



AGREEMENT COVER PAGE

PARTICIPATING ADDENDUM NUMBER DTI 240024
COOPERATIVE CONTRACT NUMBER 23025
BETWEEN
STATE OF DELAWARE

AND

NetApp U.S. Public Sector, Inc.

COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES

Department Primary Contact:	Amy Miller IT Procurement Officer
Service Owner:	Jordan Schulties Chief of Administration
Section:	Office of Administration
Contractor Primary Contact:	Harry Franks Senior Contract Manager
Contractor Executive Contact:	Michelle Rudnicki President

PARTICIPATING ADDENDUM NUMBER DTI 240024
COOPERATIVE CONTRACT NUMBER 23025
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
Between
The State of Delaware
And
NetApp U.S. Public Sector, Inc.

1. SCOPE

- a. This Participating Addendum is made between the State of Delaware, Department of Technology and Information (DTI) and NetApp U.S. Public Sector, Inc. (Contractor), to establish Computer Equipment (Desktops, Laptops, Tablets, Servers, and Storage, including related Peripherals & Services).
- b. 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 3, Servers and Storage
- c. Under Delaware Code, Title 29 §6933 and §6987, The State of Delaware is authorized to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of materiel or nonprofessional services, or professional services with one or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.
- d. The requirements herein are in addition to those in the executed NASPO ValuePoint contract and shall continue through June 30, 2025. At the sole discretion of DTI, this Participating Addendum may further be extended to include any extensions as agreed to, by and between NASPO ValuePoint and the Contractor.

2. CHANGES

- a. Mandatory Insurance Requirements (29 Del. C. § 6929)
Contractor must obtain at its own cost and expense and keep in force and effect during the term of this Participating Addendum, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the

State. Contractor must carry the following coverage depending on the type of service or product being delivered.

- i. **Worker's Compensation and Employer's Liability Insurance** in accordance with applicable law.
- ii. Commercial General Liability including Product Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate. A combination of Commercial General Liability and Commercial Umbrella/Excess Liability insurance policies can be used to meet the limit requirement.
- iii. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Contractor pursuant to this Participating Addendum as well as all units used by Contractor, regardless of the identity of the registered owner, used by Contractor for completing the Work required by this Participating Addendum), providing coverage on a primary non-contributory basis with limits of not less than:
 - iv. \$1,000,000 combined single limit each accident, for bodily injury;
 - v. \$250,000 for property damage to others;
 - vi. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
 - vii. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 Del. C. § 2118; and
 - viii. Comprehensive coverage for all leased vehicles, which shall cover the actual cash value of the vehicle in the event of collision, damage, or other loss.

The Contractor must carry at least one of the following depending on the scope of work being performed.

- i. Miscellaneous Errors and Omissions - \$3,000,000 per occurrence/\$3,000,000 per aggregate

Should any of the above-described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

Before any work is done pursuant to this Participating Addendum, the Certificate of Insurance, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Department of Technology and Information
Participating Addendum Number: DTI240024-COMPUTER
801 Silver Lake Blvd
Dover, DE 19904

Nothing contained herein shall restrict or limit the Contractor's right to procure insurance coverage in amounts higher than those required by this Participating Addendum. To the extent that the Contractor procures insurance coverage in amounts higher than the amounts required by this Participating Addendum, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Contractor has complied with the terms of this Participating Addendum and has procured insurance coverage for all vehicles Leased and/or operated by Contractor as part of this Participating Addendum, the **State of Delaware's** self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

In no event shall the State of Delaware be named as an additional insured on any policy required under this Participating Addendum.

Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

b. Electronic Catalog

At the discretion of DTI, the Contractor may be required to submit its items list in an electronic format designated by the State.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with Master Contract specific pricing,
- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award.

c. Intent to Load Catalogs in State eProcurement Solution

Contractor shall provide catalog(s) and the corresponding price list(s) for all goods that are being offered to the State for purchase and shall include all applicable and price tiers available for each product in the pricing format required of this of this Participating Addendum. These documents may be required and supplied by the Contractor in an electronic format as determined by the State over the life of this Participating Addendum. The prices listed therein will be the prices paid by the State for purchases during this Participating Addendum term.

At the discretion of the State, all items will need to be provided in an electronic format for use in a hosted catalog offering which will be presented

in the State's eProcurement solution. All single items listed must reflect one price, at the discounted rate as offered by the Contractor in their proposal and as accepted by the State. Volume discounts offered for multiple units or multi-unit packaging shall be listed as a separate line item(s) in any catalog submitted for posting to the State's eProcurement solution.

Contractor shall supply the catalog file to an identified state representative **and/or the State's designated eProcurement vendor.**

A zero-dollar catalog shall be submitted to the eProcurement solution vendor no later than thirty (30) days prior to the end of this Participating Addendum term and shall be the final catalog update provided under this Participating Addendum. The State will approve this catalog, after this Participating Addendum end date, to remove all items and pricing from the eProcurement Solution. The zero-dollar catalog serves as a correcting entry to maintain system integrity of valid items. The failure by the Contractor to comply and submit this correcting entry will be viewed as a major performance deficiency.

At any time during this Participating Addendum term, (1) the Contractor shall remove individual or categories of items from the catalog offering if requested by the State; (2) consider expanding the catalog offering with additional items or categories if requested and accepted by the State; and/or (3) the State may take unilateral action on the items listed in the eProcurement solution to hide or otherwise make unauthorized any items the State believes is outside the scope of the categories.

The failure and/or inability to comply with this hosted catalog requirement may subject the Contractor to corrective action, up to and possibly including termination of this Participating Addendum.

A hosted catalog is defined as a Contractor supplied electronic catalog of all items, including item descriptions, attributes, and the prices, which will be **stored and publicly visible in the State's eProcurement solution. At the sole discretion of the State, DTI will consider implementation and use of a punchout catalog solution in lieu of the hosted catalog option. A punchout catalog uses the eProcurement system to access to the Contractor's** electronic catalog. Users can then shop, select, and retrieve items back into the eProcurement system, allowing the original to execute an order.

d. Severability

If any term or provision of this Participating Addendum is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the

same shall not affect the other terms or provisions hereof or the whole of this Participating Addendum, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

e. Permits and Licenses

All necessary permits, licenses, and insurance policies required by local, State or Federal laws, shall be provided by the Contractor at its own expense.

f. Patented Devices, Material and Processes

i. The Contractor shall provide for the use of any patented design, device, material, or process to be used or furnished under this Participating Addendum by suitable legal agreement with the patentee or owner and if requested, shall provide representation that they have properly contracted with others.

ii. Subject to section i.ii., the Contractor will defend or settle any claim brought by a third party against the State of Delaware, the Agency, the Director, their Officers, or Agents that the use of such patented design, device, material, or process in connection with the work agreed to be performed under this Participating Addendum infringes any patent, trademark, or copyright.

g. State Of Delaware Business License

Prior to commence performance under this agreement, Contractor shall represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 Del. C. § 2502.

h. Emergency Termination of Participating Addendum

i. Due to restrictions which may be established by the United States Government on material, or work, this Participating Addendum may be terminated by the cancellation of all or portions of this Participating Addendum.

ii. In the event the Contractor is unable to obtain the material required to complete the items of work included in this Participating Addendum or related Purchase Order(s) because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or this Participating Addendum and/or related Purchase Order(s) may be terminated.

i. Indemnification

i. General Indemnification

The Contractor will indemnify and otherwise hold harmless the State of

Delaware, its agents, and employees from any and all liability, suits, **actions, or claims, together with all costs, expenses for attorney's fees, arising out of the Contractor's, its agents, and employees' performance** work or services in connection with this Participating Addendum.

ii. Proprietary Rights Indemnification

- A. Subject to the terms and conditions of this section, Contractor will defend or settle any claim brought by a third party against the State of Delaware that hardware or software, including Contractor documentation related to the description, operation, and use of Contractor hardware or software, sold and delivered by Contractor to the State of Delaware under this Participating Addendum infringed on any patent, trademark, or copyright ("**IP Claim**"). Contractor will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of **competent jurisdiction (collectively, "Damages")** against the State of Delaware to the extent such Damages are specifically attributable in the final award to the IP Claim, provided that the State of Delaware (1) promptly notifies the Contractor in writing of the IP Claim; (2) provides information and assistance to Contractor to defend such IP Claim; and (3) provides Contractor with sole control of the defense related to the IP Claim, provided that Contractor will not settle or resolve a claim without prior written consent of the State of Delaware that would require the State of Delaware to pay any amount not indemnified by Customer under the terms of this Participating Addendum or that would require an admission of liability or fault of the State of Delaware.
- B. If hardware or software, including Contractor documentation related to the description, operation, and use of Contractor hardware or software, sold and delivered by Contractor to the State of Delaware under this Participating Addendum ("**Products**") is or in Contractor's reasonable judgment is likely to be, held to constitute an infringing product, Contractor shall at its expense and option either:
 - 1. Procure the right for the State of Delaware to continue using the Product(s);
 - 2. Replace the product with a non-infringing equivalent that satisfies all the requirements of this Participating Addendum; or
 - 3. Modify or substitute the Product(s) to make it or them non-infringing, provided that the modification does not

materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of this Participating Addendum, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

- C. Notwithstanding anything to the contrary in this Participating Addendum, Contractor has no obligation or liability for any claim of infringement that arises from or relates to (a) **Contractor's compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by or on behalf of the State of Delaware;** (b) Product modifications made by or on behalf of the State of Delaware without **Contractor's prior written authorization;** (c) **the State of Delaware's failure to upgrade or use a new version of the Product, to make a change or modification requested by Contractor, or to cease using the Product if requested by Contractor;** (d) the Product, or any portion thereof, in combination with any other product or service; (e) any content or information stored on or used by the State of Delaware or a third party in connection with a Product; or (f) **the State of Delaware's breach of the use limitations prescribed by the Contractor.**
- D. Notwithstanding anything to the contrary herein, Contractor has no obligation or liability for any IP Claim to the extent it arises from or relates to third-party branded products. Contractor will pass through any indemnities from such third-party vendor or licensor to the extent permissible.
- E. Notwithstanding anything to the contrary in this Participating Addendum, this section i.ii. **states Contractor's entire liability and the State of Delaware's sole and exclusive remedies for IP Claims.**

j. Limitation of Liability

- i. Liability Exclusions. To the extent permitted by applicable law, regardless of the basis of the claims (e.g., whether in contract, tort (including negligence), statute, products or strict liability, or any other form of action), in no event will Contractor or its suppliers or subcontractors be liable to the State of Delaware for special, incidental, exemplary, indirect or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill, or anticipated savings; procurement of substitute goods and/or

services; and/or interruption of business. This exclusion is independent of any remedy set forth in this Participating Addendum.

- ii. Cumulative Liability. To the extent permitted by applicable law, **Contractor's liability to the state of Delaware** under this Participating Addendum is limited to direct damages in an amount not to exceed US\$5,000,000. This limitation is cumulative and not per incident.
- iii. Exceptions. The limitations set forth in sections j.i. (Liability Exclusions) and j.ii. (Cumulative Liability) will not apply to liability for: **(a) claims arising from death or bodily injury caused by a party's negligence or gross negligence; (b) claims arising from a party's willful misconduct or fraud; or (c) IP Claims under section i.ii.** These limitations will also not apply to any other liabilities which cannot be excluded under applicable law.

k. Non-Performance

In the event the Contractor does not fulfill its obligations under the terms and conditions of this Participating Addendum, in addition to proceeding with termination of this Participating Addendum subject to the terms herein, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the Contractor to the extent such cost is specifically related to the termination pursuant to the terms of this Participating Addendum. Under no circumstances shall monies be due the Contractor in the event open market products can be obtained below contract price. Any monies charged to the Contractor may be deducted from an open invoice.

l. Reports

- i. One of the primary goals in administering this Participating Addendum is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of this Participating Addendum and to establish proper bonding levels, if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.
- ii. A complete and accurate Usage Report (Attachment A) shall be submitted electronically, no later than the 30th (or next business day after the 30th day) of each quarter (i.e., report due on January 30th will cover the period of October 1 - December 31), detailing the purchasing of all items and/or services on this Participating Addendum. The reports shall be completed in Excel format, using the template provided, and emailed as an attachment to DTI_vendorservices@delaware.gov. Reports shall contain accurate

descriptions of the products, goods or services procured, purchasing agency information, quantities procured, and prices paid. Reports are required quarterly **including those with “no spend”**. **Any exception to** this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of this Participating Addendum. Failure to provide the report with the minimum required information may also negate any extension clauses of this Participating Addendum. Additionally, if the Contractor is determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

- iii. In accordance with Executive Order 49, the State of Delaware is committed to supporting its diverse business industry and population. The Contractor will be required to accurately report on the participation by Diversity Suppliers which includes minority (MBE), woman (WBE), veteran owned business (VOBE), or service-disabled veteran owned business (SDVOBE) under this Participating Addendum. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service-disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, **Women’s Business Enterprise Council**, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Attachment B.

Accurate 2nd Tier reports shall be submitted to the contracting **Agency’s Office of Supplier Diversity at** DTI_vendorservices@delaware.gov or the 30th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September, and December of each calendar year. Contract spend during the covered periods shall result in a report even if this Participating Addendum has expired by the report due date.

Information on the Delaware Division of Small Business can be found in Attachment C of this agreement.

m. Delaware Economic Impact

Contractor shall provide an annual report of the economic impact of their operations in Delaware. This report shall be submitted by February 15th of each calendar year and shall report on the immediately prior one full calendar year of operations.

The following basic information is required under this Participating Addendum:

- i. Number of Delaware Locations
- ii. Number of Delaware Employees
- iii. Annual Taxes, licenses & Fees Paid to Delaware
 - A. This may be payroll, franchise, service taxes, etc.
- iv. Major Delaware Investments/ Partnerships
 - A. Amount paid to Major partners or Suppliers in Delaware
 - B. Highlight of Delaware MWBE, Veteran, Small Business (SBA criteria) and Disabled Veteran partnerships/ supply chain
 - C. Rent to Delaware Locations or value of Delaware real property
 - D. Utility Expenses paid to Delaware utilities

The report shall be submitted to DTI_vendorservices@delaware.gov.

n. Independent Contractors

The Contractor is an independent contractor to one another, and nothing herein shall be deemed to cause this Participating Addendum to create an agency, partnership, joint venture, or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations, or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

o. Temporary Personnel Are Not State Employees Unless and Until They Are Directly Hired

- i. Contractor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Participating Addendum shall remain the employee(s) of Contractor for all purposes including any required compliance with the Affordable Care Act (ACA) by the Contractor. Contractor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Participating Addendum must be provided any benefits, including any healthcare benefits by the State of

Delaware and Contractor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third-party governmental entity determines that the State of Delaware is a dual employer, or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Participating Addendum, Contractor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

- ii. Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Participating Addendum, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate **the Contractor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware.** Contractor will waive any separation fee provided an employee works for both the Contractor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the **State's intention to hire.**

p. Work Performed in a State Building

Contractor, if carrying out any work related to the Agreement at a State facility, shall have those employees working at such State facility comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority while working at a State facility, provided that the State provide reasonable written notice of any such mandate or policy to the Contractor in advance of Contractor personnel working at a State facility.

q. Fair Background Check Practices

Pursuant to 29 Del. C. § 6909B, the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Contractors doing business with the State are encouraged to adopt fair background check practices. Contractors can refer to 19 Del. C. § 711(g) for applicable established provisions.

r. Contractor Background Check Requirements

- i. If Contractor has access to state property or will come in contact with vulnerable populations, including children and youth, they shall **complete background checks on employees serving the State's on premises contracts**. Unless otherwise directed, at a minimum, this shall include a check of the Delaware Sex Offender Central Registry at: <https://sexoffender.dsp.delaware.gov/>
- ii. Individuals that are listed in the registry shall be prevented from direct contact in the service of this Participating Addendum but may provide support or off-site premises service for contract contractors. Should an individual be identified, and the Contractor believes its **employee's service does not represent a conflict with this requirement**, may apply for a waiver to the primary agency listed in **the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.**
- iii. By Agency request, the Contractor shall provide a list of all employees serving this Participating Addendum and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of this Participating Addendum. A violation of this condition represents a violation of the terms and conditions of this Participating Addendum, and may subject the Contractor to penalty, including cancellation for cause of this Participating Addendum.
- iv. Individual Purchase Orders may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Contractor shall be responsible for the background check requirements of any authorized Services Subcontractor providing service to an agency pursuant to this Participating Addendum.

s. Subcontractors

- i. For the purposes of this Participating Addendum, Subcontractors are classified as follows:
 - A. **"Authorized Reseller" and/or "Local Dealer"**
 1. Authorized Reseller/Local Dealer may provide quotes, accept purchase orders, fulfill purchase orders, and accept payment from ordering agencies for products and associated services offered under this Participating Addendum.

2. Authorized Reseller/Local Dealer is responsible for sending a copy of all purchase orders and invoices to the Contractor for compliance with quarterly usage reporting and administrative requirements.
 3. All purchase documents to Authorized Reseller/Local Dealer shall reference this Participating Addendum Number and the Contractor.
- ii. Subcontracting is permitted under this Participating Addendum. However, every subcontractor (defined for purposes of this Participating Addendum as an authorized representative or reseller of the Contractor) shall be identified (Attachment D) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of this Participating Addendum. Any substitutions in or additions to such subcontractors will be subject to the prior written approval of the State.
- iii. The Contractor shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the Master Agreement and this Participating Addendum.
- iv. **All subcontractors identified on Contractor's NASPO ValuePoint** webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum.
- v. Subcontractors may be added to this Agreement upon prior written approval from the Department.
- vi. Department approved subcontractors for this agreement are listed in Appendix A. Approved subcontractors may be added to or removed from this Agreement upon written approval from the Department as indicated in Appendix A.
- vii. Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions under this Participating Addendum, even if work is performed by Servicing Subcontractors (defined as entities utilized by Contractor to deliver services sold under this Participating Addendum).
- viii. Contractor will be the sole point of contact with regard to Participating Addendum contractual matters, reporting, and administrative requirements.
- ix. Proposed Subcontractors, as well as the Contractor, must complete the registration process at <http://esupplier.erp.delaware.gov>.

- x. State-approved Subcontractors will be posted on the [State's Contracting website](#).
- t. Ordering Procedure

Contractor maintains a toll-free number: 877 2 NETAPP (877 263 8277). Depending on the nature and scope of the event, each State agency or other governmental entity shall be responsible for contacting the Contractor directly for all required resources. All consumables delivered by the Contractor and received by a state agency or other governmental entity, become the property of that State agency or entity subject to the terms of this Participating Addendum and the executed NASPO ValuePoint contract. Orders may be accomplished by written purchase order, telephone, fax, or computer on-line systems. All Purchase Orders **must include the State's** contract number.
- u. Quote Requirements
 - i. Reseller/Contractor is required to respond to quote requests in a reasonable timeframe, ideally but not necessarily to not exceed five (5) business days unless previously negotiated with requestor.
 - ii. Reseller/Contractor must honor and guarantee all quotes for thirty (30) calendar days.
 - iii. Reseller/Contractor quotes must contain:
 - o Description - Full description of item
 - o Quantity – Item quantity requested
 - o Unit Price – Quoted cost per item
 - o Extended Price – Cost quoted for total quantity of items
- v. Billing
 - i. The Contractor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number. Per Del. C. § 6516 (d)(4), the Contractor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.
 - ii. Agencies will make every effort to achieve available discount opportunities under this Participating Addendum. Contractors shall be required to report semi-annually opportunities to enhance the discounts achieved.
- w. Method of Payment
 - i. For each P.O. issued as part of this Participating Addendum, the State will pay Contractor monthly, within thirty (30) days of receipt of the Contractor's billing, the amount which is legitimately earned by the Contractor, and supported by payroll data and an itemized accounting of reasonable reimbursable direct non-salary costs. Final settlement

for total payment to the Contractor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.

- ii. No premium time for overtime will be paid without prior written State authorization. Indirect overhead cost shall not be applied to the premium portion of the overtime.
- iii. The agencies or school districts using this Participating Addendum will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under this Participating Addendum. Contractors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under this Participating Addendum. While it is the **State's intention to utilize the P-card** payment method the State reserves, at its discretion, the right to pay by ACH/ACI or check. Should the Contractor wish to provide a financial incentive to not process payment by P-Card, they are to prepare a proposal to clearly outline any incentives for alternative payment methods the Contractor is willing to accept.

x. Formal Contract And/or Purchase Order

No employee of the Contractor is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office.

No other terms and conditions shall apply, including 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.

y. Minimum Wage Rates

Work performed under this Participating Addendum may fall under the [State of Delaware Minimum Wage Rates](#) or the Delaware Prevailing Wage rates. Prior to issuing a purchase order, the ordering agencies must obtain from the Department of Labor a determination if prevailing wage applies to the project and, if appropriate, what the applicable prevailing wage rates would be for the work to be performed. No work shall proceed without a determination by

the Department of Labor. Request for prevailing wage certification can be found at: <http://dia.delawareworks.com/labor-law/prevailing-wage.php>

z. Dispute Resolution

- i. At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Participating Addendum promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Participating Addendum. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.
- ii. If the matter is not resolved by negotiation, the parties may proceed to mediation if both parties agree. If both parties agree to mediation, the mediator shall be selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The parties reserve the right to proceed directly to arbitration or litigation without mediation. This Participating Addendum will be governed by and interpreted in accordance with the laws of the State of Delaware, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of **mediation, arbitration, or litigation, including attorneys' fees.**

aa. Remedies

Except as otherwise provided in this solicitation, including but not limited to Section z. above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this solicitation, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

bb. Termination of Individual Orders or Purchase Orders

As a central contract, this Participating Addendum shall include individual orders from state agencies and other entities authorized by law to procure from this Participating Addendum. The individual orders may be terminated as follows:

i. Termination for Cause

If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations, or if the Contractor violates any of the covenants, agreements, or stipulations of this

Participating Addendum, and the Contractor does not cure the alleged failures or violations within 30 calendar days, or another reasonable timeframe as agreed to by the parties, the Agency shall have the right to terminate the P.O. by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor in the performance of the P.O. shall, at the option of the Agency, become its property subject to the license terms of the Participating Addendum and master NASPO ValuePoint agreement, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.

ii. Termination for Convenience

The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.

iii. Termination for Non-Appropriation

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the Purchase Order, in whole or part, the Purchase Order shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

cc. Termination of Participating Addendum

As a central contract, this Participating Addendum may be terminated as follows by DTI.

i. Termination for Cause

If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner its obligations under this Participating Addendum, or if the Contractor violates any of the covenants, agreements, or stipulations of this Participating Addendum, the State shall thereupon have the right to terminate this Participating Addendum

by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Participating Addendum shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of this Participating Addendum cancellation notice from the State, the Contractor shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the **violation(s). The Contractor's response shall not** affect or prevent this Participating Addendum cancellation unless the State provides a written **acceptance of the Contractor's response. If the State does accept the Contractor's method and/or action plan to correct the identified** deficiencies, the State will define the time by which the Contractor must **fulfill its corrective obligations. Final retraction of the State's** termination for cause will only occur after the Contractor successfully rectifies the original violation(s). At its discretion the State may reject **in writing the Contractor's proposed action plan and proceed with the** original Participating Addendum cancellation timeline.

ii. Termination for Convenience

The State may terminate this Participating Addendum at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

iii. Termination for Non-Appropriations

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue this Participating Addendum, in whole or part, this Participating Addendum shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

This is not a termination for convenience and will not be converted to such.

iv. Termination Upon Insolvency

The State may, at its option and without notice, terminate this Agreement, effective immediately, should Contractor: (1) admit in writing its inability to pay its debts generally as they become due; (2) make a general assignment for the benefit of creditors; (3) institute proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against it; (4) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (5) seek reorganization under any bankruptcy act, or consent to the filing of a petition seeking such reorganization; or (6) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such party's property or providing for the liquidation of such party's property or business affairs.

dd. Publication, Reproduction, and Use of Material

No material produced in whole or part under this Participating Addendum shall be subject to copyright in the United States or in any other country. The State shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Participating Addendum; provided, however, that the State agrees not to use any design or engineering plans prepared by the Contractor for anything other than their intended purpose under this Participating Addendum. The Contractor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the State's support shall be given in the publication.

Each party will retain all right, title and interest in and to its pre-existing intellectual property (IP). Contractor will retain all right, title, and interest in **and to the Contractor's services and Contractor's related materials delivered** here under, including any and all Deliverables (defined as tangible materials including reports, analyses, documents, drawings, studies, recommendations, scripts, code, or other specific outputs identified as a Deliverable and delivered to the State under the relevant purchase order documentation), and IP rights embodied therein. In no event **will Contractor's materials related to delivery of its services be deemed to include the State's** pre-existing IP or confidential information. Upon receipt of full payment, Contractor hereby grants to the State a limited, non-exclusive, non-transferable, terminable license, with no right to sublicense, to use, copy and modify the Deliverables, including any materials related to delivery of

Contractor's services incorporated in such Deliverables, solely for the State's internal business purposes. The State will not re-distribute the Deliverables to any third parties without the Contractor's prior written consent.

ee. Rights and Obligations

The rights and obligations of each party to this Participating Addendum shall not be effective, and no party shall be bound by the term of this Participating Addendum, unless and until a valid executed purchase order has been approved by the State of Delaware Secretary of Finance, and all reasonable procedures of the State of Delaware Department of Finance have been complied with. A separate purchase order shall be issued for every project or order.

ff. Assignment of Antitrust Claims

The Contractor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this Participating Addendum. Upon **either the State's or the Contractor notice of** the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Contractor shall meet and confer about coordination of representation in such action.

gg. Audit Access to Records

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Participating Addendum to the extent and in such detail as shall adequately reflect performance hereunder. The Contractor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Contractor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under this Participating Addendum during normal business hours and upon thirty (30) days prior written notice. Upon notice given to the Contractor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Participating Addendum. The cost of any audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the State for disallowances shall be drawn from the Contractor's own resources and not charged to this Participating Addendum or Purchase Order cost or cost pools indirectly charging costs. If the State uses a third party to perform the audit,

the third party auditor must execute Contractor's non-disclosure agreement prior to any such audit.

hh. IRS 1075 Publication (If Applicable)

i. Performance

In performance of this Participating Addendum, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- A. All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- B. **The Contractor and the Contractor's employees with access to** or who use Federal Tax Information (FTI) must meet the background check requirements defined in IRS Publication 1075.
- C. Any Federal tax returns or Federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Participating Addendum. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Participating Addendum. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- D. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- E. No work involving returns and return information furnished under this Participating Addendum will be subcontracted without prior written approval of the IRS.
- F. The Contractor will maintain a list of employees authorized access. Such list will be provided to the Agency and, upon request, to the IRS reviewing office.
- G. The Agency will have the right to void this Participating Addendum if the Contractor fails to provide the safeguards described above.

H. The Contractor shall comply with agency incident response policies and procedures for reporting unauthorized disclosures of agency data.

ii. Criminal/Civil Sanctions

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Participating Addendum. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Participating Addendum. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence,

punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of Contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting Contractor access to FTI must be preceded by certifying that **each individual understands the agency's security policy and** procedures for safeguarding IRS information. Contractor must maintain its authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, Contractor must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

iii. Inspection

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this Participating Addendum for compliance with requirements **defined in IRS Publication 1075. The IRS' right of inspection shall** include the use of manual and/or automated scanning tools to

perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

ii. Contractor Emergency Response Point of Contact

The Contractor shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty-four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the Contractor.

In the event of a serious emergency, pandemic, or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Participating Addendum. Payments are subject to appropriation and other payment terms.

jj. Potential Contract Overlap

Contractors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded that overlap this Participating Addendum.

kk. Supplemental Solicitation

The State reserves the right to advertise a supplemental solicitation during the term of this Participating Addendum if deemed in the best interest of the State.

II. Confidentiality and Data Integrity

DTI is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored: e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed at the direction of the State and paid for by the State to process State Agency/School District data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The

control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

The Contractor is required to agree to the requirements in the Confidentiality and Integrity of Data Statement; Attachment E attached and made a part of this Participating Addendum. Contractor employees may be required to sign the statement prior to beginning any work.

mm. Security

- i. As computer, network, and information security are of paramount concern, the State wants to ensure that computer/network hardware and software does not compromise the security of its IT infrastructure. Contractor represents that at the time of signing this Participating Addendum, Contractor is ISO27001 certified.
- ii. Contractor must provide clear notice to DTI of any change to its ISO27001 certification.

nn. Tax Exemption

- i. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers, and the tax on heavy trucks, trailers, and tractors. More detail is included in IRS Publication 510 Excise Taxes located at <https://www.irs.gov/publications/p510>. Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the Division of Accounting will work with the agency and vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted. Such taxes shall not be included in prices quoted.
- ii. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the Contractor.

oo. Equality of Employment Opportunity

During the performance of this Participating Addendum, the Contractor agrees as follows:

- i. The Contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any employee or applicant for employment with respect to compensation, terms, conditions, or

privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships. The Contractor agrees to post in conspicuous places, notices to be provided by the Agency setting forth the provisions of this non-discrimination clause.

- A. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin.

pp. Document Execution

The State of Delaware requires a new vendor to complete the registration process through the Delaware Supplier Portal at <http://esupplier.erp.delaware.gov>. Successful completion of this registration enables the creation of a State of Delaware supplier record. The Taxpayer ID (SSN or EIN) and Applicant (supplier) name are submitted to the Internal Revenue Service for "matching"/ **If the Taxpayer ID and name do not match**, the vendor record cannot be approved.

It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

Any questions about completing this registration or specific comments about the registration, please contact supplier maintenance by phone at 302-672-5000.

qq. Equipment Trade-in Program:

- i. Trade-in program is not allowed.

rr. Leasing and Alternative Financing:

- i. The NASPO ValuePoint Master Agreement allows for leasing if approved for use by the Participating Entity. The terms and conditions of the lease or financing arrangement will be separately negotiated

and set forth in an agreement between the purchaser and either Contractor or its designated and/or approved financing partner.

ss. Services:

- i. Services are broadly classified as installation or de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the NASPO ValuePoint 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. Under this Participating Addendum, Contractor may offer only services related to the products within scope of the Participating Addendum and NASPO ValuePoint Master Agreement.

3. PRIMARY CONTACTS

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

Lead State

Contact: Elizabeth Randa
Address: Department of Administration
Office of State Procurement
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 5155
Phone: 651-201-3122
Email: Elizabeth.Randa@state.mn.us

Contractor

Contact: Harry Franks, Senior Contracts Manager
Address: NetApp U.S. Public Sector, Inc.
8350 Broad Street, Suite 1200
Tysons, VA 22102
Phone: 703-918-7200
Email: harry.franks@netapp.com

Participating State: Delaware Department of Technology and Information

Contact: Amy Miller

Address: 801 Silver Lake Blvd
Dover, DE 19904

Phone: 302-739-9683

Email: DTI_Vendorservices@delaware.gov

4. CONTRACT NUMBER

The contract number for the State of Delaware is: DTI240024-COMPUTER.

This Participating Addendum and the NASPO ValuePoint Master Agreement, Number 23025, administered by the State of Minnesota, 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 inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the NASPO ValuePoint Master Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the NASPO ValuePoint Master 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 Participating Addendum and the NASPO ValuePoint Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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

State of Delaware

By: Jordan Schulties

Name: Jordan Schulties

Title: Chief of Administration

Date: Aug 22, 2024

Contractor: NetApp

By: Michelle Rudnicki
Michelle Rudnicki (Aug 22, 2024 13:36 EDT)

Name: Michelle Rudnicki

Title: President

Date: August 22, 2024

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Note: A copy of the Usage Report will be sent by electronic mail to the Awarded Contractor. The report shall be submitted electronically in EXCEL and sent as an attachment to DTI_Vendorservices@delaware.gov. It shall contain the six-digit department and organization code for each agency and school district

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

State of Delaware																	
Subcontracting (2nd tier) Quarterly Report																	
Prime Name:							Report Start Date:										
Contract Name/Number							Report End Date:										
Contact Name:							Today's Date:										
Contact Phone:							*Minimum Required		Requested detail								
Vend or Name *	Vendo r TaxID *	Contra ct Name/ Numbe r*	Vendo r Conta ct Name *	Vendo r Conta ct Phone *	Repo rt Start Date*	Repo rt End Date*	Amount Paid to Subcontract or*	Work Performed by Subcontract or UNSPSC	M/WBE Certifyi ng Agency	Veteran/Servi ce-Disabled Veteran Certifying Agency	2nd tier Suppli er Name	2nd tier Suppli er Addres s	2nd tier Suppli er Phone Numbe r	2nd tier Suppli er email	Descripti on of Work Performe d	2nd tier Suppli er Tax Id	Dat e Pai d

Note: A copy of the Subcontracting Quarterly Report will be sent by electronic mail to the Awarded Contractor.

Completed reports shall be saved in an Excel format and submitted to the following email address:

DTI_Vendorservices@delaware.gov.



The Office of Supplier Diversity (OSD) has moved to the
Division of Small Business (DSB)

Supplier Diversity Applications can be found here:

<https://business.delaware.gov/osd/>

Completed Applications can be emailed to: OSD@Delaware.gov

For more information, please send an email to OSD:

OSD@Delaware.gov or call 302-577-8477

Self-Register to receive business development information here:

<https://business.delaware.gov/directory-of-certified-businesses/>

New Address for OSD:
Office of Supplier Diversity (OSD)
State of Delaware
Division of Small Business
820 N. French Street, 10th Floor
Wilmington, DE 19801

Telephone: 302-577-8477 Fax: 302-736-7915

Email: OSD@Delaware.gov

Web site: <https://business.delaware.gov/osd/>

Dover address for the Division of Small Business

Local applicants may drop off applications here:

Division of Small Business
99 Kings Highway
Dover, DE 19901
Phone: 302-739-4271

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

SUBCONTRACTOR (RESELLER) INFORMATION FORM

PART I – STATEMENT BY CONTRACTOR		
1. CONTRACT NO. Insert Contract Number	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (<i>Signature</i>)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (<i>Signature</i>)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

Use a separate form for each subcontractor



DEPARTMENT OF TECHNOLOGY AND INFORMATION
William Penn Building
801 Silver Lake Boulevard
Dover, Delaware 19904-2407

CONFIDENTIALITY (NON-DISCLOSURE) AND INTEGRITY OF DATA AGREEMENT

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored, e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed at the direction and expense of the State to process State Agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

I/we, as an employee(s) of NetApp U.S. Public Sector, Inc. or officer of my firm, when performing work for the Department of Technology and Information, understand that I/we act as a contractor **of DTI and therefore I/we are responsible for safeguarding the States' data and** computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI. Furthermore, I/we understand that I/we are to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure, or modification of State data.

Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may result in the termination of the Participating Addendum.

This statement applies to the undersigned Contractor and to any others working under the **Contractor's direction.**

I, the Undersigned, hereby affirm that I have read DTI's Policy on Confidentiality (Non-Disclosure) and Integrity of Data (attached hereto at Appendix B) and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above where applicable to a contractor of DTI.

Contractor Signature *Michelle Rudnicki*
Michelle Rudnicki (Aug 22, 2024 13:36 EDT)
Title: Michelle Rudnicki, President
Date: August 22, 2024
Contractor Name: NetApp U.S. Public Sector, Inc.

APPENDIX A

Agreement Number DTI240024-COMPUTER
NetApp U.S. Public Sector, Inc.

COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES

Below are the requested resellers for this Agreement:

Resellers:

Doc Ref Number:	DTI-0065	Revision Number:
Document Type:	Internal Policy	Page: 1 of 11
Policy Title:	Confidentiality(Non-disclosure) and Integrity of Data	

Synopsis:	Employees and contractors working for the Delaware Department of Technology & Information (DTI) have unique access to citizen, customer and employee records, communications and data storage equipment. This policy establishes expectations and standards of behavior in safeguarding information that others entrust to us. Employees and contractors are required to take all necessary precautions not only to prevent unauthorized disclosure or modification of State computer files, but will bring to the attention of their immediate supervisor any situation which might result in, or create the appearance of, unauthorized disclosure or modification of State data.		
Authority:	<p>Delaware Title 29, Chapter 90C, § 9002C. Establishment of the Department of Technology and Information.</p> <p>A Department of Technology and Information is established, and shall have, in addition to the other powers, duties and functions vested in the Department by this chapter and where consistent with express provisions of this chapter, the power and duty to perform all the powers, duties and functions heretofore vested in the department by §§ 6352, 6353, 6354, 6357, 6358 and 6360 of this title. (73 Del. Laws, c. 86, § 1.)</p>		
Applicability:	<p>All organizational elements of the Department of Technology and Information, including but not limited to:</p> <ul style="list-style-type: none"> - DTI Employees - State Employees working within DTI - Contractors and private organizations providing products, services and/or support. 		
Effective Date:	December 07, 2005	Expiration Date:	None
POC for Changes:	Chief Technology Officer		
Approval By:	Cabinet Secretary - State Chief Information Officer		
Approved On:	January 3, 2006		

Doc Ref Number:	DTI-0065	Revision Number:
Document Type:	Internal Policy	Page: 2 of 11
Policy Title:	Confidentiality(Non-disclosure) and Integrity of Data	

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I. Policy

A Message to All DTI Employees/Contractors

Our jobs at the Delaware Department of Technology & Information (DTI) give us unique access to citizen, customer and employee records, communications and data storage equipment. We are trusted to use their information with care. We will carefully handle both DTI information and information that others entrust to us. Each of us is responsible for upholding the DTI's commitment to the highest standards of business conduct.

DTI employees/contractors will take all necessary precautions not only to prevent unauthorized disclosure or modification of State computer files, but will bring to the attention of their immediate supervisor any situation which might result in, or create the appearance of, unauthorized disclosure or modification of State data.

Because this agreement cannot address every situation and issues continue to evolve in our rapidly changing environment, you can seek assistance; discuss concerns or report violations through numerous channels, including your supervisor or Team Leader.

You are accountable for familiarizing yourself with this agreement:

Read: the agreement and give careful attention to those subjects that most pertain to your job duties.

Understand: the purpose of this Confidentiality and Non-disclosure Agreement and your overall responsibilities for DTI's standards of business conduct.

Consult Related Documents: employees/contractors should review and understand related DTI policies, including those governing "Acceptable Use", "FOIA", "e-Records Request", "Data & UserID Security", "Data Classification Policy" and "Disposal of Electronic Equipment/Storage Media."

Acknowledgement: employees/contractors must attest to their compliance by signing the Confidentiality and Non-disclosure acknowledgement form. See appendices 1 & 2.





STATE OF DELAWARE
DEPARTMENT OF TECHNOLOGY AND INFORMATION
801 Silver Lake Blvd.
Dover, Delaware 19904

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Introduction

DTI employees are responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or the medium on which they are stored; e.g., printed page, photocopies, or tape or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of that State Agency's Representative. All source data submitted by any State Agency to the Department of Technology and Information, and all data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State Agency and DTI.

Note: References to "customers" in this document include the agencies/organizations we serve, citizens, and DTI employees

Applicability

DTI's expectations for responsible conduct are applicable to all parties who work on behalf of DTI, including, but not limited to, its employees, consultants, in-house contractors, and employees of vendors completing work on behalf of DTI.

Corrective Action and Discipline

Employees who violate DTI policies and standards may be disciplined up to and including dismissal, as well as be subject to civil and criminal charges. If misconduct occurs, DTI is committed to taking prompt and responsive action to correct the situation and discipline responsible individuals.

Management employees may be disciplined if they condone misconduct, do not report misconduct, do not take reasonable measures to detect misconduct, or do not demonstrate the appropriate leadership to ensure compliance.

DTI has no authority to discipline consultants, in-house contractors, and employees of vendors completing work on behalf of DTI, but expects the same level of compliance and will take the appropriate steps to ensure any misconduct is appropriately addressed.

Compliance with Privacy Laws

We have a responsibility to our customers (agencies, citizens, employees) to comply with all applicable privacy laws and regulations. We should not listen -nor allow others- to customer conversations or monitor data transmissions unless it is part of our job responsibilities, and even then, only in compliance with applicable law. We should not tamper with or intrude upon conversations using wiretaps or other methods, except when authorized by law. We will neither confirm nor deny to customers or to any unauthorized person the existence of, or any information concerning, a subpoena, warrant or court order for communications, wiretaps and/or records, unless authorized by law.

During the course of employment, employees may receive a subpoena or similar inquiries from law



Question – A neighbor is working on a committee to help elect a new state representative. Her committee needs voter registration information for the communities in our area. She has asked me to help out by providing that information. Is it OK to try to get this information for my neighbor.

Answer - NO. You should never use your position at DTI to access information that is not available directly to the public. You should direct your neighbor to the Department of Elections who ensures all requests for voting information complies with Delaware law.



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enforcement or the government requesting or directing them to furnish records or information in the possession of DTI, including records or other customer-specific data. Employees should provide these requests immediately to their Team Leader or directly to DTI's FOIA Coordinator (Office of the CIO Executive Secretary).

We Safeguard Customer Information

DTI possesses sensitive, detailed information about customers who trust us to safeguard that information. Any inappropriate use of confidential customer information violates that trust and weakens our relationship with our customers. For these reasons, it is a serious breach of our policies, and in some cases of the law, to use customer information for anything other than DTI business purposes. Accessing customer records, unless there is a valid business purpose, or divulging this information to any other persons, including friends, co-workers or former employees, is inappropriate. Unless we have a supervisor's express approval, we should never access our own accounts, or those of our relatives, friends, or co-workers.

Question - A friend of mine in the real estate business has asked me for some confidential information on a renter who skipped out owing three months' rent. Through my job, I have access to the information my friend needs. Can I give it to my friend?

Answer - Absolutely not. You should refuse to provide that information to your friend. Our policies prohibit using confidential information for anything other than legitimate DTI business purposes. Even requests from law enforcement or governmental agencies must always be referred to the DTI FOIA Coordinator.

U.S. Government Classified and National Security Information

Some of our employees have access to information covered under the U.S. Espionage Act and other regulations that govern our work with U.S. classified and national security information and impose stringent penalties for misuse of this information.

We will protect U.S. Government classified and national security information by:

- Ensuring that access to this information is restricted only to employees with proper clearance and a "need to know".
- Safeguarding this information and other assets related to national defense from others, whether such items are classified or unclassified.
- Coordinating all activities related to this information, such as proper clearance and contracts, with DTI Security



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Protecting Information

We will safeguard Information in the possession of DTI by:

- Following DTI policies and procedures for identifying, using, protecting and disclosing this information.
- Properly returning, destroying or otherwise disposing of Information when it is no longer of use.
- Utilizing a "confidential" marking as appropriate for Information classified as "confidential, secret, or top secret", and ensuring that this information retains its labeling when reproducing any portion of it.
- Keeping "confidential, secret, or top secret" Information in protected places (such as secured offices, locked drawers, and password-protected computer systems).
- Taking appropriate precautions when transmitting "confidential, secret, or top secret" Information, either within or outside the DTI. In general, we should ensure that Information is not transmitted through unsecured e-mail, posted onto the Internet or sent to unattended fax machines.
- Complying with any agreements regarding the use and protection of Information.
- Protecting information owned by others. We are responsible for knowing what these agreements require of us.
- Only disclosing Information according to agreed-upon terms, generally as outlined in non-disclosure agreements between the DTI and others, or according to directives from DTI representatives authorized to permit disclosure of Information.
- Informing our Supervisor or Team Leader if we believe that any Information has been or is being used or disclosed improperly.

Question - Because I work for the State, sometimes my family or friends ask me to get information about someone's vehicle tag number. Is this appropriate?

Answer - No. You should never use your job with DTI to obtain information that isn't available to the public.

Releases of and Requests for DTI Information

We will only release DTI Information under the following conditions:

- To employees who have a legitimate, business-related need to know the DTI Information, and who have been advised of the applicable confidentiality requirements.
- To outside parties, whom we expect will treat the information appropriately, (for example, consultants, suppliers, joint venture partners) to whom disclosure has been specifically authorized and who have entered into a written agreement to receive DTI Information under terms and conditions that restrict use and disclosure of the DTI Information.



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- In such a way that we are assured of the security of that disclosure. For example, we will avoid sending DTI Information to unattended fax machines or across unsecured e-mail.

We never release DTI Information or information that could be perceived as DTI Information:

- In public Internet forums, such as in chat rooms or on electronic bulletin boards.
- **When outside parties, such as the media, or outside attorneys request DTI Information, we will not respond to this request but will inform our Supervisor or Team Leader about the request and take a call back with the requesting party,**

Employee Separation

When leaving the DTI's employment, we must understand our responsibilities to:

- Return any DTI Information in our possession.
- Not take any DTI Information or copies with us.
- Continue safeguarding DTI Information and not disclose it to or use it for the benefit of other parties, including future employers, without DTI's specific prior written authorization.

Reporting Improper Disclosures and Use

We will report any improper disclosures or unauthorized use of DTI Information. Timely reporting of improper disclosures or unauthorized use can assist us in minimizing any damages; including informing certain parties of their duties to protect the DTI Information or taking other measures that protect our interests.



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Privacy Principles

DTI has adopted ten "Privacy Principles" which reflect the DTI's commitment to safeguarding customer privacy in an era of rapidly changing communications technology and applications. We should be aware of these Principles and how they impact our jobs.



General Privacy Principles

1. DTI obtains and uses individual customer information for business purposes only.
2. DTI will only disclose information with the permission of the customer or as directed by a court order.
3. DTI complies with all applicable privacy laws and regulations.
4. DTI will safeguard all information and assets related to national defense.
5. DTI strives to ensure the integrity of all data and information entrusted to us.
6. DTI considers privacy implications as new services are planned and introduced and informs customers of the privacy implications of these services.
7. All DTI employees are responsible for safeguarding individual customer communications and information.
8. DTI participates in and supports consumer, government and industry efforts to identify and resolve privacy issues.
9. DTI will properly return, dispose of, or destroy information when it is no longer of use.
10. Each DTI employee and contractor is responsible for implementing these Principles.



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II. Definitions

Information

For purposes of this policy, Information is:

- any and all data/information that has been entrusted to us by other agencies and organizations. Control of the disclosure of this data remains with the agency/organization.
- any and all data/information owned by DTI but not previously released to the public.

III. Development and Revision History

Initial version established **December 07, 2005.**

IV. Approval Signature Block

Name & Title: Cabinet Secretary - State Chief Information Officer	Date

V. Listing of Appendices

Appendix 1 – Employee Acknowledgement Certification

Appendix 2 – Contractor Acknowledgement Certification





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Appendix 1 – Employee Acknowledgement Certification



State of Delaware
DEPARTMENT OF TECHNOLOGY AND INFORMATION
William Penn Building
801 Silver Lake Boulevard
Dover, Delaware 19904

DTI Employee Confidentiality (Non-Disclosure) and Integrity of Data Agreement

This is to certify that I have read and agree to abide by the guidelines set forth within the DTI Confidentiality (Non-Disclosure) and Integrity of Data Policy. As an employee of the State of Delaware, I fully intend to comply with this policy realizing that I am personally liable for safeguarding information in the possession of the State of Delaware and subject to the corrective action and/or discipline described in this agreement, up to and including dismissal for just cause. If I have any questions about this agreement, I understand that I need to ask my supervisor for clarification.

Name: _____

Signature: _____

Date: _____





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Appendix 2 – Contractor Acknowledgement Certification



State of Delaware
DEPARTMENT OF TECHNOLOGY AND INFORMATION
William Penn Building
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Dover, Delaware 19904

Contractor Confidentiality (Non-Disclosure) and Integrity of Data Agreement

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

I/we, as an employee(s) of _____ or officer of my firm, when performing work for the Department of Technology and Information, understand that I/we act as an extension of DTI and therefore I/we are responsible for safeguarding the States' data and computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI. Furthermore, I/we understand that I/we are to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data.

Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may mean the loss of my position and benefits, and prosecution under applicable State or Federal law. This statement applies to the undersigned Contractor and to any others working under the Contractor's direction.



"Enabling Excellence In Delaware State Government"



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I, the Undersigned, hereby affirm that I have read DTI's Policy On Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above.

Contractor Signature_____

Date: _____

Contractor Name: _____

