

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

**MASTER AGREEMENT  
Master Agreement No: MNWNC-121  
NetApp, Inc.  
(hereinafter "Contractor")  
And  
State of ND  
(hereinafter "STATE", "Participating State", or "Participating Entity")  
ND State Contract #022-MNWNC-121-PA**

**1. Scope: This addendum allows for purchase of the following Computer Equipment/Services: "Band 5 Storage Including related Peripherals & Services" led by the State of Minnesota along with a multi-state sourcing team for use by the Participating State's entities, governmental boards and commissions, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, nonprofit entities established on behalf of public entities, tribal agencies, and the International Peace Garden. This Addendum is not a purchase order and it does not guarantee any purchases will be made by any Participating State procuring agency. Each Participating State procuring agency is responsible for complying with any laws that regulate its individual purchase authority. The parties agree to the following terms and conditions and expressly agree that if any of the following terms and conditions are in conflict with any of the terms and conditions of the Contract, then, notwithstanding any term in the Contract, the following terms and conditions govern and control the rights and obligations of the parties. Any amendments to the Participating Addendum, or any other amendments, must be in writing and executed by each party.**

The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor. The Products and Services available under this Participating Addendum include all Products and Services in scope for the Master Agreement, with the exception of the following change for the configuration limits:

- a. Server and Storage category is increased to \$750,000.
- b. Printers and scanners in all categories are increased to \$30,000.
- c. The following copiers cannot be sold unless the Participating State and Participating Entity (applies to State Agencies only) has received prior contract exemption approval:
  - i. Convenience Black and White Copiers with Speed in Impressions per Minute (IPM) 90 or greater
  - ii. Convenience Hybrid Copiers with Speed in Impressions per Minute (IPM) 50 or greater
  - iii. Any Production Black and White Copiers
  - iv. Any Wide Format Copiers
  - v. Any Color Production Copiers

To the extent applicable, this Addendum is effective and will replace and supersede the existing Participating Addendum between Contractor and Participating State/Entity under the WSCA

Master Price Agreement Number B27170, when executed by both parties.

This Addendum will be coterminous with the Master Agreement and any extensions of the Master Agreement, unless terminated pursuant to MASTER AGREEMENT TERMS AND CONDITIONS B. WSCA-NASPO TERMS AND CONDITIONS, Section 6 Cancellation.

2. Participation: Use of specific NASPO ValuePoint cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) are authorized pursuant to N.D.C.C. § 54-44.4-13. Issues of interpretation and eligibility for participation shall be determined by the State Procurement Office.

3. Order of Precedence:

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

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

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

- a. **Prepayment.** STATE will not make any advance payments before performance by CONTRACTOR under this Participating Addendum (this section modifies Exhibit A, section B). Notwithstanding the foregoing, maintenance payments, if any, may be made up to one year in advance.
- b. **Payment of Taxes by State.** STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by CONTRACTOR (this section modifies Exhibit A, section B).
- c. **Applicable Law and Venue.** This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be brought and solely litigated in the District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens* (this section modifies Exhibit A, sections B and C).

**d. Insurance.** CONTRACTOR shall secure and keep in force during the term of this Participating Addendum and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this PARTICIPATING ADDENDUM, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages (this section modifies Exhibit A, section B):

- i. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limit of \$1,000,000 per occurrence and in the aggregate.**
- ii. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limit of and \$1,000,000 per occurrence and in the aggregate.**
- iii. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Participating Addendum.**
- iv. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.**

The insurance coverages listed above must meet the following additional requirements:

- v. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.**
- vi. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.**
- vii. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.**
- viii. The state of North Dakota and its agencies, officers, and employees shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the CONTRACTOR.**
- ix. The insurance required in this agreement, through a policy or endorsement, shall include:**
  - 1. Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.**
  - 2. A provision that CONTRACTOR's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-**

insurance or self-retention maintained by the State shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

3. Cross liability/severability of interest for all policies and endorsements.
  4. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any additional legal fees require approval by the CONTRACTOR's insurance carrier prior to the STATE's hiring of counsel.
  5. The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- x. CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - xi. Failure to provide insurance as required in this agreement is a material breach of Participating Addendum entitling STATE to terminate this agreement immediately.
  - xii. CONTRACTOR shall use reasonable efforts to provide at least 30 day notice of any cancellation of the policies or endorsements.
- e. **Indemnification.** In addition to any indemnity obligations found within the Master Agreement, CONTRACTOR agrees that any attorney appointed to represent the STATE must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08 (this section modifies Exhibit A, sections B and C).
- f. **Limitation of Liability.** Except for direct damages that cannot be limited under N.D.C.C. § 32-12.2-15, CONTRACTOR's limitation of liability shall be that specified in Section 17 of Exhibit C to the Master Agreement (this section modifies Exhibit A, section C).
- g. **Confidentiality.** CONTRACTOR shall not use or disclose any information it receives from STATE under this Participating Addendum that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Participating Addendum or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Participating Addendum (this section modifies Exhibit A, section B).
- h. **Compliance with Public Record Law.** CONTRACTOR understands that, except for disclosures prohibited in this Participating Addendum, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Participating Addendum, except for records that are

confidential under this Participating Addendum, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request (this section modifies Exhibit A, section B).

- i. **Severability.** If any term of the Master Agreement, including this Participating Addendum, is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Master Agreement or Participating Addendum did not contain that term (this section modifies Exhibit A, sections B and C).
- j. **Spoliation – Notice of Potential Claims.** CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Participating Addendum. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident (this section modifies Exhibit A, section B).
- k. **Alternative Dispute Resolution – Jury Trial.** STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial (this section modifies Exhibit A, section B).
- l. **State Audit.** All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Participating Addendum are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Participating Addendum and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice (this section modifies Exhibit A, sections B and C).
- m. **Takeback and Other Environmental Programs.** Takeback and/or recycling of products by agencies covered by this Addendum are subject to approval of OMB State Surplus Property pursuant to N.D.C.C. § 54-44.4-05.5 (this section modifies Exhibit A, section B).

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

**Contractor**

Name	Denise Orosco
Address	495 East Java Drive, Sunnyvale, CA 94089
Telephone	530-644-1467

Fax	703-918-7200
E-mail	Denise.orosco@netapp.com

**Participating Entity**

Name	Tricia Opp
Address	600 East Boulevard Avenue., Dept 012, Bismarck, ND 58505
Telephone	701-328-1721
Fax	701-328-1615
E-mail	topp@nd.gov

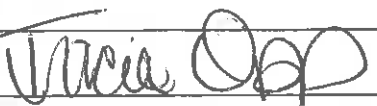
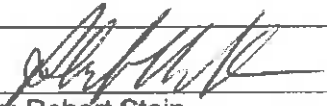
**6. Partner Utilization:** Each state represented by WSCA-NASPO participating in this Master Agreement independently have the option of utilizing partners. Only partners approved by this Participating State may be deployed. The participating State will define the process to add and remove partners and may define the partner's role in their participating addendum. The Contractors partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Approved partners are: All NetApp partners are allowed.

All of contractor's authorized business partners are listed on the state's landing page on this website: <http://www.netapp.com/us/how-to-buy/wscal/index-MNWNC121.aspx>.

**7. Terms.** The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

**8. Orders:** All orders placed by Participating Entities within the State must include the Participating State contract No.: 022-MNWNC-121 PA as well as the Lead State Master Agreement No.: MNWNC-121.

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

Participating State:	Contractor: NETAPP, INC.
By: 	By: 
Name: Inicia Opp	Name: Robert Stein
Title: Procurement Officer II	Title: VP Sales
Date: 9/4/15	Date: 8/19/15