

**PUBLICLY ACCESSIBLE CONTACT
AMENDMENT 002**

**Agreement Between
The Rector and Visitors of the University of Virginia
and
NetApp, Inc.**

The Rector and Visitors of the University of Virginia ("University") and NetApp, Inc. ("NetApp") are amending their Agreement dated October 1, 2015 as follows:

- The Term end date is changed to July 31, 2021.

All other terms and conditions of the Agreement dated January 15, 2014 remain the same.

ACCEPTANCE

**For the Rector and Visitors
of the University of Virginia**

Eric N. Denby, Director
Procurement & Supplier Diversity Services

For NetApp, Inc.

Mary Jo Dorr
Controller, USPS

Date

Agreement #: **UVA1639592-PAC**

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

MASTER AGREEMENT

Master Agreement No: MNWNC-121

NetApp, Inc.

(hereinafter "Contractor")

And

The Rector and Visitors of the University of Virginia

(hereinafter "Participating Entity")

(Participating Entity Contract Number UVA1639592)

1. Scope: This addendum allows for purchase of the following Computer Equipment/Services: **Computer Equipment, Peripherals and Related Services** led by the State of Minnesota along with a multi-state sourcing team for use by state agencies and other entities located in the Participating State/Entity that is authorized by that state's statutes to utilize state /entity contracts, and which receives prior written approval of the state's chief procurement official.

The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor. The configuration limits and restrictions for the Master Agreement are provided with revisions identified by the Participating State in this Participating Addendum.

2. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use University of Virginia's contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Order of Precedence:

1. A Participating Entity's Participating Addendum ("PA"); A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota NASPO ValuePoint Master Agreement

2. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)

3. The Solicitation including all Addendums; and

4. Contract Vendor's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an

Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Participating State Modifications or Additions to Master Agreement:

The following changes shall be made to the Master Agreement with respect to Contractor's performance pursuant to this Addendum. The following terms and conditions shall apply in the following order of precedence:

- A. Agreement ;
- B. Agreement Attachment 1, Contractual Provisions;
- C. Agreement Attachment 2, Warranty
- D. NetApp and WSCA/NASPO agreement, # MNWNC-121;
- E. Purchasing Manual for Institutions of Higher Education and Their Vendors

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	
E-mail	Denise.orosco@netapp.com

Participating Entity

Name	Michael Warlick
Address	Carruthers Hall, 1001 N. Emmet Street PO Box 400202 Charlottesville, Virginia 22904-4202
Telephone	434-924-8918
Fax	
E-mail	warlick@virginia.edu

6. Partner Utilization: Each state represented by NASPO ValuePoint 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:


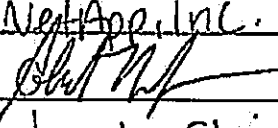
- SLATT
- ePlus
- Presidio
- Data Network Solutions
- CDWG
- DLT Solutions
- IronBrick Associates, LLC

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/wsca/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 or Purchasing Entities within the State must include the Participating Entity contract number: UVA1639592 as well as the Lead State Master Agreement Number: MNWNC-121.

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

Participating State:		Contractor:	
By:	 Digitally signed by Eric N. Denby 9 Date: 2015.08.28 09:42:29 -0400	By:	<i>NetApp, Inc.</i> 
Name:	For the Rector and Visitors of the University of Virginia	Name:	Robert Stein
Title:	Eric Denby, Director Procurement and Supplier Diversity Services	Title:	VP Sales
Date:	Tracking #: 1639592	Date:	8/27/15

For questions on executing a participating addendum, please contact:
NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

AGREEMENT

This Agreement, effective 1st day of October 2015, is by and between the Rector and Visitors of the University of Virginia (the "University") and NetApp, Inc. ("NetApp").

TERM

The initial term of this Agreement will commence on the execution date and will be in effect until March 31, 2020, conditioned upon the renewal of contract number MNWNC-121 referenced below. The parties may terminate this Agreement at any time by giving forty-five (45) days written notice.

WITNESS

The University, as allowed by the Code of Virginia and the Management Agreement between the Commonwealth of Virginia and the University, is accessing the agreement between NetApp and WSCA/NASPO (contract number MNWNC-121) as the basis for entering into this Agreement. The University and NetApp, having negotiated the specific terms and conditions required by the University, hereby agree as follows:

I. Contents

These documents are hereby incorporated into this Agreement:

- A. Agreement Attachment 1, Contractual Provisions;
- B. Agreement Attachment 2, Warranty
- C. NetApp and WSCA/NASPO agreement, # MNWNC-121, incorporated by reference.
- D. Purchasing Manual for Institutions of Higher Education and Their Vendors

To the extent that the terms of the various Agreement documents are in conflict, the order of precedence shall be as detailed above, with the terms of this Agreement and Agreement Attachment 1 will prevail over all other Agreement documentation.

II. Specific Provisions

A. Goods and Services / Discounts

NetApp will provide, warrant, and offer maintenance services on all of its products. The products and services, and the associated guaranteed minimum discount offered by NetApp based on categories, are shown below:

Categories A & XA, B & XB, E, J & XJ, L, M, N	16.25%
Category C	3.25%
Categories D & K	8%
Categories P, S, T & XS, W	15.25%

The University will pay the lower of NetApp's North American list prices minus the applicable discounts indicated above, available at <http://www.netapp.com/us/how-to-buy/wsca/virginia.aspx>, or an Announced Promotion Price, Education Discount Price, General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit discount.

NetApp may change the price of any product or service at any time, based upon documented baseline price changes, but the guaranteed price discount levels will remain unchanged during this Agreement unless approved by the University beforehand.

B. Product Additions

NetApp may, during the life of this Agreement, offer additional products, services or product lines. The University will consider these additions as enhancements. The pricing for these products will incorporate, to the extent possible, comparable price discount levels approved by the University for similar products and services. In the event NetApp adds a new specialty product line which represents product(s) that are substantially different from products or brands currently represented in

this Agreement, the University and NetApp may enter into negotiations to add the product(s) into the Agreement.

C. Resellers/Subcontractors

Delivery and installation, support, warranty, and maintenance may be provided by NetApp using Resellers/Subcontractors. The University's use of such services from the Resellers/Subcontractors listed below shall not void any NetApp-provided warrantee, make any product furnished under this Agreement ineligible for maintenance services, nor relieve NetApp of any contractual obligation under this Agreement. The following Resellers/Subcontractors are authorized to resell NetApp products and services under this Agreement:

- SLAIT
- ePlus
- Presidio
- Data Network Solutions
- CDWG
- DLT Solutions
- IronBrick Associates, LLC

The following Resellers/Subcontractors are authorized to provide NetApp support, warranty, and maintenance services under this Agreement:

- SLAIT
- Presidio
- DLT Solutions
- IronBrick Associates, LLC

D. Warranty

1. NetApp agrees to warrant and assume legal responsibility for each NetApp branded product that it licenses, or sells, to the University under this Agreement. Taking legal responsibility means NetApp must provide

warranty and maintenance call numbers, accept, process, and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities. NetApp acknowledges that the Uniform Commercial Code applies to this Agreement. In general, NetApp warrants for a period of three (3) years from the date of hardware delivery that:

- a. The hardware materially conforms to the specific technical information about NetApp's products which is published in NetApp's product manuals or data sheets as of the date of delivery.
- b. The product is in the legal possession of the University, as defined in Section F, Shipment and Risk of Loss, before any warranty period begins.
- c. Attachment 2 contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Attachment 2. The warranties will not apply to use of a product other than as anticipated and intended by NetApp, to a problem arising after changes or modifications to the products or operating system by any party other than NetApp (unless expressly authorized in writing by NetApp), or the use of a product in conjunction or combination with other products or software not authorized by NetApp. The following is a list of the warranties attached as Attachment 2:
 - General Warranty (includes NetApp's standard Hardware and Software Warranties)
 - Extended Warranty Hardware Support (available for purchase)
 - Software Support Plan (available for purchase)

2. Contractor may modify the warranties described in Attachment 2 from time to time with the prior approval of the University Contract

Administrator.

3. Warranty documents for products manufactured by a third party, including details on how such products are covered by NetApp maintenance services are provided at:

<http://support.netapp.com/NOW/products/support/#supportedge>.

E. Substitutions

Substitutions will only be allowed with the University's prior approval. If ordered products no longer become available or are placed on back-order, the University will have the option to purchase another product or cancel the order without penalty prior to shipment.

F. Shipping & Risk of Loss

All deliveries shall be F.O.B. Destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by NetApp. Responsibility and liability for loss or damage shall remain with NetApp until final inspection and acceptance when responsibility shall pass to the University except as to fully-litigated latent defects, fraud and NetApp's warranty obligations. Unless otherwise arranged between the University and NetApp, all products shall be shipped within 30 days after receipt of a purchase order, by a reliable and insured shipping company.

G. Returns

The University shall determine whether all products meet NetApp's published specifications. The University will make every effort to notify NetApp within 30 days following delivery of non-acceptance of a product. All products shall be deemed accepted by the university at thirty (30) days following delivery should the University not notify NetApp within that time period of either acceptance or non-acceptance of said products. NetApp will assume all restocking/freight costs associated with products judged to be unacceptable and are consequently rejected

by the University. NetApp will be responsible for the dispositions of all defective, damaged, rejected or over-shipped Goods (with the understanding that the University may choose to accept, in its sole discretion, over-shipped Goods). The University will endeavor to include original packing materials for all returns, and NetApp will provide a Return Merchandise Authorization (RMA) number. NetApp will provide any needed return authorization information no later than seven business days after the NetApp confirms that the product does not meet NetApp's published specifications.

H. Contract Administrator

The individual named below will serve as the University's Contract Administrator under this Agreement:

Michael Warlick
Senior Buyer, Procurement Services
University of Virginia
Carruthers Hall, 1001 N. Emmet Street
PO Box 400202
Charlottesville, Virginia 22904-4202
Phone: 434-924-8918; Email: warlick@virginia.edu

Individual University departments who place orders to NetApp will be the first contact for issues/problems surrounding an order. The departments cannot approve amendments or price changes to this Agreement.

NetApp will not make any commitments or comments, or take actions on behalf of the University, without the explicit direction of the Contract Administrator.

The University reserves the right to change its Contract Administrator upon notice to NetApp.

I. Orders:

All orders placed by Participating Entities or Purchasing Entities within the State must include the Participating State contract number: UVA1639592 as well as the Lead State Master Agreement Number: MNWNC-121.

This Agreement represents the entire agreement between NetApp and the University relating to the subject matter hereof and supersedes any previous agreements.

ACCEPTANCE

**For the Rector and Visitors
of the University of Virginia**



Digitally signed by Eric
N. Denby 9
Date: 2015.08.28
09:28:27 -04'00'

**Eric N. Denby, Director
Procurement & Supplier Diversity Services**

8-28-15

Date

For NetApp, Inc.

A handwritten signature in black ink, appearing to read 'Robert Stein', written over a horizontal line.

Robert Stein

VP Sales

8/21/15

Date

Agreement #: UVA1639592

Attachment 1
Contractual Provisions

- A. Nondiscrimination
During the performance of this Agreement, NetApp will comply with the contract provisions contained in Section 2.2-4311(1) and (2) of the Code of Virginia or any successor provisions which may be applicable to this Agreement. Also, in accordance with Section 2.2-4343.1, the University does not discriminate against faith-based organizations.
- B. Conflict of Interests
NetApp represents to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 *et seq.*), the Virginia Ethics In Public Contracting Act (Va. Code 2.2-4367 *et seq.*), the Virginia Governmental Frauds Act (Va. Code 18.2-498.1 *et seq.*) or any other applicable law or regulation.
- C. Assignment
Neither party to this Agreement will have the right to assign this Agreement in whole or in part without the prior written consent of the other.
- D. Amendments
No amendment of this Agreement will be effective unless it is reduced to writing and executed by the University's Director of Procurement Services and by the individual signing NetApp's proposal or by other individuals named by either party as specified in Section E, Notices below. If NetApp deviates from the terms of this Agreement without a written amendment, it does so at its own risk.
- E. Notices
Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt; or (4) if sent by facsimile, when received (as verified by sender's machine) if delivered no later than 4:00 p.m. (receiver's time) on a business day or on the next business day if delivered (as verified by sender's machine) after 4:00 p.m. (receiver's time) on a business day or on a non-business day. All such notices will be addressed to a party at such party's address or facsimile number as shown below.

If to the University:
Eric N. Denby
Director of Procurement Services
University of Virginia

Carruthers Hall
1001 North Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904-4202
Fax: (434) 924-6154

If to the NetApp:
Legal Department
NetApp, Inc.
1921 Gallows Road
Suite 600
Vienna, VA 22182

F. Independent Contractors

NetApp is not an employee of the University, but is engaged as an independent contractor. NetApp will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes – other than sales taxes owed by the University -- relating to NetApp's performance of this Agreement. Nothing in this Agreement will be construed as authority for NetApp to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.

G. Workers' Compensation and Employers' Liability

NetApp will (i) maintain Employers Liability coverage of at least \$100,000 and (ii) comply with all federal or state laws and regulations pertaining to Workers' Compensation Requirements for insured or self-insured programs.

H. Drug-Free Workplace

NetApp, its agents and employees are prohibited, under the terms of this Agreement, Code of Virginia Section 2.2-4312, and the Commonwealth of Virginia, Department of Human Relations Management Policy Number 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, NetApp agrees to 1) provide a drug-free workplace for NetApp's employees; 2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in NetApp's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of NetApp that it maintains a drug-free workplace; and 4) include the provisions of the foregoing clauses in every

subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to a NetApp, the employees of whom are prohibited from engaging in the unlawful manufacturing, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

I. eVA Registration

NetApp agrees that it is a registered eVA vendor and subject to an eVA transaction fee, for which NetApp will be invoiced by Commonwealth of Virginia, Department of General Services. All Resellers/Subcontractors authorized to provide products and services under this Agreement will be required to register with eVA. Additional information is available at www.eva.virginia.gov

J. Contractor License Requirements

State statutes and regulatory agencies require that some firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. If firms provide removal, repair, improvement, renovation or construction-type services they, or a qualified individual employed by the firm, must possess and maintain an appropriate State of Virginia Class A, B, or C License (as required by applicable regulations and value of services to be performed) for the duration of this Agreement. It is the firm's responsibility to comply with the rules and regulations issued by the appropriate State regulatory agencies. If the firm will be providing these types of services, a copy of the license must be furnished to the University.

K. Goods and Services

During the term of this Agreement, NetApp will provide for the University the goods and services offered to the University in its proposal and/or any addenda to its proposal which has been approved in writing by the University and as may be further specified by the University in writing when it selected the firm.

L. Unauthorized Alien Use

The NetApp(s) warrants that it does not knowingly employ an "unauthorized alien," as such term is defined in the federal Immigration Reform and Control Act of 1986. The NetApp(s) furthermore agrees that, during the term of this Agreement, it will not knowingly employ an unauthorized alien.

M. Waiver

No waiver of any right hereunder will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right hereunder will prevent a later exercise of such or any other right.

N. Indemnification

NetApp will indemnify and hold harmless the Commonwealth of Virginia, the Rector and Visitors of the University of Virginia, and their agents, employees and officials (hereinafter "Customer") from any and all costs, damage or loss, claims, liability, damages, expenses (including, without limitation, attorneys' fees and expenses) caused by or arising out of the performance or non performance of this Agreement by NetApp or its agents or subcontractors, including the provision of any services or products. In no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, indirect or consequential damages (including downtime costs, loss or corruption of data, lost revenue or lost profits), regardless of whether such damages are based on contract, tort, warranty or any other legal theory. This exclusion is independent of any remedy set forth in this Agreement.

To the extent that limitation of liability is permitted by law, NetApp's liability to Customer is limited to US\$ 1,000,000. This limitation is cumulative and not per incident.

The limitations set forth in this Section will not apply to damages for bodily injury or death, or to the Patent, Copyright, Trademark and Trade Secret Indemnification.

O. Governing Law

This Agreement will be governed in all respects by the laws of the Commonwealth of Virginia.

P. Termination

If NetApp fails to provide quality goods or services in a professional manner, solely as determined by the University, and, upon receipt of notice from the University, does not correct the deficiency, to the University's satisfaction within a reasonable period of time, not to exceed five calendar days unless otherwise agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to NetApp.

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

Q. Non-Appropriation

Funding for any Agreement between the University and NetApp is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then this Agreement may be terminated by the University effective the last day for which appropriated funding is available.

R. Right of Audit

NetApp shall maintain complete records of purchases and amounts billable to and payments made by the Purchasing Agency hereunder to NetApp directly in accordance with generally accepted accounting principles and practices for audit purposes only. NetApp shall retain such records for at least a period of 3 years from the date of termination of this Agreement, or longer if required by laws of the Commonwealth of Virginia. The Purchasing Agency will give NetApp 30 days advance written notice, to perform an audit of NetApp's records, identified above, as it pertains only to the Purchasing Agency. The Purchasing Agency's audits are limited to once per year, and such audit will be conducted during NetApp's normal business hours and shall not duly interrupt or interfere with NetApp's normal business operations, and provided further that in the event that such an audit is conducted by a third party, such third party shall, prior to conducting such an audit, execute a confidentiality agreement of the benefit of NetApp in a form reasonably satisfactory to NetApp.

S. Contractual Claims / Dispute Resolution

The Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments requires NetApp with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of NetApp's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. The University's procedure for deciding such contractual claims can be found at:
<http://www.procurement.virginia.edu/main/publicpostings/rfp/resolution.pdf>

T. Insurance

Listed below is the insurance NetApp must maintain as part of this Agreement. In no event will NetApp construe these minimum required limits to be its limit of liability to the University.

Comprehensive Commercial General Liability:

NetApp and any Subcontractor will maintain a minimum combined single Limit of Liability for bodily injury and property damage of \$750,000 per occurrence, with coverage for: premises/operations and products/completed operations.

Automobile Insurance:

NetApp and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of \$750,000 per accident on all owned, hired, and non-owned vehicles operated by its employees.

U. Cooperative Purchasing / Use of Agreement by Third Parties

It is the intent of this Agreement to allow for cooperative procurement. Accordingly, any public body (to include government/state agencies, political subdivisions, etc.), cooperative purchasing organizations, public or private health or educational institution, or any University related foundation may access the Agreement if authorized by NetApp.

Participation in this cooperative procurement is strictly voluntary. If authorized by NetApp, the Agreement may be extended to the entities indicated above to purchase goods and services in accordance with the Agreement. As a separate contractual relationship, the participating entity will place its own orders with NetApp and will fully and independently administer its use of the Agreement to include contractual disputes, invoicing and payments without direct administration from the University. No modification of the Agreement or execution of a separate agreement is required to participate; however, the participating entity and NetApp may modify the terms and conditions of the Agreement to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and NetApp.

NetApp will notify the University in writing of any such entities accessing the Agreement. NetApp will provide semi-annual usage reports for all entities accessing the Agreement. The University will not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by NetApp to extend the Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of the Agreement no matter the circumstances.

V. The University's Authorized Representatives

The only persons who are or will be authorized to speak or act for the University in any way with respect to this Agreement are those whose positions or names have been specifically designated in writing to NetApp by the University's Director of Procurement Services.

W. Purchasing Manual

This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Their Vendors" which is available on Procurement Service's web site at: <https://vascupp.org/hem.pdf>. Revisions to the manual which materially impact NetApp's performance under this contract will be brought to the attention of NetApp by the University and NetApp shall have the option of accepting the revised terms or, if the parties are unable to reach a mutual agreement on inclusion of such future revisions, this agreement shall be terminated in accordance with the termination provisions set forth in the Agreement.

X. Small, Disadvantaged, Women-owned and Minority (SWAM) Business Reporting

The NetApp(s) will identify and fairly consider SWAM firms for subcontracting opportunities when qualified SWAM firms are available to perform a given task in performing for the University under the resulting Agreement. The NetApp(s) will submit a quarterly SWAM business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January. The NetApp(s) will submit the quarterly SWAM business reports to:

Lorie Strother
SWAM Contract Administrator
Procurement and Supplier Diversity Services
E-mail: <mailto:ljs8n@virginia.edu>

The quarterly SWAM business reports will contain this information:

- SWAM firm's name, address and phone number with which the NetApp(s) has contracted over the specified quarterly period.
- Contact person at the SWAM firm who has knowledge of the specified information.
- Type of goods and/or services provided over the specified period of time.
- Total amount paid to the SWAM firm as it relates to the University's account.

The NetApp(s)'s failure to provide SWAM reports on a quarterly basis which contain the information required by this section may be grounds for debarment pursuant to Section 9. G. 4 of the "Purchasing Manual for Institutions of Higher Education and their Vendors."

Y. Intellectual Property Rights/Disclosure

The Software, Documentation and all intellectual property rights contained therein (collectively, the "NetApp Materials"), are and shall remain the exclusive property of NetApp or its licensors. All rights in and to the NetApp Materials not expressly granted to Customer in this Agreement are reserved by NetApp. No title to the Software transfers to Customer under this Agreement. The Software and Documentation is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to Customer. No right, title or interest to any trademark, service mark, logo or trade name, of NetApp or its licensors is granted to Customer.

Z. Marketing

The University encourages NetApp to appropriately and specifically market itself to applicable end-using University departments that may be interested in NetApp's Goods and Services. However, NetApp will not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail. In the event that NetApp engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement.

AA. Invoice Accuracy and Timeliness

It is the responsibility of NetApp to ensure the accuracy, completeness, correct format, and timely submission of all invoices. NetApp may not interrupt service to the University due to payment delays caused by NetApp's invoice errors. In addition, invoices are to be submitted on a timely basis ("timely" to be defined as no later than 60 days from the point at which the Goods and Services were delivered to the University). The University, in its sole discretion, may choose to reject any late invoices not submitted in this timely fashion.

BB. Ordering Procedures

The University does not place verbal orders for the Goods and Services. The University may only place orders for the Goods and Services by issuing a formal written Purchase Order in advance of NetApp's provision of the Goods and Services. Accordingly, at the University's request, NetApp's Reseller/Subcontractor will issue a proposal/quotation listing the Goods and Services desired by the University and the corresponding fees and/or fee estimates. After any necessary discussions and/or revisions, the University will issue a corresponding Purchase Order for a specified fee amount. This specified fee amount cannot be exceeded by NetApp's Reseller/Subcontractor unless a new formal written Purchase Order or Purchase Order revision is issued by the University authorizing a specific additional fee amount. Under no circumstances does the University authorize NetApp's Reseller/Subcontractor to provide the Goods and Services before receipt of a formal written Purchase Order corresponding to its proposal/quotation. If NetApp's Reseller/Subcontractor provides Goods and Services prior to receipt of a formal written Purchase Order, or incurs costs in excess of authorized purchase order fee amounts, it does so at its own risk.

CC. Other Goods and Services

The University reserves the right to allow NetApp to sell additional goods and/or services that may be required by the University, under the same terms and conditions of this Agreement, which may include, but not limited to those described within. Such additional goods and services may include other products, components, accessories, subsystems or related services.

DD. Compliance

NetApp will comply with all applicable laws and industry standards in performing services under this Agreement. Any NetApp personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to NetApp upon request.

EE. Agreement Signature

This Agreement is the entire agreement between the University (including University employees and other End Users) and NetApp. In the event that NetApp enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply, with the exception of the provisions of a written Statement of Work signed by both parties for professional services ordered under this Agreement.

Attachment 2
Warranty

I. **General Terms**

- A. **Hardware Warranty.** NetApp warrants for a period of three (3) years from the date of Hardware Delivery (unless otherwise specified in the applicable Documentation) ("Hardware Warranty Period") that the Hardware will materially conform to NetApp's Documentation in effect on the date of Hardware Delivery. In the event of any material nonconformity in the Hardware during the Hardware Warranty Period, NetApp will, at its sole discretion and expense, repair or replace the Hardware, or refund the purchase price paid by Customer for the non-conforming Hardware. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect on the original Hardware purchased, unless otherwise mandated by applicable law.
- B. **Software Warranty.** NetApp warrants to Customer that for a period of ninety (90) days from the date of Software Delivery, or such other minimum periods under applicable laws, for the initially-shipped version of such Software (the "Software Warranty Period"), that (a) the Software will materially conform to the then-current Documentation in effect on the date of Software Delivery; and (b) the media containing the Software will be free from physical defects. NetApp does not warrant that Customer's use of the Software will be error-free or uninterrupted. In the event of any material defect in the Software during the Software Warranty Period, NetApp will, at its sole discretion and expense, repair or replace the Software, or refund the purchase price paid by Customer for the nonconforming Software. This warranty covers only material nonconformities in the Software that are reproducible and verifiable and does not cover software, other items, or any services provided by persons other than NetApp or a NetApp authorized distributor, reseller or partner.
- C. **Limitations.** NetApp will not be liable under this warranty for claims arising from Customer's, Customer subcontractor's or any unauthorized third person's misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware, without NetApp's prior written approval. The Software warranty will be void if Customer or any third parties misuse, neglect, improperly install or test, attempt to repair or modify (except as authorized by NetApp in writing), or use the Software beyond the range of the intended use.
- D. **Exclusive Warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND NO OTHER WARRANTY OR REMEDY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

II. Extended Warranty Hardware Support (available for purchase)

A. The following chart lists the support features of Extended Warranty Hardware Support, provided under NetApp's Support Services Terms, available at <http://www.netapp.com/us/how-to-buy/stc.html>. Extended Warranty Hardware Support is available for purchase on the following NetApp products: NetApp hardware, including related firmware, upon expiration of the original warranty period.

SUPPORT PRODUCT FEATURE	DESCRIPTION	ENTITLEMENT DETAILS FOR EXTENDED WARRANTY HARDWARE SUPPORT
Remote Technical Support	Remote Technical Support Customer may contact NetApp by telephone or Web interface on a 7/24/365 basis to report a problem.	Included for NetApp hardware purchased.
Replacement Parts	NetApp provides replacement parts.	Included.
Replacement Parts Delivery Target Response Objective and Installation.	NetApp delivers replacement parts within the target response objective.	Included. Installation of all replacement parts performed by customer. Where available, replacement parts will be shipped to customer for next local business day arrival. Local country shipment cut-off times may impact target response objective timing.
Access to NetApp Support Site	Customers have access on a 7/24 basis to the NetApp Support Site.	Included for NetApp hardware purchased.
AutoSupport —NetApp Remote Support Diagnostics Tool	Certain NetApp hardware products, when properly installed and configured,	Included.

	<p>will automatically contact NetApp to provide input to assist NetApp in support issue determination and may proactively create technical support cases on behalf of the customer.</p>	
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III. Software Support Plan (available for purchase)

A. The following chart lists the support features of the NetApp® Software Support Plan provided under NetApp’s Support Services Terms, provided under NetApp’s Support Services Terms, available at <http://www.netapp.com/us/how-to-buy/stc.html>. The NetApp Software Support Plan is available for purchase for the following NetApp products: Eligible NetApp software.

- a. Note: For Data ONTAP®-based software licensed on a NetApp system, the NetApp Software Support Plan may only be purchased for software installed in a system covered by a valid Hardware Warranty or Extended Warranty Hardware Support offering.

SUPPORT PRODUCT FEATURE	DESCRIPTION	SOFTWARE SUPPORT PLAN ENTITLEMENT DETAILS
Remote Technical Support	Remote Technical Support Customer may contact NetApp by telephone or by Web interface on a 7/24/365 basis to report a problem.	Included for eligible NetApp software.
Access to the NetApp Support Site	Customer will have access on a 7/24/365 basis to the NetApp Support site.	Included for eligible NetApp software.
Software Updates	Software Updates NetApp provides access to commercially available software updates via the NetApp Support Web site when and if available, as determined by the NetApp Technical Support Center.	Included.**

** If the customer is purchasing a NetApp Software Support Plan for Lustre software or Hortonworks software, the feature “Software Updates” is not included in the NetApp Software Support Plan because the appropriate software updates are available directly from the respective software vendor. When this is the case, the price of the NetApp Software Support Plan reflects the fact that this feature is not being provided by NetApp.

**PUBLICLY ACCESSIBLE CONTACT
AMENDMENT 001**

**Agreement Between
The Rector and Visitors of the University of Virginia
and
NetApp, Inc.**

The Rector and Visitors of the University of Virginia ("University") and NetApp, Inc. ("NetApp") are amending their Publicly Accessible Contract (PAC) Agreement dated January 15, 2014.

The following changes, effective October 1, 2015, are made to the Agreement:

- The date of the Primary Agreement referenced is changed from January 15, 2014 to October 1, 2015. The new University/NetApp agreement number is UVA1639592.

All other terms and conditions of the Agreement dated January 15, 2014 remain the same.

ACCEPTANCE

**For the Rector and Visitors
of the University of Virginia**



Digitally signed by Eric N.
Denby 9
Date: 2015.08.28
09:43:12 -04'00'

Eric N. Denby, Director
Procurement & Supplier Diversity Services

For NetApp, Inc.

A handwritten signature in black ink, appearing to read "Robert Stein", written over a horizontal line.

Robert Stein
VP Sales

8/21
Date

Agreement #: UVA1445952-PAC

**PUBLICLY ACCESSIBLE CONTRACT
AGREEMENT**

This Agreement, executed the 15 day of January 2014, is by and between the Rector and Visitors of the University of Virginia (the "University") and the NetApp, Inc. ("NetApp").

WITNESS

WHEREAS, the University and NetApp have executed an agreement for NetApp to provide a broad spectrum of information technology products and services (the "Goods and Services") dated JANUARY 15, 2014 (the "Primary Agreement"), and included in the Primary Agreement is a Cooperative Purchasing / Use of Agreement by Third Parties provision.

WHEREAS, the University and NetApp have taken the additional time needed to proactively and thoughtfully articulate the nature of overall relationship via an effectively written Primary Agreement.

WHEREAS, the University and its Procurement & Supplier Diversity Services Department ("PSDS") established and maintains a Publically Accessible Contract's ("PAC") website [currently: <http://www.procurement.virginia.edu/pagepacontracts>] to promote the use of PACs and to facilitate third party access of existing PAC relationships.

Now therefore, the University and NetApp wish to express in this Agreement the specific basis on which the University will provide third party marketing assistance of the Primary Agreement to NetApp.

TERM

The term of this Agreement will commence on the effective date of the University's Primary Agreement and will end at the time of termination of the Primary Agreement.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

- I. NetApp will:
 - A. Pay the University the greater of \$2,500 or ½% of all sales to accessing entities associated with the Primary Agreement (as the “PAC Annual Fee”). The PAC Annual Fee will be paid in exchange for marketing services provided by the University, described below in Section II;
 - B. Fully support this marketing relationship by promoting the availability of the Primary Agreement to other entities;
 - C. Agree to extend the Primary Agreement to all Virginia Association of State College & University Purchasing Professionals (“VASCUPP”) members [currently detailed at <https://vascupp.org/index.php>] and other entities;
 - D. Alert the University to new entities accessing the Primary Agreement;
 - E. Provide quarterly sales reports detailing the amount of sales to each accessing entity; and
 - F. Provide the University with timely supporting information, as needed, to establish/maintain NetApp’s PAC placement.

- II. The University will:
 - A. Develop a separate and concise Primary Agreement which clearly describes the Good and Services provided by NetApp;
 - B. Establish and maintain a Contract Summary Sheet (“CSS”) for NetApp at the University’s PAC website. The formatting and content of the CSS will be at the University’s sole and reasonable discretion. However, it is the intent of the CSS to provide contact information; brief description of goods and services; the price, rates or discounts for the goods or services covered; and access to the Primary Agreement document(s);
 - C. Maintain a University approved version of NetApp’s logo at the University’s PAC website;

- D. Provide connectivity to the firm's PAC CSS via the VASCUPP Contract Database;
- E. Post an initial blog entry, as a methodology for increased internet awareness of the PAC, announcing the Primary Agreement and its establishment as a PAC. This entry will be made on the PSDS Blog [currently: <http://blog.procurement.virginia.edu/>]. The University may, in its sole discretion and format, issue future blog entries detailing the on-going nature of NetApp's PAC; and
- F. The University will promote the Primary Agreement on its website and through other channels that become available.

III. Payment

- A. The initial PAC Annual Fee of \$2,500 will be sent to the University no later than 15 calendar days from the execution of this Agreement. This initial PAC Annual Fee will cover the period from the PAC Agreement effective date until December 31, 2014.
- B. Payment of PAC Annual Fee for future years will arrive at the University no later than February 15th of each calendar year. For example, PAC Annual Fee of \$2,500, for 2015, will arrive at the University no later than February 15, 2015.
- C. In the event the resulting total of ½% of all sales to accessing entities during a calendar year is *greater* than the initial PAC Annual Fee payment, a remainder payment (of any residual amount in excess of what was initially paid), will arrive at the University no later than 45 calendar days from the end of each respective calendar year, or portion thereof, covered by the Term of this Agreement; for example:

If, for 2014, the ½% total of all sales to accessing entities is greater than previously paid PAC Annual Fee, NetApp will issue payment for that residual amount in such a manner that the payment will arrive at the University no later than February 15, 2015.

In the event of early termination of the Primary Agreement, this residual payment will arrive at the University no later than 45 calendar days from termination date of the Primary Agreement.

- D. Payment(s) of PAC Annual Fee will take the form of a check. Checks will be made payable to the University of Virginia, and sent to:


Dolores Hildebrand, Assistant Director
Business Operations & Purchasing Card Administration
Procurement & Supplier Diversity Services
University of Virginia
Carruthers Hall
1001 North Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904

IV. Contractual Provisions

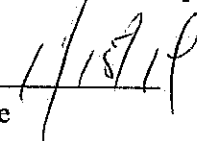
The Contractual Provisions incorporated into the Primary Agreement will govern this Agreement.

ACCEPTANCE

**For the Rector and Visitors
of the University of Virginia**

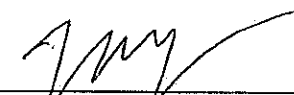


Eric N. Denby, Director
Procurement & Supplier Diversity Services

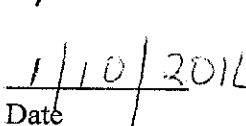


Date

For NetApp, Inc.



Mark Weber
Senior Vice President



Date

Agreement #: UVA1445952-PAC