governmental entities within the State of South Carolina. In order to maintain and enhance the quality and quantity of its State term contracts an administrative fee of one percent (1%) of the total actual sales will be assessed of each contractor. Total actual sales will be equal to gross sales less return goods and taxes as stated on the invoice. The Administrative Fee will be remitted monthly in the form of a check to:

The Information Technology Management Office
Attn: Reports Manager
1201 Main Street, Suite 430
Columbia, SC 29210

Each remittance will include the period covered and the contract number. The monthly administrative fee shall be submitted by the last business day of the month for the previous month's actual sales.

O. Change in Contractor Representatives: The Contractor will email the South Carolina point of contact within seven (7) days of any change of contract contacts and contact information.

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P. Protection of Human Health & the Environment: Any contractor doing business with the State will be required to document compliance and to specify prudent practices used by the contractor to address applicable mandates including, but not restricted to "the hazard communication standard" OSHA CFR 1910.1200 (SCRR Article 1,71-1910.1200). By submission of this Addendum, the vendor agrees to take all necessary steps to ensure compliance with these requirements.

Q. Insolvency: This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

R. Income Tax Credit for State Contractors Having Subcontracts with MINORITY Firms:
TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)
Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498.

4. Lease Agreements

Any/all leasing will be handled through the South Carolina Leasing Hardware State Term Contract, <http://www.cio.state.sc.us/itmo/contract/osp/PCLease/pcleaseindex.htm>

5. Primary Contacts

The primary contact individuals for this Addendum are as follows (or their named successors):

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MASTER AGREEMENT CONTACTS:

Lead State

Name: Bernadette Kopischke
Address: 50 Sherburne Ave., 112 Admin Bldg, St Paul, MN 55155
Telephone: (651) 201-2450
Fax: (651) 297-3996
E-mail: bernie.kopischke@state.mn.us

Contractor

Name: Michael Taloff
Address: 1 Infinite Loop, MS 90-2CM, Cupertino, CA 95014
Telephone: 408-974-3245
Fax: 408-974-4908
E-mail: taloff@apple.com

PARTICIPATING ADDENDUM CONTACTS:

Participating State

Name: Agnes Copeland or Tammy Cash
Office of Information Technology Management Office (ITMO)
1201 Main Street, Suite 430
Columbia, South Carolina, 29201
E-mail: acopela@itmo.sc.gov, tcash@itmo.sc.gov
Phone: (803) 896-0068/ (803) 239-8513
Fax: (803) 737-0102

Contractor State Contract Manager

Name: Jill Keller
Address: Infinite Loop, MS 90-2CM, Cupertino, CA 95014
Telephone: 408-974-0070
Fax: 408-974-4908
E-mail: jkeller@apple.com

6. **Servicing Subcontractors:** Apple may utilize all Contractor authorized business partners in the State of South Carolina to perform Services.

Placement of Orders and shipment of Order directly from Apple will remain unchanged in the PA.

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All orders and payments are to be issued directly to:

Apple Inc
12545 Riata Vista Circle, MS 198-3ED
Austin, TX 78727
Fax: 800-490-0325

And all payments are to be issued to:

Apple Inc
PO Box 846095
Dallas, TX 75284

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: 500009004; and the Master Price Agreement Number B27158.

7. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"): If Vendor is notified by ordering entity that a specific purchase order is being made with ARRA funds, Vendor agrees to assist the ordering entity with their requirement to comply with the data element and reporting as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing Vendor at the time of purchase order placement that ARRA funds are being used. Vendor will include the tracking data, if provided by ordering entity, as an element within the utilization report, as per Article 44 of the MPA. Vendor, as it relates to purchases under this contract, is not a subcontractor or sub-grantee, but simply a provider of goods and related services.

8. Services:

The terms of the Agreement shall apply each time Customer engages Apple to Provide services. All services provided will be described in one or more of the following:

- (i) "Service Descriptions" used to describe any services purchased by an entity;
- (ii) any mutually agreed upon "Statement of Work" ("SOW") executed by the parties; or
- (iii) any "Technical Specification Form" approved by the parties

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions

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inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern. In the event of a conflict between a provision of the MPA and a State of South Carolina statute, the South Carolina statute shall prevail. Otherwise, the provision of the MPA shall remain in full force and effect. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum

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

FOR SOUTH CAROLINA GOVERNMENTAL BODIES:

The undersigned person warrants that he or she is authorized to execute the contract and legally bind the governmental bodies thereto.

SOUTH CAROLINA

Apple Inc

Signature: *Agnes P. Copeland*

Signature: *Stephen Glaws*

Printed Name: **Agnes P. Copeland**

Printed Name: *Stephen Glaws*

Title: **Procurement Manager**

Title: *Sr. Mgr, Contracts*

Date: October 16, 2009

Date: *10/16/09*

End of Document