

PARTICIPATING ADDENDUM
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES

NASPO MASTER AGREEMENT
Master Agreement No.: 23025
NetApp US Public Sector, Inc.
(hereinafter "Contractor")
And
Commonwealth of Kentucky
Commonwealth Office of Technology (COT)
(hereinafter "Participating Entity")
Commonwealth Master Agreement #: MA 758 2400000371

This Participating Addendum, ("PA" or "Commonwealth Master Agreement") is entered into, by and between Commonwealth of Kentucky, Commonwealth Office of Technology ("Participating Entity", "Customer", or "COT") and NetApp, Inc. ("Contractor", "Vendor", or "NetApp").

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Harry Franks
Sr. Contracts Manager
Harry.Franks@NetApp.com
703 918 7200

Participating Entity's Procurement contact for this Participating Addendum is:

Jenifer Taylor, KCPM
Assistant Director
Jenifer.Taylor@ky.gov
502-564-6522

Participating Entity's COT contact for this Participating Addendum is:

Stephanie R. Williams, NIGP-CPP, CPPO,
CPPB, MPA
COT Contracting Officer
StephanieR.Williams@ky.gov
502-234-4898

- II. TERM.** This Participating Addendum is effective on the date fully executed by all parties, and will terminate upon termination of the NASPO Master Agreement 23025, as amended, unless this Participating Addendum is terminated sooner in accordance with the terms set forth herein. The Commonwealth reserves the right to extend this PA based on NASPO's contract renewals or extensions.

This Participating Addendum shall expire on June 30, 2025 per the NASPO Master Agreement 23025. This PA shall include annual renewal options through the final NASPO expiration date of June 30, 2028.

- III. PARTICIPATION AND USAGE.** The Commonwealth Office of Technology (COT) is the ONLY authorized Executive Branch State Agency that is permitted to use this Participating Addendum and will purchase on behalf of the Executive Branch State Agencies. Executive Branch State Agencies must obtain prior approval from the Commonwealth Office of Technology (COT) if they wish to use this PA. The Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum.

The Commonwealth of Kentucky shall obtain quotes from NetApp as well as all authorized resellers/partners that are listed on this PA as secondary vendor(s), unless otherwise approved by the Commonwealth Office of Technology (COT).

Non-Executive Branch State Agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized by the Commonwealth of Kentucky state statutes are authorized to use this PA without the prior approval of COT.

IV. GOVERNING LAW. The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, laws of the Commonwealth of Kentucky.

All terms in this Participating Addendum and any associated Orders/EULAs shall be read as applicable only to the extent permitted by Kentucky law and no term in violation of the Kentucky law, inclusive of Kentucky Procurement Law, shall be given effect.

V. SCOPE. Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the NASPO Master Agreement 23016 and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities. The scope of this PA shall include the following awarded band(s):

Band 3— Servers and Storage

See NASPO website for available products and services.

- Participating Entity-specific Pricing
https://s3-us-west-2.amazonaws.com/naspovaluepoint/1705699565_NetApp_ExD.pdf
- NASPO MASTER AGREEMENT 23025
https://s3-us-west-2.amazonaws.com/naspovaluepoint/1705699561_NetApp_23016_Assignment.pdf
- NetApp NASPO WEBSITE
[Portfolio Contractor - NASPO ValuePoint](#)

- a. **Services.** All services available through the NASPO Master Agreement 23016 may be offered and sold by Contractor to Purchasing Entities as it relates to the above listed band(s).
- b. **Equipment Leasing.** All requests for equipment leasing shall be negotiated and approved by the Commonwealth Office of Technology (COT).
- c. **Equipment Trade-in Program.** All requests for equipment trade-ins shall be negotiated and approved by the Commonwealth Office of Technology (COT).
- d. **Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the NASPO Master Agreement 23016 and in this Participating Addendum.

COT shall approve the addition and removal of all partners. Approved partners will be identified on this PA as secondary vendors. Secondary vendors are permitted to provide quotes directly to authorized users of this PA as well as bill directly to those users.

Any requests to add or remove partners must be sent via email to the Participating Entity's Procurement contact referenced in this PA.

Partner Name	Point of Contact
See Separate Document	

Any amendment to the NASPO Master Agreement 23016 shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by this Participating Entity in writing to Contractor within ten (10) calendar days of the amendment’s effective date and is documented thereafter via written amendment hereto. The Commonwealth cannot procure goods/services included as part of an amendment until such amendment is published to the NASPO website.

Any conflict between this Participating Addendum, and the NASPO Master Agreement 23016 will be resolved in favor of this Participating Addendum.

VI. ORDERS. Purchasing Entities may place orders under this Participating Addendum by referencing the Commonwealth Master Agreement Number, MA 758 2400000371 on the Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the NASPO Master Agreement 23016, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity. Orders that include additional terms and conditions or do not reference the Commonwealth Master Agreement Number, MA 758 2400000371 will not be accepted.

VII. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE. The Contractor agrees to provide a quarterly administrative fee to the Commonwealth of Kentucky as a part of the Contractor’s unit prices and is not to be charged directly to the customer in the form of a separate line item. The administrative fee percentage is only applicable to amounts actually received by the Contractor during the quarter and is not applicable to the amounts ordered by customers but not paid yet. The administrative fee shall be paid in the form of a check Payable to the Commonwealth of Kentucky – Office of Procurement Services or EFT for an amount equal to one half percent (.5%) of the net sales (less any returns, credits, or adjustments) under this PA for the period. Fees shall be paid sixty (60) calendar days after the close of the quarter.

Contractor shall submit to Participating Entity a Sales Report documenting all Contractor’s net sales made during the applicable reporting period and such submission, including any supplemental information submitted, is deemed a public record.

Quarterly Sales Reports shall be emailed to Jenifer Taylor, Commonwealth Buyer, at Jenifer.Taylor@ky.gov. The Sales Report shall be submitted no later than forty-five (45) days after the end of each calendar quarter, and the related administrative fee shall be remitted no later than sixty (60) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report will contain the following information:

- Complete and accurate details of all sales, credits, and the like for the reporting quarter;
- Purchasing Entity Foundation Account Name;
- Total of Net Sales; and
- If no sales were made to Participating Entity during the reporting quarter, then a report shall be submitted showing zero sales and zero convenience fees due.

End of Quarter	Reporting Date	Pay Date
March 31st	May 15th	May 31st
June 30th	August 15th	August 31st
September 30th	November 15th	November 30th
December 31st	February 15th	February 28th (29)

Payment of Administrative Fee:

The Contractor shall timely remit Administrative Fees via check or EFT, including reference to this Participating Addendum, Commonwealth Master Agreement MA 758 2400000371, and mailed to the address below:

FINANCE AND ADMINISTRATION CABINET
Office of Procurement Services
Jenifer Taylor, KCPM
200 Mero St., 5th Floor
Frankfort, KY 40622

VIII. FEDERAL FUNDING REQUIREMENTS. Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.

IX. INFORMATION TECHNOLOGY SECURITY STANDARDS.

The Contractor and any subcontractors, dealers, distributors, resellers, and other partners shall adhere to applicable **Commonwealth Office of Technology (COT) Policies and Standards:**

Commonwealth Office of Technology - Home - Commonwealth Office of Technology (Kentucky)

X. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

Harry Franks
Sales Operations Manager
Harry.Frank@NetApp.com
703-918-7200

For Participating Entity:

Jenifer Taylor, KCPM
Assistant Director
Jenifer.Taylor@ky.gov
502-564-6522


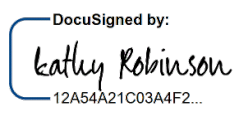
Stephanie R. Williams, NIGP-CPP, CPPO,
CPPB, MPA
COT Contracting Officer
StephanieR.Williams@ky.gov
502-234-4898

XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

Commonwealth of Kentucky Commonwealth Office of Technology (COT)	NetApp US Public Sector, Inc.
Signature: 	Signature: <u>Michelle Rudnicki</u> Michelle Rudnicki (Mar 1, 2024 08:56 PST)
Name: Jim Barnhart	Name: Michelle Rudnicki
Title: Deputy CIO 3-14-24	Title: President
Date:	Date: Mar 1, 2024
Commonwealth of Kentucky Office of Procurement Services (OPS)	
Signature: 	
Name: Kathy Robinson	
Title: Executive Director	
Date: 3/20/2024	