

**AMENDMENT 3
TO
PARTICIPATING ADDENDUM
("Participating Addendum")
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Computer Equipment
Administered by the State of Minnesota (hereinafter "Lead State")**

**MASTER AGREEMENT
Master Agreement No: MNWNC-109
NetApp
(hereinafter "Contractor")
And
State of Tennessee
(hereinafter "Participating State/Entity")
(Contract #53458)**

This Amendment is made and entered by and between the State of Tennessee, Department of General Services, Central Procurement Office, hereinafter referred to as the "State" and **NetApp**, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

Section 2 of the Contract is deleted in its entirety and replaced with the following:

2. Term of Contract

This Contract shall be effective on the date of final signature ("Effective Date") and extend through February 28, 2023 ("Term"). The State shall have no obligation for goods and services provided by the Contractor prior to the Effective Date.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective July 31, 2022. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

NetApp:

Max Long
Max Long (Jul 19, 2022 13:26 PDT)

Jul 19, 2022

SIGNATURE

DATE

Max Long

PRINTED NAME AND TITLE OF SIGNATORY (above)

STATE OF TENNESSEE DEPARTMENT OF GENERAL SERVICES, CENTRAL PROCUREMENT OFFICE:

7/20/2022

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

DATE

**AMENDMENT 2
TO
PARTICIPATING ADDENDUM
("Participating Addendum")
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Computer Equipment
Administered by the State of Minnesota (hereinafter "Lead State")**

**MASTER AGREEMENT
Master Agreement No: MNWNC-121
NetApp, Inc.
(hereinafter "Contractor")
And
State of Tennessee
(hereinafter "Participating State/Entity")
(Participating State/Entity Contract #53458)**

This Amendment is made and entered by and between the State of Tennessee, Department of General Services, Central Procurement Office, hereinafter referred to as the "State" and **NetApp, Inc.**, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

Section 2 of the Contract is deleted in its entirety and replaced with the following:

2. Term of Contract

This Contract shall be effective on the date of final signature ("Effective Date") and extend through July 31, 2022 ("Term"). The State shall have no obligation for goods and services provided by the Contractor prior to the Effective Date.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective August 1, 2021. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

NetApp, Inc.:

M. Long 7.3.2021
SIGNATURE DATE
MAXWELL LONG, SVP, NORTH AMERICA
PRINTED NAME AND TITLE OF SIGNATORY (above)

STATE OF TENNESSEE DEPARTMENT OF GENERAL SERVICES, CENTRAL PROCUREMENT OFFICE:

Michael F. Perry Digitally signed by Michael F. Perry
DN: cn=Michael F. Perry, o=State of Tennessee,
ou=Central Procurement Office,
email=mike.perry@tn.gov, c=US
Date: 2021.07.12 15:00:25 -05'00'
MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER July 12, 2021
DATE

**AMENDMENT 1
TO
PARTICIPATING ADDENDUM
("Participating Addendum")
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Computer Equipment
Administered by the State of Minnesota (hereinafter "Lead State")**

**MASTER AGREEMENT
Master Agreement No: MNWNC-121
NetApp, Inc.
(hereinafter "Contractor")
And
State of Tennessee
(hereinafter "Participating State/Entity")
(Participating State/Entity Contract #53458)**

This Amendment is made and entered by and between the State of Tennessee, Department of General Services, Central Procurement Office, hereinafter referred to as the "State" and **NetApp, Inc.**, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

Section 2 of the Contract is deleted in its entirety and replaced with the following:

2. Term of Contract

This contract shall be effective on April 1, 2017 and extend for a period of fifty two (52) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective 4/1/2020. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

NetApp, Inc.:

Richard Scurfield

Richard Scurfield (Feb 27, 2020)

Feb 27, 2020

SIGNATURE

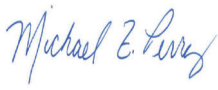
DATE

Richard Scurfield

SVP, Global Verticals and Pathways

PRINTED NAME AND TITLE OF SIGNATORY (above)

STATE OF TENNESSEE DEPARTMENT OF GENERAL SERVICES, CENTRAL PROCUREMENT OFFICE:



Digitally signed by Mike Perry
DN: cn=Mike Perry, o=Chief Procurement
Officer, ou=Department of General Services,
email=mike.perry@tn.gov, c=US
Date: 2020.02.28 08:41:24 -06'00'

2/28/2020

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

DATE

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

MASTER AGREEMENT
Master Agreement No: MNWNC-121
NetApp, Inc.
(hereinafter "Contractor")
And
State of Tennessee
(hereinafter "Participating State/Entity")

(Participating State/Entity Contract Number: 53458)

1. Scope: This addendum allows for purchase of the following Computer Equipment/Services: Band 5 - Storage led by the State of Minnesota along with a multi-state sourcing team for use by state agencies and other entities located in the Participating State/Entity that is authorized by that state's statutes to utilize state /entity contracts, and which receives prior written approval of the state's chief procurement official. The original solicitation contains the requirements and definitions establishing the Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor. The configuration limits and restrictions for the Master Agreement are provided with revisions identified by the Participating State in this Participating Addendum (See Attachment A). Pricing to Participating State/Entity will be as set forth in the Master Agreement, Exhibit B.

2. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** contracts are subject to the prior 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. Order of Precedence:

1. A Participating Entity's Participating Addendum ("PA"); A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota NASPO ValuePoint Master Agreement
2. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)
3. The Solicitation including all Addendums; and
4. Contract Vendor's response to the Solicitation

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. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and

conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Participating State Modifications or Additions to Master Agreement:

The State of Tennessee Participating Addendum includes Modifications to the Master Agreement as well as additional Terms and Conditions. See Attachments A and B.

5. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

<u>Contractor</u>	
Name	Harry Franks
Address	1921 Gallows Road, Suite 600, Vienna, VA 22182
Telephone	703-918-7317
Fax	
E-mail	Harry.franks@netapp.com

<u>Participating Entity</u>	
Name	Josh Gaddy, Category Specialist
Address	312 Rosa L. Parks Avenue Nashville, TN 37243
Telephone	615-741-1402
Fax	615-741-0684
E-mail	Josh.gaddy@tn.gov

6. Partner Utilization: Each state represented by NASPO ValuePoint participating in this Master Agreement independently has the option of utilizing partners. Only partners approved by this Participating State may be deployed. The Participating State/Entity chooses to utilize the following Contractor's partners to perform under this Participating Addendum.

Pomeroy
1020 Petersburg Road
Hebron, KY 41048

CDWg
200 North Milwaukee Ave
Vernon Hills, IL 60061

Hardwood
100 Northshore Office Park
Hixson, TN 37343

N4mative
925 North Point Parkway, Suite 150
Alpharetta, GA 30005

DLT
2411 Dulles Corner Park, Suite 800
Herndon, VA 20171

***Contractor's approved partners are revised periodically and are listed on the Tennessee landing page located at <http://www.netapp.com/us/how-to-buy/wsca/index-MNWN121.apx>.**

The participating State will define the process to add and remove partners and may define the partner's role in their participating addendum. Upon recommendation by the Contractor the Participating State/Entity reserves the right to add and/or remove Partners, without the need for an amendment to the Participating Addendum, throughout the term of the Participating Addendum.

The Contractors Authorized Partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement and this Participating Addendum. Additionally, in accordance with the Master Agreement, the Contractor shall be fully responsible as the prime Contractor for its Partners performance under this Participating Addendum and shall be responsible for any terms and conditions with its Partners. Each Contractor's approved Partners are shown on the Contractor's dedicated website for the Participating Entity and its respective eligible Purchasing Entities.

7. Terms: The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with this Participating Addendum, Tennessee State Constitution, and State law.

8. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order. All orders placed by a Participating Entity within the State must include the Participating State contract number: 53458 as well as the Lead State Master Agreement number: MNWNC-121.

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

Participating State:	Contractor: NetApp, Inc.
By: Michael F. Perry - KH <small>Digitally signed by Michael F. Perry - KH DN: cn=Michael F. Perry - KH, o=State of Tennessee - General Services, ou=Central Procurement Office, email=Mike.Perry@tn.gov, c=US Date: 2017.03.13 10:52:59 -05'00'</small>	By: <i>Mary Jo Dorr</i>
Name: Michael F. Perry	Name: <i>Mary Jo Dorr</i>
Title: Chief Procurement Officer	Title: <i>Controller</i>
Date: March 13, 2017	Date: <i>3/9/17</i>

Attachment A

State of Tennessee

2015-2020 MN NASPO ValuePoint Computer Equipment

Modifications

Master Award Summary:

Page 3, Section 4. Configuration Dollar Limits:

This section is modified by the State of Tennessee as follows:

The State of Tennessee will not have a maximum single configuration limit for Storage.

Page 4, Section 5.a. Software:

This section is modified by the State of Tennessee as follows:

1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software.
5. Any software available under any other Tennessee Statewide Contract is excluded from purchase through this contract except when applicable to initial procurement of equipment.

Page 4, Section 5.b. Services:

This section is modified by the State of Tennessee as follows:

6. The State of Tennessee will only allow manufacturer based services. No reseller professional services will be accepted under this contract.

State of Tennessee

2015-2020 MN NASPO ValuePoint Computer Equipment

Additional Terms and Conditions



Standard Terms and Conditions

1. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

2. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Special Terms and Conditions number 10 and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for:

- (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights;
- (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or
- (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

NetApp shall not be liable for special, incidental, indirect, punitive or consequential damages.

3. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of

the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

4. Taxes: Purchases of goods by the State of Tennessee are exempt from Tennessee sales and use tax pursuant to Tenn. Code Ann. 67-6-329(a) (4), and the state is generally exempt from Federal excise tax. Contractors are subject to Tennessee sales and use tax on all materials and supplies used in the performance of a contract, whether such materials and supplies are purchased by the contractor, produced by the contractor, or provided to the contractor by the State, pursuant to Tenn. Code Ann. 67-6-209. The contractor agrees to pay all taxes incurred in the performance of an awarded contract.

5. Unless otherwise stated, all goods called for by a purchase order must be tendered in a single delivery in compliance with the delivery time specified and payment is due only on such tender. Partial shipments and/or back orders will only be accepted with receiving agency's prior written authorization.

6. All products, materials, supplies and equipment offered and furnished must be new, of current manufacturer production.

7. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The contractor agrees that it will be subject to the exclusive jurisdiction of the courts of Tennessee in actions that may arise under this contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Section 9-8-101 through 9-8-407.

8. State and Federal Compliance: The contractor shall comply with all applicable state and federal laws and regulations in the performance of this contract.

9. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment C, semi-annually during

the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

10. Modifications and Amendments: This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Chief Procurement Officer, the Commissioner of Human Resources, and the Comptroller of the Treasury).

11. Records: The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

12. Monitoring: The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

13. HIPAA Compliance: The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

Contractor's warrants in subsections a & b shall have no bearing on the Contractor's warranties for its products and services, which are solely governed by the Master Contract #MNWNC-121 Section 32 Warranty.

Special Terms and Conditions

1. F.O.B. Destination (Statewide Contract)

All state agencies, local government agencies and authorized non-profit enterprises located within the State of Tennessee.

2. Term of Contract

This Contract shall be effective on April 1, 2017 and extend for a period of thirty six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

3. Renewal Options

This Contract may be renewed upon satisfactory completion of the Term. If the Master Agreement is renewed by the Lead State, the State reserves the right to execute up to the same number of renewals under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

4. Debarment and Suspension

The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors/partners and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors/partners are excluded or disqualified.

5. Delivery Time (Days)

All items must be delivered within approximately 30 days after receipt of a purchase order unless otherwise provided for in a purchase order or SOW.

6. Vendor Reporting

Usage Report

Upon request, or at a minimum quarterly, the Contractor shall furnish a usage report delineating the acquisition activity under the Contract. The format of the report shall be approved by the State and shall disclose, at a minimum, the following for State and non-State governmental entities and all others authorized to use this Contract:

- Purchase Order (PO) Number
- PO Date
- Customer Name (State Agency/Municipality/Other)
- Customer number
- Billing Address & Shipping Address
- Product Type - Storage, Etc.)
- Total Price per PO
- For Hardware
 - Manufacturer catalog part number
 - Manufacturer name
 - Product Description
 - Catalog Name and Effective Dates for Items Purchased, as applicable
 - Invoiced amounts
 - Reporting period by State fiscal year - annual/quarter
 - Model Number
 - Serial Number
 - Support Expiration Date (if applicable)
 - Invoice number
 - Invoice Date
 - List Price
 - State unit price (as stated on invoice)
 - Quantity

Reporting formats must be submitted to the State for approval within 10 business days after the Contract start date. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the Contract.

7. Department of Revenue Registration

The contractor/partners shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

8. Insurance Required

The Contractor shall procure and maintain for the duration of the contract, at their own cost and expense insurance against claims for injuries to persons or damages to property including contractual liability which, may arise in connection with the performance of the work performed by the contractor, his agents, representatives, employees or subcontractors/partners under the contract.

The insurance carrier(s) must be licensed to conduct business in the State of Tennessee. The insurance will be evidenced by an original or .pdf format document certificate of insurance. The certificate shall list the State of Tennessee as the certificate holder and must list the company name and address on file with the State. Should any of the policy coverage(s) provided have a major change, expire, or be canceled before the expiration date the Contractor shall fax or email vendor.insurance@tn.gov, a copy of their insurer's cancellation notice within two (2) business days of receipt. The State of Tennessee shall be held harmless for any injuries, claims or judgments against the contractor/partners.

Certificates for liability coverages shall name the State of Tennessee Central Procurement Office as an additional insured. The following Insurance Coverages are required:

Workers' Compensation Insurance: a certificate shall be provided which indicates the contractor provides workers' compensation coverage in compliance with the state laws of Tennessee., and Employer's Liability with the following limits:

E.L. Each Accident	\$1,000,000
E.L. Disease- Each Employee	\$1,000,000
E.L. Disease - Policy Limit	\$1,000,000

General Liability and Property Damage Insurance: Comprehensive General Liability Insurance, including but not limited to, bodily injury, property damage, contractual liability, products liability, with combined single limits of \$1,000,000 per occurrence with a minimum aggregate of \$2,000,000.

The Contractor shall provide the Central Procurement Office with an original certificate of insurance or .pdf format document as proof of insurance coverage, as stated above, naming the State of Tennessee, Central Procurement Office as additional insured, within ten (10) business days after request. If the certificate of insurance is in .pdf format, it must be received directly from the insurance company.

Failure to maintain insurance coverage for the duration of the contract period may result in cancellation of the contract. In the event that the insurance policy on file in the Central Procurement Office expires or is canceled, the contractor/partners will be required to cease work until proof of insurance is presented.

9. Purchase Order Release (Statewide)

Orders for products or services that are included on statewide contracts shall be prepared by agencies on departmental purchase orders and forwarded directly to the vendor/contractor or the contractor's authorized partner. These purchase orders, when received by the vendor/contractor or the contractor's authorized partner, serve as authorization for shipment of product(s) or start of service.

Billing Instructions:

The vendor/contractor or the contractor's authorized partner shall invoice the state only after product has been received by the user agency or upon completion of the service described in the

purchase order/contract, unless otherwise authorized in writing by the user agency and as required below prior to any payment.

The contractor or the contractor's authorized partner shall submit an invoice, with all necessary supporting documentation, to the state agency billing address. Such invoice shall clearly and accurately detail the following required information:

1. Invoice/reference number; (assigned by the contractor or the contractor's authorized partner);
2. Invoice date;
3. Contract and/or purchase order number; (assigned by the state);
4. Account name;
5. Procuring state agency and division name;
6. Account/customer number (uniquely assigned by the vendor/contractor or the contractor's authorized partner);
7. To the above-referenced account name;
8. Contractor/Partner name;
9. Contractor/Partner Identification Number; (as referenced in the contract);
10. Contractor/Partner contact (name, phone, and/or fax for the person to contact with billing questions);
11. Contractor/Partner remittance address;
12. Description of delivered product(s) or service;
13. List Price;
14. Discount %; and
15. Total amount due for delivered product(s) or service.

The vendor/contractor understands and agrees that the invoice shall;

- Include only charges for service described in contract or Purchase Order and in accordance with payment terms and conditions set forth in the contract or purchase order;
- Not include any future work but will only be submitted for completed service, unless otherwise authorized in writing by the user agency; and
- Not include sales tax or shipping charges (unless otherwise stipulated in the contract or purchase order).

Payment: The Contractor/Partner agrees that timeframe for payment (and any discounts) begins when the state is in receipt of a correct invoice meeting the minimum requirements above. It shall be the responsibility of the "bill to" agency to make payment in accordance with the Prompt Payment Act of 1985. Any questions concerning payment should be addressed to the "bill to" agency and not to the Central Procurement Office.

10. Estimated Liability

The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be Seven Million Five Hundred Thousand dollars per year (\$7,500,000) ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor/Partner will only be paid for goods or services provided under this Contract after a purchase order is issued to

Contractor/Partner by the State or as otherwise specified by this Contract.

11. Prerequisite Documentation

The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

a. The Contractor shall complete, sign, and present to the State:

- (1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- (2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card and Contractor will provide level III data reporting information.

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

12. Intellectual Property

The Contractor/Partner agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim alleging that a NetApp Product solely infringes U.S. patent, copyright, trade secret or other intellectual property. In any such claim or action brought against the State, the Contractor/Partner shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor/Partner shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor/Partner notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor/Partner of its obligations under this Section to the extent Contractor/Partner can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor/Partner, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

Notwithstanding the preceding, Contractor shall have full right to conduct the Contractor's own defense to that extent not in conflict with the Tennessee Attorney General's duties under Tenn. Code Ann. § 8-6-106.

Should any such Product become, or in Contractor's opinion be likely to become, the subject of such a claim, Contractor may, at its option and expense, (1) procure for the State the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; or (3) request return of the Product and, upon receipt thereof, refund the price paid by the State, less straight-line

depreciation based on a five (5) year useful life for Products.

13. Damages

If state property is damaged, stolen or lost as a result of vendor/contractor or the contractor's authorized partner employees' negligence and that property has to be repaired or replaced by the state, the expense for such work or replacement will be deducted from the monies due the Contractor/Partner. In addition to the foregoing, the State reserves the right to pursue claims for damages through any and all legal remedies available to the State.

14. Travel Compensation

The Contractor/Partner shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

15. Subcontracting

The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without obtaining the prior written approval of the Central Procurement Office. Notwithstanding any use of approved subcontractors/resellers/partners, the Contractor shall be the prime contractor and shall be responsible for all work provided and the Contractor shall be responsible for any agreements with the partners, resellers or subcontractors. The State of Tennessee shall not agree to and shall not be responsible for any terms and conditions with a subcontractor/reseller/partner.

16. Purchases by Local Government and Authorized Non-Profit Agencies (SWC)

Authorized Users: Local Governments, Private Non-Profit Institutions of Higher Education and Eligible Non-Profit Agencies

The purpose of this Participation Addendum is to establish a source or sources of supply for all state agencies, local governmental units within the geographic limits of the State of Tennessee, any private nonprofit institution of higher education chartered in Tennessee, and any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3) as amended and which contracts with the Department of Mental Health and Mental Retardation to provide services to the public (T.C.A. 33-2-401et seq.).

Purchases by local governmental units, private institutions of higher education, and authorized corporations are encouraged but are optional with those agencies, private institutions of higher education, and corporations.

17. Bill of Materials

Establishing a Bill of Materials (BOM) shall be developed by Finance and Administration (F&A), Strategic Technology Solutions (STS) and the Contractor. No Partner can take part in this process.

The BOM must list the NASPO ValuePoint current manufacturer catalog part number.

18. Hardware, Software, Updates, Etc.

Hardware and/or software maintenance/upgrade maintenance and maintenance renewals thereof must include all new version updates, hardware and/or software corrections, or enhancement (including patches/fixes) to the state agency's embedded hardware and/or software at no additional

cost to the State over and beyond the payment for annual maintenance. All new updates, hardware and/or software corrections, or enhancements (including patches/ fixes), support releases and/or documentation deemed necessary by the State of Tennessee and/or recommended by hardware and/or software manufacturer must be received within twenty (20) working days from the manufacturer's date of release.

19. Ownership of Software and Work Products.

Deleted.

20. Software License Warranty.

Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business as follows:

- (a) "Software" means NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency and management software.
- (b) "Documentation" means technical documentation describing the features and functions of the associated Software.
- (c) **NetApp License Grant.** Contract vendor grants to Purchasing Entity a personal, non-exclusive non-transferrable, limited and revocable license, without the right to sublicense, to i) install and use the Software for Purchasing Entity's internal business purposes only, and ii) use the Documentation in support of Purchasing Entity's use of the Software.

The Software associated with Purchasing Entity's license is either bundled with a specific storage controller identified by a unique serial number ("Controller-based"), or is independent of a storage controller ("Standalone"), and Purchasing Entity's license is one of the following license types: (i) "Life-of-controller": Controller-based licenses granted for the period of time during which Purchasing Entity's storage controller is operable; (ii) "Perpetual": Standalone licenses granted in perpetuity; (iii) "Term": Controller-based licenses or Standalone licenses granted for a fixed period of time; (iv) "Capacity": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity, number of hosts or other measure of usage; and (v) "Subscription": Controller-based licenses or Standalone licenses which may be purchased on a periodic basis.

Certain license types may require the installation and use of NetApp's AutoSupport remote support diagnostic system. When AutoSupport is required for the proper management of a license type which the State wishes to procure, prior to the purchase of the Autosupport system, the State shall be entitled to review and approve such purchase to ensure it complies with published State policies and procedures.

Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based license as the other storage controllers in that cluster, high-availability pair or group. Subject to Contract vendor's separate written agreement, and in the context of non-disruptive operations within a cluster, Purchasing Entity may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same

hardware and software support offerings in effect at all times.

- (d) **SolidFire License Grant:** For the SolidFire line of products only, in lieu of the license grant described in part (c) of this section, the following license shall apply. Contract vendor grants to Purchasing Entity a perpetual, paid-up, non-exclusive, non-transferable license, without the right to sublicense, solely to use the SolidFire Software Program either (i) as embedded in the NetApp SolidFire Storage Appliance, solely in connection with the use of the accompanying NetApp Solidfire Storage Appliance ("Appliance license"), or (ii) on one or more units of NetApp SolidFire Storage Appliance under the control of the Purchasing Entity in specified units of provisioned capacity ("Capacity license"), and solely in accordance with any applicable Documentation. Capacity licenses require that all clusters have Active IQ collection and reporting enabled.
- (e) **License Restrictions.** Purchasing Entity shall not, nor shall Purchasing Entity allow any third party to: (i) reverse-engineer, decompile or disassemble the Software or otherwise reduce it to human-readable format except to the extent required for interoperability purposes under applicable laws or expressly permitted in open-source licenses; (ii) remove or conceal any product identification, proprietary, intellectual property or other notices in the Software or Documentation; (iii) use the Software or Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services or similar non-State environment; (iv) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller; (v) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market NetApp hardware not purchased by Purchasing Entity from Contractor or a Contractor Partner; (vi) modify, adapt or create a derivative work of the Software or Documentation; and (vii) publish or provide any Software benchmark or comparison test results.

Audit: Upon at least thirty (30) days prior notice, Purchasing Entity grants Contractor and its independent accountants the right to examine Purchasing Entity's Software usage, no more than once per calendar year, to verify compliance with this Contract regarding this clause number 20. Audits may only be conducted during the Purchasing Entity's normal business hours and will be subject to Contractor executing confidentiality or non-disclosure agreement(s) required by the Purchasing Entity and conforming to any other reasonable restrictions or requirements of the Purchasing Entity. If the audit discloses a difference between the number of Software licenses paid for and used by the Purchasing Entity, a payment or credit shall be issued by the responsible party representing the difference.

21. Software Support and Maintenance Warranty.

Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers as part of its standard maintenance program made part of the Master Agreement MNWNC-121.

22. Extraneous Terms and Conditions

Contractor/Partner shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the

Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor/Partner to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor/Partner.

23. Warranty

Contractor represents and warrants that the products shall be warranted pursuant to Section 32 of the Master Agreement MNWNC-121.

24. Conflicts of Interest

No part of the Contractor's/Partner's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor/Partner in connection with any work contemplated or performed under this Contract.

The Contractor/Partner acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor/Partner is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor/Partner is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

25. Trade-In of equipment

The Contractor/Partner agrees that the State, at its sole discretion, can trade-in its existing equipment toward the purchase of new equipment and may receive a reduction in the price of new equipment subject to the agreement of both parties.

26. Administrative Fee

The Contractor shall pay the State an Administrative Fee of one (1) and one half (0.5) percent (1.5% or 0.015) in accordance with the Terms and Conditions of the Master Agreement no later than 60 days following the end of each calendar quarter. The State's Administrative Fee shall be submitted quarterly and is based on sales of products and services (less any charges for taxes or shipping).

Period End	Admin Fee Due
March 31	May 31
June 30	August 31
September 30	November 30
December 31	February 28

The administrative fee **shall** be submitted to the following address:

Ron Plumb, Director of Financial Management
Department of General Services
W.R. Snodgrass TN. Tower 24th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243

27. Prohibited Advertising or Marketing

The Contractor/Partner shall not suggest or imply in advertising or marketing materials that Contractor's/Partner's goods or services are endorsed by the State. The restrictions on Contractor/Partner advertising or marketing materials under this Section shall survive the termination of this Contract.

28. Quarterly Reviews – In Person

The Contractor/Partner shall meet with State representatives at the office of the Department of General Services, Central Procurement Office in Nashville, Tennessee. Contractor/Partner agrees that the in-person meetings will be held no less frequently than quarterly, throughout the life of this Participating Addendum. Contractor/Partner agrees that the first in-person meeting will be held within thirty (30) days of the date that the Participating Addendum is fully executed. The in-person meetings will be used to answer questions, review contractor's/partner's performance, and discuss current and future projects.

29. Confidentiality of Records

Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law. The obligations set forth in this Section shall survive the termination of this Contract. Notwithstanding anything above to the contrary, the State is subject to and will comply with the Tennessee public records act, found at Tenn. Code Ann. § 10-7-501 et seq.

30. Iran Divestment Act.

The requirements of Tenn. Code Ann. § 12-12-101 et seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106

**STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES
CENTRAL PROCUREMENT OFFICE**

EFFORTS TO ACHIEVE DIVERSITY BUSINESS ENTERPRISE PARTICIPATION

The Governor's Office of Diversity Business Enterprise (Go-DBE) is the state's central point of contact to attract and assist minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)

"Tennessee service disabled veteran owned business" means a service-disabled veteran owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function with at least a twenty percent (20%) disability that is service-connected meaning that such disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)

"Tennessee small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis".

For additional program eligibility information visit, http://www.tn.gov/businessopp/program_elig.html.

DIVERSITY INSTRUCTIONS

As part of this process, the Respondent should complete the Diversity Utilization Plan, which begins on the following page. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at: <http://www.tn.gov/businessopp/regdivcomp.html> or by calling Go-DBE toll free at 866-894-5026.

**RESPONDENT'S
DIVERSITY UTILIZATION PLAN**

Respondent's Company Name: <i>NetApp, Inc.</i>		
Solicitation Event Name: <i>NASPO ValuePoint Computer Equipment</i>		Event Number:
Respondent's Contact Name: <i>53458</i>	Phone: <i>(703) 918-7200</i>	Email: <i>Harry.Franks@netapp.com</i>
Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE		
Certifying Agency:		

Estimated level of participation by diversity businesses if awarded a contract:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	Percent of Contract	Estimated Amount	MBE/ WBE/ SDVBE/ SBE Designation	Currently Certified (Yes or No)
Business Name: <i>Hardwood</i> Contact Name: <i>Steve Lamsky</i> Contact Phone: <i>423-870-5500</i>	<i>20%</i>	<i>\$200K</i>	<i>Yes, SBE</i>	<i>Yes</i>
Business Name: <i>Nymative</i> Contact Name: <i>Hong Lee</i> Contact Phone: <i>404-797-9347</i>	<i>20%</i>	<i>\$200K</i>	<i>Yes, MBE</i>	<i>Yes</i>

If awarded a contract, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in

form and substance as required by said office. We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed

diversity businesses.

Authorized Signature: Mary Jo Orr Date: 03/09/17
Printed Name and Title of Respondent Signatory (above) Mary Jo Orr, Controller

ATTACHMENT C

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

If the attestation applies to more than one contract, modify this row accordingly. SUBJECT CONTRACT NUMBER:	NASPO ValuePoint master Agreement mnwnc-121 TN PA # 53458
CONTRACTOR LEGAL ENTITY NAME:	NetApp, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	77-0307580

If the attestation applies to more than one contract, modify the following paragraph accordingly.

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

Mary Jo Dorv

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Mary Jo Dorv, Controller

PRINTED NAME AND TITLE OF SIGNATORY

3/9/17

DATE OF ATTESTATION

