

PARTICIPATING ADDENDUM
NASPO ValuePoint Cooperative Purchasing Program

COMPUTER EQUIPMENT MASTER AGREEMENT
Minnesota Master Agreement No.: MNWNC-121

California Participating Addendum No. 7-15-70-34-006
NETAPP, INC. (Contractor)

This Participating Addendum Number **7-15-70-34-006** is entered into between the State of California, Department of General Services (hereafter referred to as "State" or "DGS") and NetApp, Inc. (hereafter referred to as "Contractor") under the NASPO ValuePoint Cooperative Purchasing Program Master Agreement Number MNWNC-121 ("Master Agreement") executed by the State of Minnesota.

1. Scope

- A. This Participating Addendum covers the purchase of Computer Equipment under the Master Agreement for the following product bands:

Band 5 – Storage

- B. This Participating Addendum is available for use by California political subdivisions/local governments (hereafter referred to as "Purchasing Entities"). A political subdivision/local government is defined as any city, county, city and county, district, or other local governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges empowered to expend public funds.
- C. Political subdivision/local government use of this Participating Addendum is optional. Each political subdivision/local government is to make its own determination whether this Participating Addendum and the Minnesota Master Agreement are consistent with its procurement policies and regulations.

2. Term

- A. The term of this Participating Addendum shall begin upon signature approval by the State and will end March 31, 2017, or upon termination by the State, whichever occurs first.
- B. Lead State amendments to extend the Master Agreement term date are automatically incorporated into this Participating Addendum unless terminated early in accordance with the terms and conditions of the Master Agreement or this Participating Addendum.

3. Order of Precedence

In the event of any inconsistency between the articles, attachments, or provisions which constitute this agreement, the following descending order of precedence shall apply:

- A. California Participating Addendum 7-15-70-34-006
- B. Minnesota WSCA-NASPO Master Agreement MNWNC-121

4. Terms and Conditions

The California General Provisions - Information Technology (GSPD401IT), revised and effective 09/5/14, is hereby incorporated by reference and made a part of this Participating Addendum. The 12 page document is available at:
http://www.documents.dgs.ca.gov/pd/poliproc/GSPD401IT14_0905.pdf.

Section 38 of GSPD401IT is clarified with respect to revenue recognition as follows:

38. SOFTWARE LICENSE: Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").

- a) The State may use the Software Products in the conduct of its own business, and any division thereof
- b) The license granted above authorizes the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU, provided that the State shall not have a right to exchange original software for a software product that is dissimilar, or has material differences in price, functionality, or features, and the State may not increase the number of copies or concurrent users, until the designated CPU is returned to operation.
- c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost, provided that the State shall not have a right to exchange original software for a software product that is dissimilar, or has material differences in price, functionality, or features, and the State may not increase the number of copies or concurrent users. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
- d) Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.

5. Price List

Contractor shall maintain a website dedicated to this Participating Addendum which contains the Product and Service Schedule (PSS) and designated base line price list for participating entities to verify product/service pricing and applicable discounts offered under the Master Agreement.

6. Partner Utilization

- A. Contractor may use Partners under this Participating Addendum for sales and service functions as defined herein. Each Purchasing Entity will determine whether use of Partners is consistent with its procurement policies and regulations.
- B. 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 Partners.
- C. Contractor will be the sole point of contact with regard to Participating Addendum contractual matters, reporting, and administrative fee requirements.
- D. Partners are classified as follows:
 - 1) "Authorized Reseller"
 - a. Authorized Resellers may provide quotes, accept purchase orders, fulfill purchase orders, perform maintenance/warranty services and accept payment from ordering agencies for products and associated services offered under this Participating Addendum.
 - b. Authorized Resellers are responsible for sending a copy of all purchase orders and invoices to the Contractor for compliance with quarterly usage reporting and administrative fee requirements.
 - c. All purchase documents to Authorized Resellers shall reference the Participating Addendum Number: 7-15-70-34-006 as well as the Lead State Master Agreement Contract Number: MNWNC-121.
 - d. Contractor's Authorized Reseller(s) under this Participating Addendum will be listed on the Contractor's dedicated website at:
<http://www.netapp.com/us/how-to-buy/wsca/index-MNWNC121.aspx>.

7. Invoicing

The Participating Addendum Number and Ordering Agency Purchase Order Number shall appear on each purchase order and invoice for all purchases placed under this Participating Addendum.

8. Usage Reporting

- A. Contractor shall submit usage reports on a quarterly basis to the State Contract Administrator for all California entity purchases using the WSCA-NASPO Detailed Sales report template.

- B. The report is due even when there is no activity.
- C. The report shall be an Excel spreadsheet transmitted electronically to the DGS mailbox at PDWSCA@dgs.ca.gov.
- D. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected reports within five business days of the date of written notification from the State.
- E. Tax must not be included in the report, even if it is on the purchase order.
- F. Reports are due for each quarter as follows:

Reporting Period	Due Date
JUL 1 to SEP 30	OCT 31
OCT 1 to DEC 31	JAN 31
JAN 1 to MAR 31	APR 30
APR 1 to JUN 30	JUL 31

Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of this contract.

9. Administrative Fee

- A. Contractor shall submit a check, payable to the State of California, remitted to the Department of General Services, Procurement Division for the calculated amount equal to one percent (0.01) of the sales for the quarterly period.
- B. Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.
- C. Administrative fee checks shall be submitted to:
State of California
Department of General Services, Procurement Division
Attention: Multiple Awards Program
707 3rd Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605
- D. The administrative fee shall not be included as an adjustment to Contractor's Master Agreement pricing.
- E. The administrative fee shall not be invoiced or charged to the ordering agency.
- F. Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a Purchasing Entity.

G. Administrative fee checks are due for each quarter as follows:

Reporting Period	Due Date
JUL 1 to SEP 30	OCT 31
OCT 1 to DEC 31	JAN 31
JAN 1 to MAR 31	APR 30
APR 1 to JUN 30	JUL 31

H. Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of this contract.

10. Contract Management

A. The primary contact individuals this Participating Addendum shall be as follows:

Contractor	
Name:	Denise Orosco
Phone:	(530) 644-1467
Fax:	(703) 918-7301
E-Mail:	Denise.Orosco@NetApp.com
Address:	495 East Java Dr, Sunnyvale, CA 94089

State Contract Administrator	
Name:	Julie Matthews
Phone:	(916) 375-4612
Fax:	(916) 375-4663
E-Mail:	Julie.Matthews@dgs.ca.gov
Address:	Department of General Services Procurement Division 707 Third Street, 2nd Floor, MS 2-202 West Sacramento, CA 95605

B. Should the contact information for either party change, the party will provide written notice with updated information no later than ten business days after the change.

11. Termination of Agreement

The State may terminate this Participating Addendum at any time upon 30 days prior written notice to the Contractor. Upon termination or other expiration of this Participating Addendum, each party will assist the other party in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

12. Agreement

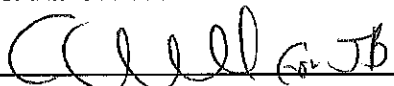
- A. This Participating Addendum and the Master Agreement together with its exhibits and/or amendments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Agreement, together with its exhibits and/or amendments, shall not be added to or incorporated into this Participating Addendum or the Master Agreement and its exhibits and/or amendments, 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 Master Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.

- B. By signing below Contractor agrees to offer the same products/and or services as on the Master Agreement, at prices equal to or lower than the prices on that contract.

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

Participating State:
STATE OF CALIFORNIA

Contractor:
NETAPP, INC.

By: 

By: 

Name: Jim Butler

Name: Robert Stein

Title: Deputy Director

Title: VP Sales

Date: 4/19/16

Date: 4/14/2016

PARTICIPATING ADDENDUM AMENDMENT
NASPO VALUEPOINT COMPUTER EQUIPMENT
California Participating Addendum No. 7-15-70-34-006
Amendment No. 1
NETAPP, INC. (Contractor)

This Amendment 1 ("Amendment") for Participating Addendum Number 7-15-70-34-006 ("Participating Addendum") is entered into between the State of California, Department of General Services ("State") and NetApp, Inc. ("Contractor").

The parties hereto mutually agree to amend the Participating Addendum as follows:

1. The Contractor primary contact specified in Participating Addendum Section 10 (Contract Management) is revised to the following:

NetApp, Inc. (Contractor)	
Name:	Harry Franks
Phone:	(703) 918-7317
Fax:	(703) 918-7200
E-Mail:	<u>Harry.Franks@NetApp.com</u>
Address:	1921 Gallows Road, Suite 600 Vienna, VA 22182

All other terms and conditions remain the same.

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

Participating State:
STATE OF CALIFORNIA

By: 

Pr Name: Jim Butler

Title: Deputy Director

Date: September 19, 2016

Contractor:
NETAPP, INC.

By: 

Name: Mary Jo Dorr

Title: USPS Controller

Date: 9/7/16