

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

MASTER AGREEMENT
Master Agreement No: MNWNC-121
NetApp, Inc.
(hereinafter “Contractor”)
And
State of Wisconsin
(hereinafter “Participating State”)

Participating State Contract #505ENT-O16-NASPOCOMPUT-08

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1. **Scope.** This Participating Addendum covers the Computer Equipment 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 that is authorized by that state’s statutes to utilize state contracts, and which receives prior written approval of the state’s chief procurement official. Personal use of the Participating Addendum is NOT authorized.

This Participating Addendum authorizes the purchase of equipment and associated Software and Services in the following category as set forth in the Master Agreement:

- Band 5 (Storage)

Link to the NASPO ValuePoint VendorPage: <http://www.netapp.com/us/how-to-buy/wsca/index-MNWNC121.aspx>

Band 5 includes related Peripherals and Services. The original solicitation contains the requirements and definitions establishing the Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor.

The configuration dollar limits remain the same as the Master Agreement. Restrictions are identified in the Master Agreement with any further restrictions identified within this Participating Addendum.

With respect to any educational discount, the parties agree that the following Authorized Users shall be eligible to receive such discount available under the scope of this Contract: University of Wisconsin System University, College, or Board; Wisconsin public K-12 schools; Wisconsin Technical College System; Wisconsin Department of Public Instruction; Wisconsin Educational Communications Board; Wisconsin School for the Blind and Visually Impaired, Wisconsin School for the Deaf; and any other educational Authorized Purchasing Entity as approved by the Participating State Primary Contact.

The scope of this Participating Addendum does not include the following: trial, demonstration, evaluation equipment and/or related Software; rental; cellular phone equipment; wireless phone or internet services; cloud services; hosting services; or managed print services. There are also Hardware, Software, and Service restrictions in both the Master Agreement and the Participating Addendum.

This is not a mandatory contract for any Purchasing Entities. The Purchasing Entities may obtain related Deliverables and Services from other sources during the term of this

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Participating Addendum. The State makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Deliverables or Services will be procured.

2. **Participation.** Use of specific WSCA-NASPO cooperative contracts by state agencies, political subdivisions and other entities authorized by an individual state's statutes to use state contracts ("collectively, "Purchasing Entity") are subject to the prior approval of the respective State Chief Procurement Official. Wisconsin Statutes (s. 16.73, Wis. Stats.) establish authority to allow Wisconsin municipalities to purchase from state contracts. A "municipality" is defined as any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having the authority to award public contracts (s. 16.70(8), Wis. Stats.). Federally recognized Indian tribes and bands in this state may participate in cooperative purchasing with the state or any municipality under ss. 66.0301(1) and (2), Wis. Stats.

The Contract is not mandatory for the Purchasing Entities. 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 State's Participating Addendum ("PA"); A Participating State'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

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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 attached Exhibits A, B, and C are incorporated in this Participating Addendum and apply to all transactions under this Participating Addendum.
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
E-mail	Denise.orosco@netapp.com

Participating State

Name	Brenda Derge, CPPO, CPPB
Address	Wisconsin Department of Administration 101 E. Wilson St. P.O. Box 7867 Madison, WI 53707
Telephone	608-266-8613
E-mail	brenda.derge@wisconsin.gov

The contacts listed above can be changed by the parties in writing. Such updates do not require an amendment to this Contract.

6. **Partner/Subcontractor Utilization.** Each state represented by NASPO ValuePoint

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participating in this Master Agreement independently has the option of utilizing partners. Only partners approved by this Participating State may be deployed. The participating State will define the process to add and remove partners and may define the partner's role in their participating addendum. The Contractor's partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Approved partners are listed on the NASPO ValuePoint website at: <http://www.netap.com/us/how-to-buy/wsca/index-MNWNC121.aspx>.

Information for each Partner shall include the following: contact information for quotes, ordering, invoice, and delivery; scope of responsibilities; and online or e-mail information, when applicable.

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.** Authorization for the purchase of equipment or services within the scope of this Contract shall be made only upon issuance of a Purchase Order or order via eProcurement. The Order will indicate the State Contract number: **#505ENT-O16-NASPOCOMPUT-08**, the Lead State Master Agreement Contract number: **MNWNC-121** and the dollar amount of funds authorized. Contractor shall notify Purchasing Entity if Order is not accepted by Contractor. The Contractor shall be authorized to perform up to the amount on the Order or the accepted quotation document. The Purchasing Entity shall not have any legal obligation to pay for goods or services in excess of the amount indicated on the Order or the accepted quotation document. No further obligation for payment shall exist unless:
 - 1) a change Order is sent by the Purchasing Entity and accepted by the Contractor and/or
 - 2) an additional Order is issued for the purchase of goods and services under this Contract.

There is no minimum Order amount for this Contract. No additional fees shall apply for orders paid with a procurement card. Purchasing Entities will place Orders via eProcurement or send a hard copy Order sent via U.S. mail, fax, or as an attachment in e-mail. Such Orders may include a Statement of Work, when applicable.

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All valid Orders issued by Purchasing Entities shall include:

1. Participating State Contract number, **#505ENT-O16-NASPOCOMPUT-08**
2. Provide a Contractor Master Agreement number, **#MNWNC-121**
3. List the Bill-to name and address
4. List Ship-to name and address. A physical location is required. No Post Office boxes shall be used in the address.
5. Provide an Order number.
6. Description including the quantity. Part number, if known, may be included.
7. A unit prices with extended price for each line or a total dollar amount authorized.
8. A valid inked or electronic signature
9. The Purchasing Entity's contact information (name, phone number, e-mail)

Contractor will make commercially reasonable efforts to provide Order confirmations to Purchasing Entity or designee within 48 hours of receipt during business weekdays unless an Order is missing pertinent information or is a custom order Deliverable, or 3 business days for new customers. If an Order will take longer than five to ten (5-10) days to arrive, the Contractor will communicate to the Purchasing Entity or designee the estimated time of arrival for each line item at the time of Order confirmation.

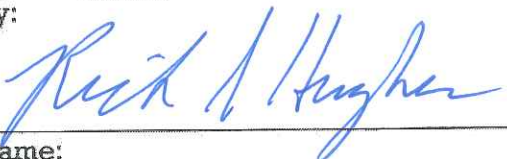

The Purchasing Entity reserves the right to terminate or cancel an Order in whole or in part without penalty if the appropriation of funds necessary to complete the Order is no longer available as further described in Exhibit A, Non-appropriation of Funds. Purchasing Entity will make a reasonable effort to provide thirty (30) days prior written notice if funds are non-appropriated. If written notice is delivered under this section, the Purchasing Entity will reimburse Contractor for the goods or services properly ordered until the effective date of said notice. Purchasing Entity reserves the right to cancel an Order, with notice, within 5 business days of receipt of the Order Confirmation if Contractor indicates it is unable to render the Services or provide the Deliverables required by the Order "Ship to" date to meet the business needs of the State. Contractor shall not charge any restocking fee for unopened hardware that is returned within thirty (30) days of delivery.

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

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Participating State: State of Wisconsin	Contractor: NetApp, Inc.
By: 	By: 
Name: Rick S. Hughes	Name: Mary Jo Dorr
Title: State Bureau of Procurement Director	Title: Controller, USPS
Date: 10.20.2015	Date: 10/14/15

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Participating State Modifications or Additions to Master Agreement.

1. **Additional Term Definitions.** All terms used and not defined herein shall have the meaning given within the Master Price Agreement and Request for Proposal.

“Confidential Information” means all tangible and intangible information and materials being disclosed in connection with this Participating Addendum, in any form or medium without regard to whether the information is owned by the Purchasing Entity, Participating State or by a third party, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) Proprietary Information; (iii) non-public information related to the Purchasing Entity’s or Participating State’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information expressly designated as confidential in writing by the Purchasing Entity or Participating State. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law.

“Contract” means a binding agreement for the procurement of goods and services under the terms and conditions contained within the Participating Addendum, Master Agreement, Solicitation and Addendums, Contract Vendor’s response to the Solicitation, and related Agreements.

“Data Breach” means the successful exfiltration of Personally Identifiable Information supplied by the Purchasing Entity to the Contractor that is hosted on Contractor systems. No Data Breach, for the purposes of this Agreement, will have occurred if Purchasing Entity’s data is compromised while hosted on a system not owned and operated by the Contractor.

“Days” means calendar days unless otherwise specified.

“Deliverables” means all project materials, including Goods, software licenses, data, and documentation created during the rendering of Services hereunder.

“Inspection” means an examination of Deliverables or Services provided under this Contract in order to determine Specifications were met.

“Order” means the accepted Purchasing Entity standard document for Deliverables and Services, including incorporated documents or references subject to Contractor’s review and acceptance. An Order may be an eProcurement Order entered online or Purchase Order sent either hard copy, fax, or via e-mail. Such

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incorporated documents may include a Statement of Work, negotiated license agreement, or an official quotation.

"Personally Identifiable Information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (d) the individual's DNA profile; or (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

"Proprietary Information" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply: (a) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) the information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

"Properly-submitted Invoice" is one that is submitted in accordance with instructions contained on the Purchasing Entity or State's Order, includes a reference to the proper Order number, and is submitted to the proper address for processing.

"Software" means commercial operating off-the-shelf machine-readable object code instructions including microcode, firmware and operating system software that are preloaded on equipment. The term "Software" applies to all parts of software and documentation, including new releases, updates, and modifications of software.

"State" for this Participating Addendum, means the State of Wisconsin.

"Subcontract" means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the to fulfill the requirements and performance obligations of this Contract.

"Subcontractor" means any entity that enters into a Subcontract with the Contractor for the purpose of fulfilling the requirements and performance obligations of this Contract. Also referred to as "Reseller" or "Partner."

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"Termination for Convenience" means contract cancellation.

"Third Party" means any party who does not have a direct connection with this Contract, but who might be affected by it. A Third Party is a supplier of ancillary goods or support for a product or service who is neither the Contractor, Subcontractor, or the Purchasing Entity.

2. **Amendments.** The terms of this Participating Addendum, excluding the Master Agreement, shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Participating State and Contractor.
3. **Contract Term.** The term of this Participating Addendum will be effective upon the later date of October 1, 2015 or the final execution by the Participating State and co-terminus with the Master Agreement term unless otherwise cancelled or terminated as set forth in this Participating Addendum by the Participating State.
4. **Vendor Agreement Form.** The Contractor must sign the State of Wisconsin Vendor Agreement, Wisconsin's Cooperative Purchasing Service form (DOA-3333), to allow Entities, as defined on the DOA-3333 form, to purchase through this Participating Addendum. Contractor is responsible for verifying all sales under this Participating Addendum are to Purchasing Entities authorized by this Participating Addendum.
5. **Quotes.**
 - a. Contractor shall respond to Purchasing Entity quote requests within two (2) business days of receiving the request.
 - b. Contract shall provide written quotes to Purchasing Entities within 24 hours, excluding requests received on weekends or Participating State holidays.
 - c. When a quote may take longer due to delays by the manufacturer, Contractor shall provide an estimate for when the quote will be provided. Standard shipping is included. Quotes shall identify any applicable special handling or shipping charges not covered under the Contract. Any shipping costs listed on an invoice that were not identified on the quote will not be paid by the Purchasing Entity.
6. **Pricing.**
 - a. Purchasing Entities will be allowed to negotiate on any of the pricing available in the Master Agreement for lower pricing or higher discounts.
 - b. Purchasing Entities may negotiate a lower rate or higher discount for bulk/volume purchases.

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- c. Contractor shall offer such lower pricing or higher discount options available to the Purchasing Entity prior to an order being placed. Such discounts shall not require the Purchasing Entity or the Participating State to provide additional documentation to participate in such pricing.
 - d. Contractor may offer promotions for deeply discounted products based on their inventory and sales. Contract Vendor will be responsible to market such offers and adhere to the terms and conditions regarding advertising and news releases.
- 7. **Refund of Credits.** Within sixty (60) Days of the State's request, the Contractor shall pay to the State any credits resulting from an Order that the State and Contractor agree is owed and determines cannot be applied to future invoices.
- 8. **Promotional Advertising and News Releases.** Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Participating Addendum shall not be made without prior written approval of the State.
- 9. **Replacement Parts.** All replacement parts provided under this Participating Addendum are new or like new, including any warranty provided with such new parts. If such parts do not meet this requirement, the Purchasing Entity must approve in writing prior to shipment of such parts for each Order.
- 10. **Usage/Spend Report.** The Contractor must submit electronic reports via e-mail on a quarterly basis and one annual summary report on all sales, including service/maintenance, made against this Participating Addendum/Master Agreement to the Participating State Primary Contact or designee.
 - a. Report format shall follow the excel format in Exhibit B;
 - b. The report file format shall be Microsoft Excel compatible format and shall easily be sorted for various data and inclusion into a pivot table;
 - c. The quarterly reports will be filed using the schedule in Section f below. The annual report shall contain all data within the quarterly reports and include an annual sum total with any additional description notes;
 - d. Such reports shall retain the same format throughout the life of the contract unless mutually agreed upon;

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- e. The Contractor agrees to provide additional reports if requested by the State of Wisconsin in a format and frequency as mutually agreed upon by both parties; and

<u>Period End</u>	<u>Report Received By</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

The annual summary report is provided after four (4) full quarters of data is collected from the start of the Participating Addendum.

11. Restrictions.

In addition to the Master Agreement, restrictions for Hardware, Software, Services, and additional products/Services are as follows:

a. Hardware.

- Purchasing Entities that have a mandatory contract such as the State Computer or State Printer contract shall first obtain a written waiver from the mandatory contract prior to using this Participating Addendum to purchase equipment available off that contract; and
- Hardware is subject to equipment configuration dollar limits.

b. Software.

- Purchasing Entities that have a mandatory contract such as the State Microcomputer Software contract for Commercial Off-The-Shelf (COTS) Software shall first obtain a written waiver from the mandatory contract prior to using this Participating Addendum to purchase COTS Software; and
- Such COTS Software is subject to equipment configuration dollar limits: and
- Software purchases through this Contract must be pre-loaded or provided as an electronic link with the initial purchase, must be related to the procurement of the equipment, and has the following exceptions:
 1. Software such as middleware which is not installed on the equipment, but is related to storage and server equipment purchased, is allowed and may be procured after the initial

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purchase of the equipment.

2. Stand-alone Software purchase, including applications ("Apps"), is not allowed unless otherwise specified in this section.
3. The Program terms and conditions, software license agreement and/or End User License Agreement (EULA) terms available under this Participating Addendum were not reviewed at the time of the Participating Addendum signing. Such terms shall be negotiated between the Purchasing Entity and the Contractor. Unless otherwise negotiated between parties, such Program terms and conditions and/or software terms and conditions shall be consistent and complementary with this Contract.

c. Value-Added Services.

- Acquisition of such Services shall be subject to this Participating Addendum and the Master Agreement and to other additional terms that may be required by the Purchasing Entity. Services shall be described in a Statement of Work (SOW). Such Statement of Work shall include specific terms detailing the Services such as, but not limited to: the time for performance, the payment amounts, payment contingencies, acceptance provisions, testing or other verification against specifications;
- Services are broadly classed as installation, de-installation, maintenance, support, minimal operation training, migration, training, and optimization of products offered or supplied under the Master Agreement. These types of services are directly related technical support service required for the effective operation of a product offered or supplied;
- Services must be related to the equipment purchase. Additional professional Services, including general consulting, regardless of length of engagement, are not allowed;
- Purchasing Entities that have a mandatory contract for Information Technology (IT) staffing Services shall first obtain a written waiver from the mandatory contract prior to using this Participating Addendum to purchase any value-added Services that can be purchased from such mandatory contracts;
- All travel expenses, if applicable, shall be reimbursed under the same conditions and rates as noted in the current published State of Wisconsin

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Pocket Travel Guide published by the Office of State Employment Relations;

- When the Purchasing Entity Order requires a background check prior to providing services, Contractor shall be responsible for meeting any background check requirements. Such background check requirements and the payment of the background checks shall be agreed to in writing between the Purchasing Entity and the Contractor. Purchasing Entity shall have the sole discretion to allow or deny access to any individual providing Contract Services after conducting a background check.
- d. **Additional Product/Services.**
- The EPEAT Bronze requirement for equipment that is covered by EPEAT standards is not waived, unless otherwise agreed in writing between the Contractor and Purchasing Entity;
 - Rental equipment is not authorized under this Participating Addendum;
 - Hardware and software required to solely support wide area network (WAN) operation and management are not allowed; and
 - **Leasing.** Purchasing Entity may finance their purchases through a lease agreement. Financing lease agreements pursuant to this Contract by a Purchasing Entity requires separate procurement authority as permitted by that Purchasing Entity's procurement laws and regulations. The competitive process for finance lease agreements was not conducted with this solicitation. As a result, this Contract does not provide procurement authority for such financing lease agreements. Upon procurement authority obtained by the Purchasing Entity, financing lease agreements may be entered into for goods and Services within Contract scope. Any such agreement must be entered into prior to the Contract expiration between the Contractor and the Purchasing Entity. Each Purchasing Entity is responsible for all aspects of the financing lease agreement such as any required competition, negotiations, equipment schedule, and signature on any financial leasing document.

12. Trade-in Program.

The Purchasing Entity shall follow all required surplus property disposal procedures and policies. Use of the current or subsequently awarded contract for disposal shall be used when applicable. If required disposal procedures allow and if the Trade-In Program offers savings or disposal not offered elsewhere for the Purchasing Entity, such Program may be utilized. When using the Contractor Trade-in Program,

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Contractor and Purchasing Entity shall negotiate the trade-in value.

The Trade-in or Recycle programs are outlined at link here:
<http://www.netapp.com/us/forms/srch-name-tradein.aspx>.

13. **Software License Agreement.** The Software License Agreement and/or End User License Agreement (EULA) terms available under this Participating Addendum were not reviewed at the time of the Participating Addendum signing. Such terms shall be negotiated between the Purchasing Entity and the Contractor. Unless otherwise negotiated between parties, Software is provided subject to the terms and conditions of the license applicable to such Software. Such terms and conditions shall be consistent and complementary with this Contract.
14. **Website Ordering.** The Participating State may inherit the NASPO Contractor website or require Contractor to provide a hosted or punchout site for use on an e-procurement system. Contractor will work with Wisconsin where needed for implementation. Contract pricing for only the scope of this Participating Addendum will be available on the website.
15. **Services performed in United States.** Pursuant to s. 16.705(1r), Wis. Stats., Services must be performed within the United States. Purchasing Entities subject to the Statute must order appropriate services from the Contractor. Where Purchasing Entities which are not subject to this Statute, this requirement may be waived.
16. **State Tax Exemption.** The State is exempt from payment of Wisconsin sales or use tax on all purchases. The Contractor shall be responsible for paying all applicable taxes. In the event taxes are due and tax-exempt status is not provided by the Purchasing Entity upon request within a reasonable time, the Purchasing Entity shall pay all applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder. The Purchasing Entity shall provide the tax-exempt status to the Contractor.
17. **Delivery.**
 - a. Contractor shall not make partial shipments of any product on a single Order unless prior authorization is obtained by the Purchasing Entity.
 - b. In those situations in which the "delivery to" address has no receiving dock or agents, the Contractor must be able to deliver to the location specified on the Order without additional cost.
 - c. If there is a special case where an inside delivery fee must be charged and is clearly specified on the Purchasing Entity's Order, the Contractor will notify the Purchasing Entity prior to accepting the Order for the Purchasing Entity to determine if the additional cost will require a change to the Order placed.

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- d. Section B (14) of the Master Agreement is changed to, "Delivery of the ordered product shall be completed within thirty (30) calendar days after receipt of an order, unless otherwise agreed to by the Purchasing Entity.
18. **Prompt Payment.** The State shall pay the Contractor's Properly-submitted Invoices within thirty (30) Days of receipt, provided that the Deliverables or Services to be provided to the State have been delivered, rendered, or installed, and accepted as specified in the this Contract or Order document. If the State fails to pay a Properly-submitted Invoice within thirty (30) Days of receipt, it shall pay a late payment penalty as provided in §16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to §16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and will be exempt from the prompt payment requirement for the disputed portion. Contractor may discontinue performance with any Purchasing Entity of Purchasing Entity fails to pay any undisputed sum due.
19. **Substitution.** Contractor will not substitute equipment, products, or Services specified by the Purchasing Entity in an Order. If equipment, products, or Services cannot be supplied and delivered as specified, Contractor shall promptly inform the Purchasing Entity in writing and the Purchasing Entity will be offered the choice of terminating the Order, accepting back order status, or consulting with the Contractor sales representative about selecting alternative goods or Services.
20. **Product Recalls.** In the event Contractor recalls a Contractor branded product, Contractor agrees to use diligent efforts to provide written notice to the Participating State's Primary Contact within twenty (20) business days from the date of Contractor's written public announcement of such recall. Such written notice shall identify the Contractor branded product being recalled, the reason for the recall (if applicable), and the process for replacing the recalled Contractor branded product. When such recalled equipment or products that are not Contractor branded products, Contractor agrees to notify the Participating State's Primary Contact within a reasonable time after Contractor's receipt of the Third Party manufacturer's written recall notice to Contractor, if applicable.
21. **Rush Orders.** Upon request of the Purchasing Entity, Contractor will provide expedited delivery of in-stock equipment in accordance with the Order. Any additional shipping incurred costs above and beyond the already included shipping costs as a result of a rush request shall be quoted and accepted by the Purchasing Entity prior to shipment.
22. **Insurance.** Section 17 of the Master Agreement shall include the following: The Contract Vendor is responsible for payment of Contractor contract premiums and deductibles on all insurance policies.

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23. Termination of Participating Addendum.

- a. **Termination for Convenience; Cancellation.** The Cancellation terms and conditions remain as stated in the Master Agreement. Additional terms include:
1. The Participating State reserves the right to cancel this Contract in whole or in part without penalty, if the Contractor:
 - Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity; or
 - Makes an assignment for the benefit of creditors; or
 - Fails to maintain the confidentiality of the Purchasing Entity's or Participating State's information that is considered to be Confidential Information, or
 - Performs in a manner that threatens the health or safety of a Purchasing Entity or Participating State employee, citizen, or customer.
 2. The State reserves the right to cancel this Contract in whole or in part without penalty, with 30 days' notice, if the Contractor:
 - Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes; or
 - Incurs a delinquent Wisconsin tax liability; or
 - Fails to submit a non-discrimination or affirmative action plan as required herein; or
 - Fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or
 - Contractor has not satisfied a certified or verifiable delinquent payment owed to the State, or to any state or local unit of government; or
 - Becomes a state or federally debarred contractor.
- b. **Termination for Cause.** The Cancellation terms and conditions remain as stated in the Master Agreement. In addition to the rights reserved in the Contract, the Participating State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the

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Contract. The Participating State shall provide thirty (30) days' prior written notice of the termination and the reasons for it to the Contractor, with a thirty (30) day allowance for Contractor to cure or provide an acceptable plan to cure. Absent Contractor's cure, the State may terminate the Contract or applicable Order. Upon termination under this Section, all goods, materials, documents, data, and reports prepared by the Contractor with payment tendered to Contractor under the Contract shall become the property of and be delivered to the Purchasing Entity on demand.

24. **Nonappropriation of Funds.** The Contractor acknowledges that the Purchasing Entity cannot contract for the payment of funds not yet appropriated. If funding is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the Purchasing Entity may terminate this contract or proportionately reduce the services and purchase obligations from the State upon thirty (30) days written notice. In the case that funds are not appropriated or are reduced, the Purchasing Entity will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the Purchasing Entity will not be liable for any future commitments, penalties, or liquidated damages.
25. **Governing Law; Venue.** This Participating Addendum and its amendments and exhibits thereto, shall be governed by Wisconsin Law. Venue for all legal proceedings arising out of the Participating Addendum, or breach thereof, shall be in the State or federal court with competent jurisdiction in Dane County, Wisconsin. In the event that any provision of this Participating Addendum is contrary to Wisconsin law, such provision shall be null and void. The Contractor shall at all times comply with and observe all applicable federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this Participating Addendum and which in any manner affect the work or its conduct.
26. **State Payment Offsets for Contractor's Delinquency.** The State shall offset payments made to the Contractor under this Contract in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State, or to any state or local unit of government. The State also reserves the right to cancel this Contract if the delinquency is not satisfied by the offset or other means during the term of the Contract.
27. **Post Contract Obligations.** Upon the termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.
28. **Contractor Compliance and Responsibility for Actions.** The Contractor shall at all times comply with and observe all applicable federal, state, and local laws,

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ordinances, and regulations that are in effect during the term of this Contract that affect the Contractor's work or obligations hereunder. The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors. Neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

29. This Participating Addendum and its amendments and exhibits thereto, shall be governed by Wisconsin Law. Venue for all legal proceedings arising out of the Participating Addendum, or breach thereof, shall be in the State or federal court with competent jurisdiction in Dane County, Wisconsin. In the event that any provision of this Participating Addendum is contrary to Wisconsin law, such provision shall be null and void. The Contractor shall at all times comply with and observe all applicable federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this Participating Addendum and which in any manner affect the work or its conduct.
30. **Nondiscrimination and Affirmative Action.** The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in § 51.01(5), Wis. Stats., or sexual orientation as defined in § 111.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

Unless exempted by workforce size (50 or fewer employees) or Contract amount (\$50,000 or less), the Contractor must submit a written affirmative action plan to the State.

The Contractor shall post a notice provided by the State, setting forth the provisions of the State's nondiscrimination laws, in its workplace, website or conspicuous places in Order that the Contractor's employees and applicants for employment are able to read it.

Failure to comply with the conditions of this provision may result in the following consequences:

- termination of this Contract as provided in Section 6, Contract Cancellation herein,
- designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or

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- withholding of a payment due under the Contract until the Contractor is in compliance

Instructions for Contractors regarding Affirmative Action Requirements can be found at <http://vendornet.state.wi.us/vendornet/contract/contcom.asp>.

31. Confidential Information.

- a. Disclosures.** In connection with the Contractor's performance hereunder, it may be necessary for the Participating State or Purchasing Entity to disclose to the Contractor Confidential Information. The Contractor shall not use such information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractor shall hold all such information in confidence, and shall not disclose such information to any persons other than its directors, officers, employees, and agents who have a business-related need to have access to such information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.

Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of such information while in its possession or control, including transportation, whether physically or electronically.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of such information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain such information of the State, as directed.

The Contractor shall maintain all such information for a period of six (6) years from the date of termination of this Contract, and shall thereafter return or destroy said information as directed by the State.

b. Equitable Relief in Event of Contractor Breach.

The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach,

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- threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.
32. **Records, Recordkeeping and Record Retention.** Pursuant to §19.36 (3) of the Wisconsin Statutes, all records of the Contractor that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, State and local laws or ordinances. The Contractor, following final payment and the end of the contract, shall retain all records produced or collected under this Contract for six (6) years. The record retention shall be longer if the particular records are the subject of an audit, needed for a legal action, an open records request has been made.
33. **Examination of Records.** In addition to Section B (26) of the Master Agreement, this right shall survive for a period of six (6) years. The right shall be longer if the particular records are the subject of an audit, needed for legal action, or an open records request has been made.
34. **Warranty.** Without a specific request, the Contract Vendor will automatically provide a copy of or a link to the manufacturer's warranty accompanying Products ordered that are not found on the following link: <http://www.netapp.com/us/how-to-buy/stc.aspx>.
35. **Title of Product Restrictions.** Notwithstanding anything to the contrary, in the event of any conflict or inconsistency between the terms and any software license, the Order of Precedence apply to the extent any terms of the software license are not in conflict with the Purchasing Entity's applicable governing law.
36. **Disclosure.** If a state public official (as defined in §19.42 (14) of the Wisconsin Statutes) or an organization in which a state public official holds at least a 10% interest is or becomes a party to this Agreement, it shall be voidable by the State unless appropriate disclosure is made to the State of Wisconsin Government Accountability Board, 212 East Washington Avenue, Madison, Wisconsin 53703 (Telephone 608-266-8005).
37. **Liens, Claims and Encumbrances.** The Contractor warrants and represents that all Deliverables ordered hereunder are free and clear of all liens, claims or encumbrances of any kind.
38. **Receipt of Goods.** The Purchasing Entity's receipt of Deliverables upon delivery is for the sole purpose of identification and acceptance of delivery. Such identification

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shall not be construed as Acceptance of the Deliverables if they do not conform to Specifications. If there are any apparent defects in the Deliverables at the time of delivery, the Purchasing Entity shall promptly notify the Contractor of its rejection of said Deliverables in accordance with the Master Agreement, Section B (28), Acceptance and Acceptance Testing. Without limiting any other rights, the Purchasing Entity warranty includes, at Contractor's option, to:

- a. Repair or replace any or all of the defective and rejected Deliverables at Contractor's expense,
- b. Refund the price of any or all of the defective and rejected Deliverables, and
- c. Accept the return of any or all of the defective and rejected Deliverables.

If rejected, the Goods shall remain the property of the Contractor.

39. **Performance.** Services rendered under this Contract shall be performed in a timely, professional and diligent manner by qualified and efficient personnel and in conformity with the strictest quality standards mandated or recommended by all generally recognized organizations establishing quality standards for the type of Services to be rendered hereunder. The Contractor shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its Subcontractors render Services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all applicable legal requirements, and Purchasing Entity's work rules to the extent disclosed and agreed to by Contractor within the Order. Without limiting the foregoing, the Contractor shall control the manner and means of the Services rendered so as to do so in a reasonably safe manner and in compliance with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated within an accepted Order under this Contract shall govern.
40. **Acceptance/Acceptance Testing.** In addition to the Master Agreement, Section B (28), the Contractor shall not require the Purchasing Entity to sign or electronically accept additional terms and conditions for acceptance or acceptance testing except under a custom Statement of Work that has been mutually agreed to by both parties in writing. Such additional terms and conditions for acceptance or acceptance testing shall be consistent and complementary with the terms and conditions of the Contract.
41. **Installation.** If the Contractor is providing installation with the product purchase, Contractor site guidelines required for equipment installation shall be provided the

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Purchasing Entity prior to Order. Ideally, such site guidelines will be provided at the time of the written quote. In the event such installation requirements were provided by the Contractor to the Purchasing Entity after an Order was placed, the Purchasing Entity has the option to cancel or write a change Order without penalty or additional fees.

42. **Severability.** If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.
43. **Antitrust Assignment.** By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the Purchasing Entity all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating specifically to that proportionate amount of the particular Deliverables or Services purchased or acquired by the Purchasing Entity under this Contract.
44. **Notice and Change of Contact Information.** Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested. In the event the Contractor moves or updates contact information, the Contractor shall inform the Participating State Primary Contact of such changes in writing within a reasonable period and not to exceed twenty (20) business days. The Purchasing Entity shall not be held responsible for payments on Orders delayed due to the Contractor's failure to provide such notice.
45. **Assignment of Contract.** The Contractor shall provide prior written notice to the Participating State Primary Contact before assigning this Contract to another party. The Participating State reserves the right to withhold approval of any such assignment. The terms and conditions of this Contract as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a Third Party until cancelled in writing by both parties.
46. **Contract Dispute Resolution.** In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin until the dispute resolution procedure has been utilized and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely. A Party must escalate a

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dispute or controversy by providing written notice to the other Party. Both Parties agree to attempt to resolve any dispute or controversy in good faith, which includes but is not limited to confidential communications towards dispute resolution. Except as required by law, neither Party nor its representatives may disclose the existence, content, or results of any dispute resolution efforts without the prior written consent of all Parties.

47. In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the Purchasing Entity, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.
48. **Performance While Dispute is Pending.** Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under the Agreement that is not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.
49. **Other Documents.** The parties to this Participating Addendum understand and agree that standard forms or templates may be used for various purposes, including but not limited to, purchase orders, invoices, quotes, 'Website Terms and/or Conditions' or 'click to accept' agreement(s), some of which may contain boilerplate or standard terms and conditions ("Other Documents"). However, any use of Other Documents are not a part of this Contract and are deemed to be for administrative convenience only and the terms therein are of no effect, have no force of law and do not modify the terms of this Participating Addendum.
50. **Rendering of Services.** The Contractor shall render Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the Purchasing Entity's satisfaction.

If the Purchasing Entity notifies the Contractor that any part of the Services rendered are inadequate or in any way differ from the Contract requirements for any reason other than as a result of the Purchasing Entity's Default or negligence, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable time as agreed upon between the Purchasing Entity and Contractor. This

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remedy shall be in addition to any other remedies available to the State or Purchasing Entity by law or in equity.

49. **Security of Premises, Equipment, Data and Personnel.** During the performance of Services under this Contract, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as "data") belonging to the Purchasing Entity. The Contractor shall preserve the safety, security, and the integrity of the personnel, premises, equipment, data and other property of the Purchasing Entity, in accordance with the instruction of the Purchasing Entity as agreed to in writing. The Contractor shall be responsible for damage to the Purchasing Entity's equipment, workplace, and its contents, when such damage or loss is solely and proximately caused by the Contractor, Contracted Personnel, or Subcontractors, and shall reimburse the Purchasing Entity accordingly upon demand.
50. **Security Incident or Data Breach Notification.**
- a. **Incident Response.** Contractor may need to communicate with outside parties regarding a Security Incident which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law, or contained in this Contract. Discussing Security Incidents shall be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
 - b. **Security Incident Report Requirements.** Contractor shall report a Security Incident to the Purchasing Entity or designee immediately if Contractor reasonably believes there has been a Security Incident.
 - c. **Breach Reporting Requirements.** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any entity's data that is subject to applicable data breach notification law, Contractor shall: a) promptly notify the Purchasing Entity or designee within 24 hours or sooner or as required by applicable law; b) take commercially reasonable measures to address the Data Breach in a timely manner and c) be responsible for its Data Breach responsibilities, as provided in the next Section.
51. **Data Breach Responsibilities.** This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification. In the event of a Data Breach or other event requiring notification, Contractor shall: a) cooperate with the Eligible User by sharing information relevant to the Data Breach; b) promptly implement necessary remedial measures, if necessary; c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in

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business practices in relation to the Data Breach; and d) in accordance with applicable laws indemnify, hold harmless, and defend the State of Wisconsin and/or Purchasing Entity against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification under applicable laws, all communication shall be coordinated with the Purchasing Entity or designee. Contractor shall be responsible for all reasonable notification and remedial costs and damages where Contractor was gross negligent, reckless, or intentional conduct.

52. **Nonvisual Access Standards and Accessibility Standards.** Contractor's VPATs identify how Contractor products comply with the Nonvisual Access and Accessibility Standards. Contractor's VPATs can be located at the following address:
<http://www.netapp.com/us/legal/accessibility.aspx>.
53. **Hazardous Substances.** In addition to the Master Agreement, a copy of each Material Safety Data Sheet can be obtained by a prospective Purchasing Entity upon request.
54. **Standard of Care.** The Services of Contractor and its Subcontractors shall be performed in accordance with the commercially reasonable standard of care exercised by members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
55. **Payment Card Industry Data Security Standard and Cardholder Information Security.** Contractor assures all of its Network Components, Applications, Servers, and Subcontractors (if any) that store, process or transmit payment card information for the purchase of products and services under this Agreement comply with the Payment Card Industry Data Security Standard ("PCIDSS"). "Network Components" shall include Contractor's firewalls, switches, routers, wireless access points, network appliances, and other security appliances that transmit payment card information; "Applications" shall include all purchased and custom external (web) applications that store, process, or transmit payment card information. "Servers" shall include all of Contractor's web, database, authentication, DNS, mail, proxy, and NTP servers that store, process or transmit payment card information. "Cardholder Data" shall mean any personally identifiable data associated with cardholder, including, by way of example and without limitation, a cardholder's account number, expiration date, name, address, social security number, or telephone number.

Contractor and Subcontractors (if any) must be responsible for the security of all Cardholder Data in its possession; and will only use Cardholder Data for assisting cardholders in completing a transaction, providing fraud control services, or for other uses specifically required by law. Contractor must have a business continuity program which conforms to the applicable PCIDSS to protect Cardholder Data in the event of a major disruption in its operations or in the event of any other disaster or

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system failure which may occur to operations; will continue to safeguard Cardholder Data in the event this Agreement terminates or expires; and ensure that a Purchasing Entity or Purchasing Entity's duly authorized representative shall be provided with full cooperation and access to conduct a thorough security review of Contractor's operations, systems, records, procedures, rules, and practices in the event of an exfiltration of Cardholder Data to an unauthorized third party in order to validate compliance with PCIDSS, provided such security review is specific to the PCIDSS solution applicable to the purchase of products and services ordered under this Agreement.

Exhibit B

NASPO ValuePoint Cooperative Contract Sales Report
Summary for Computer Equipment 2015-2019, Contract #505ENT-O16-NASPOCOMPUT-08
Manufacturer Name: NetApp, Inc.

Report Start date:
Report End Date:
Today's Date:

State or Municipality	Bill to Name	City	Contract Band	Item Description	Contract Item Number	Unit of Measure	Qty	Extended List Price	Contract Rate Obtained	Total Spend	Total Spend - Savings (Extended List Price less Contract Rate*Quantity)
State	Wisconsin Dept. of Tourism	Madison	5	XYZ	123	EA	2	\$150.00	\$100.00	\$200.00	\$100.00

Note to Preparer: Sample data is in red. Remove the sample data on the submitted electronic report.

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Complaint Resolution

A. Service/Billing.

For customer service or billing inquiries, customers may use any of the following:

- 1) Contact the representative Caryn Brown at 1(919)476-8058. Hours of operation are Monday through Friday, 8am to 5pm CT
- 2) Notify the Manager of Sales Operations, Denise Orosco, at (503)644-1467 or Denise.Orosco@netapp.com

B. Equipment.

- 1) **Defective Items.** If there are any apparent defects in the Deliverables at the time of delivery, the customer shall promptly notify the Contractor of its rejection of said Deliverables in accordance with the Master Agreement, Section B(28), Acceptance and Acceptance Testing. Without limiting any other rights, the customer warranty includes, at Contractor's option, to: (a) repair or replace any or all of the defective and rejected Deliverables at Contractor's expense; (b) refund the price of any or all of the defective and rejected Deliverables; or (c) accept the return of any or all of the defective and rejected Deliverables. If rejected, the Goods shall remain the property of the Contractor. For Defective items, you can contact Technical Support at 1(888)463-8277
- 2) **Products Lost or Damaged in Transit.** Contractor will issue credits or replace products returned due to damage in transit or that are lost in transit.
- 3) **Claims and Payment Process.** For all product damaged or lost in transit, Purchasing Entity must notify Customer Support representative at 1(888)463-8277 within ten (10) business days from receipt of receiving damaged products, a short shipment, or not receiving an expected order.

C. Escalation Process. Master provides one single point of contact for customer escalations and resolutions to the assigned Contract Contact as listed below:

Tom Rigamonti
1(713)266-8828 (office)
tom.rigamonti@netapp.com

Additional options for addressing and resolving customer problems and complaints vary depending on the nature of the issue.

- a. **Sales/Order management Team** 1(408)822-8531
- b. **Technical or Warranty Support.** 1(888)463-8277
If purchased, technical support available online at toll free at 1(888)463-8277