



**PARTICIPATING ADDENDUM
NASPO VALUEPOINT**

COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES

Administered by the State of Minnesota (hereinafter "Lead State")

COOPERATIVE PURCHASING MASTER AGREEMENT

Master Agreement No: 23025

NetApp U.S. Public Sector, Inc.
(hereinafter "Contractor")

and

State of Washington
(hereinafter "Participating State")

WASHINGTON CONTRACT No.: 05820

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and NetApp U.S. Public Sector, Inc., a California Profit Corporation ("Contractor") and is dated and effective as of February 01, 2024, or the date of last signature, whichever is later. This Participating Addendum shall terminate upon the expiration or the termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

RECITALS

- A. Pursuant to Legislative authorization codified in RCW 39.26.060, Enterprise Services, on behalf of the State of Washington, is authorized to participate in cooperative purchasing agreements to develop master agreements to procure goods and/or services and to make such competitively solicited and awarded contracts available to Washington state agencies and designated eligible purchasers consistent with terms and conditions set forth by Enterprise Services.
- B. Enterprise Services timely provided public notice of the competitive solicitation process conducted by the above-referenced lead state through Washington's Electronic Business Solutions (WEBS) system.
- C. The above-referenced Lead State, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful bidder and awarded a Master Agreement to Contractor.
- D. Enterprise Services has determined that participating in this Master Agreement is in the best interest of the State of Washington.

- E. The purpose of this Participating Addendum is to enable eligible purchasers, as defined herein, to utilize the Master Agreement as conditioned by this Participating Addendum.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **SCOPE:** This Participating Addendum covers the competitive procurement for Computer Equipment, Peripherals & Related Services led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state’s statutes to utilize state contracts with the prior approval of the State’s chief procurement official.

AWARDED BANDS:

Band 3, Servers and Storage

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 state 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. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following (“Purchasing Entities” or “Purchasers”):

- (a) WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
- (b) WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following specific institutions of higher education in Washington:
 - (a) State universities – i.e., University of Washington & Washington State University;
 - (b) Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
 - (c) Evergreen State College;
 - (d) Community colleges; and
 - (e) Technical colleges.
- (c) CONTRACT USAGE AGREEMENT PARTIES. The Master Agreement also may be utilized by any of the following types of entities that have executed a [Contract Usage Agreement \(CUA\)](#) with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) in the State of Washington;
 - Federal governmental agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.

By placing an order under this Participating Addendum, each Purchasing Entity agrees to be bound by the terms and conditions of this Participating Addendum, including the Master Agreement. Each Purchasing Entity shall be responsible for its compliance with such terms and conditions.

3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:

- 3.1. **WASHINGTON’S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services’ Electronic Business Solutions (WEBS) System at [WEBS](#). Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.
- 3.2. **WASHINGTON’S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractors must register with Washington’s Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).
- 3.3. **CONTRACT SALES REPORTING:** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.
 - (a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services’ [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
 - (b) **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
 - (c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER ENDING	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

- 3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.25 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax) authorized by this Participating Addendum.
 - (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

$$\text{Amount owed to Enterprise Services} = \text{Total contract sales invoiced (not including sales tax)} \times .01250.$$

- (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:
 - DES Invoice number associated with payment
 - This Washington Contract No.: **05820**
 - The NASPO Master Agreement No.: **23025**
 - The year and quarter for which the VMF is being remitted, and
 - Contractor's name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor's failure accurately and timely to report total net sales, to submit timely usage reports, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services to suspend or terminate this Participating Addendum or exercise any other remedies as provided by law.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

3.5. NONDISCRIMINATION.

- (a) **NONDISCRIMINATION REQUIREMENT.** During the term of this Participating Addendum, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at [RCW 49.60.530\(3\)](#). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- (b) **OBLIGATION TO COOPERATE.** Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Participating Addendum pursuant to RCW 49.60.530(3).
- (c) **DEFAULT.** Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Participating Addendum, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in

discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Participating Addendum in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

- (d) **REMEDIES FOR BREACH.** Notwithstanding any provision to the contrary, in the event of termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for damages as authorized by law including, but not limited to, any cost difference between the Participating Addendum and the replacement or cover contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasing Entities shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasing Entities for default under this provision.

3.6. CONTRACTOR REPRESENTATIONS AND WARRANTIES: Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- (a) **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
- (b) **TAXES.** Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- (c) **LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS.** Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
- (d) **SALES TAX.** Contractor represents and warrants that, for all sales to Purchasing Entities in the State of Washington, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.
- (e) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.

- (f) CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (g) EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Participation Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- (h) OCIO POLICY & SECURITY COMPLIANCE: Contractor represents and warrants, that to the extent the following applies to products provided under this Participating Addendum, that Contractor shall use commercially reasonable efforts to provide applicable supporting documentation and assist the Purchasing Entities with verifying that the products comply with the Washington Office of the Chief Information Officer (OCIO) statewide information technology policies and other local information technology policies as applicable to the Purchasing Entity. Policies applicable to the Washington State Agencies are located on the OCIO website at <https://ocio.wa.gov/policies>. Prior to final execution of a Washington State Agency’s Order with a Contractor, the Contractor’s Solution(s) may be subject to a Security Design Review performed by Washington Consolidated Technology Services to ensure compliance with the State security policies.
- (i) GREEN/SUSTAINABLE. Contractor represents and warrants that Contractor shall endeavor to supply and delivery goods in alignment with the State of Washington’s green/sustainability strategy which, at a minimum is designed to minimize the use of unnecessary product packaging, reduce the use of toxic chemicals, and offer Purchasers, where practicable, ‘green products’ that provide equivalent performance. Accordingly, Contractor should review the below list of applicable state policies and standards and use commercially reasonable efforts to meet these requirements when supplying goods and services under this Participating Addendum:
 - 1. APPLICABLE POLICIES
 - a. [Electronic Products Recycling Program](#). Contractor shall use commercially reasonable efforts to adhere to Washington State’s Electronic Products Recycling Program and its requirements to both manufacturers and retailers of electronic equipment, per [E-Cycle WA, 70A.500 RCW](#), and [173-900 WAC](#).
 - 2. PROHIBITED MATERIALS
 - a. [Expanded polystyrene](#). Contractor shall use commercially reasonable efforts to adhere to Washington State Department of Ecology’s ban on expanded polystyrene void filling packaging (packing peanuts). This will expand to additional expanded polystyrene products July 1, 2024.
 - 3. PROCUREMENT PRIORITIES

- a. [Nonmercury-Added Products](#). State Agencies and institutions of higher education are directed to purchase products that contain no mercury or the least amount of mercury-added compounds or components where commercially available and economically feasible.
- b. [Electronics Products Purchasing Preference](#). State Agencies and institutions of higher education are directed to purchase applicable electronics (e.g., servers, computers and displays, imaging equipment, mobile phones, and televisions) with an [EPEAT](#) Registry listing at the Bronze level or higher, or products that meet another environmental standard that reduces the use of hazardous substances.
- c. [Recycled Product Procurement](#). State Agencies and institutions of higher education are directed to purchase printer models that will efficiently utilize one hundred percent recycled content white cut sheet bond paper.

3.7. **CONTRACTOR'S SALES AUTHORITY; PURCHASE ORDERS; & INVOICES:**

- (a) **CONTRACTOR'S SALES AUTHORITY.** Pursuant to this Participating Addendum, Contractor is authorized to provide only those goods/services set forth in the Master Agreement as conditioned by this Participating Addendum. Contractor shall not represent to any Purchaser hereunder that it has any authority to sell any other materials, supplies, services and/or equipment.
- (b) **INVOICES.** Contractor must provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order. Each invoice must include the:
 - Washington Contract Number 05820;
 - Lead State Master Agreement Number 23025;
 - Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM);
 - Applicable Purchaser's order number; and
 - The applicable volume discounts.

3.8. **TERMINATION; EXPIRATION; SUSPENSION; & REMEDIES.**

- (a) **TERMINATION.** The Purchaser may terminate Purchase Orders: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in the Purchase Order; and (c) as otherwise expressly provided for in the Purchase Order. The Purchase Orders shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate the Purchase Order as provided in subsection (b) below without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

(b) **TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW.** Enterprise Services may suspend or terminate this Participating Addendum and Purchasers may suspend or terminate applicable Purchase Orders, in whole or in part, at the sole discretion of Enterprise Services or, as applicable, Purchaser, if Enterprise Services or, as applicable, Purchaser reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Participating Addendum or applicable Purchase Order; or (b) that a change in available funds affects Purchaser's ability to pay under the applicable Purchase Order. A change of available funds as used in this section includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, Purchaser will reimburse Contractor for Goods properly ordered and/or Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, Purchaser will have no obligation or liability to Contractor.

(c) **TERMINATION FOR PUBLIC CONVENIENCE.** The Purchasers, for public convenience, may terminate the Purchase Order; Provided, however, that such termination for public convenience must, in the Purchaser's judgment, be in the best interest of the State of Washington; and Provided further, that such termination for public convenience shall only be effective upon sixty (60) calendar days prior written notice; and Provided further, that such termination for public convenience shall not relieve any Purchaser from payment for Goods/Services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, Purchaser shall have no obligation or liability to Contractor except as it relates to payment of properly due amounts.

(d) **PURCHASER OBLIGATIONS – EXPIRATION.** Upon expiration of this Participating Addendum, Purchaser shall accept and take delivery of all outstanding and not yet fulfilled Purchase Orders and pay Contractor the price as set out in the Master Agreement. Notwithstanding any provision to the contrary, in no event shall a Purchaser's Purchase Order pursuant to this Participating Addendum that is executed prior to expiration of this Participating Addendum allow for Contractor to provide Goods and/or Services more than twelve (12) months beyond the expiration date of the Master Agreement.

(e) **CONTRACTOR OBLIGATIONS – EXPIRATION OR TERMINATION.** Upon expiration or termination of this Participating Addendum, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Goods and/or Services sold hereunder and all provisions of the Participating Addendum that, by their nature, would continue beyond the expiration, termination, or cancellation of the Participating Addendum shall so continue and survive; and (b) promptly return to Purchaser all keys, badges, and other materials supplied by Purchaser for the performance of any Purchase Order entered into pursuant to this Participating Addendum.

- 4. LEASE AGREEMENTS:** Any Purchaser that desires to lease equipment pursuant to the Master Agreement, must have the authority to do so. This Participating Addendum does not provide independent authorization for Purchaser to lease equipment. In addition, state agencies and institutions of public higher education are not authorized to lease equipment pursuant to the Master Agreement and

should consult with DES Technology Leasing.

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

Participating State

Attn: Leilani Konecny
State of Washington
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360)407-8249
Email: leilani.konecny@des.wa.gov
CC: DESContractsTeamCypress@des.wa.gov

Contractor

Attn: _Harry Franks
NetApp U.S. Public Sector, Inc.
8350 Broad Street, Suite 1200
Tysons, VA 22182
Tel: (703) 918-7200 _____
Email: harry.franks@netapp.com

6. **SUBCONTRACTORS:** Subcontractors, referred to in the Master Agreement in part as Partners, are not authorized to accept payment directly from Purchasers. Contractor shall not subcontract, assign, or otherwise transfer its obligations under the Master Agreement and this Participating Addendum without Enterprise Services' prior written consent except as provided for in section 6(a). Violation of this condition shall constitute a material breach establishing grounds for termination of this Participating Addendum.

- (a) **SUBCONTRACTOR AUTHORIZATION.** Contractor is authorized to utilize its Subcontractors to provide service support to Purchasers hereunder; *provided*, however, that such participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum. Contractor shall maintain a list of such Subcontractors utilized for this Participating Addendum, and upon request, promptly provide Enterprise Services with such list and any updates. Enterprise Services reserves the right to request removal of any subcontractor from this contract if there are documented performance issues that are not corrected by Contractor within a reasonable amount of time after receiving notice of such performance issues from Enterprise Services.
- (b) **CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS.** Contractor shall be responsible to ensure that all requirements of the Master Agreement (including, but not limited to, insurance requirements, indemnification, Washington state business registration, etc.) flow down to any and all Subcontractors. In no event shall the existence of a subcontract between Contractor and its Subcontractor operate to release or reduce Contractor's liability to the Participating State or any Purchaser for any breach of the Master Agreement or this Participating Addendum. As to Participating State and Purchasers hereunder, Contractor shall have full and complete responsibility and liability for any act or omission by Contractor's Subcontractors.
- (c) **SMALL, DIVERSE, AND VETERAN BUSINESS INCLUSION GOALS.** Contractor shall make reasonable commercial efforts to include WA small, diverse, and veteran businesses as Subcontractors, as defined by [RCW 39.26.010 \(22a\)](#), [RCW 39.26.010 \(22b\)](#), and [RCW 43.60A.190 \(2\)](#)

7. **CONTRACTOR'S AUTHORIZED FULFILLMENT PARTNERS:** Authorized Fulfillment Partners, referred to in the Master Agreement in part as Partners, are authorized to accept payment directly from Purchasers. Contractor shall not subcontract, assign, or otherwise transfer its obligations under the Master

Agreement and this Participating Addendum without Enterprise Services' prior written consent. Violation of this condition shall constitute a material breach establishing grounds for termination of this Participating Addendum.

- (a) AUTHORIZED FULFILLMENT PARTNER AUTHORIZATION. Contractor is authorized, upon approval by Enterprise Services, to utilize its Authorized Fulfillment Partners to provide sales and service support to Purchasers hereunder; *provided*, however, that such participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum. Contractor shall maintain a list of such Authorized Fulfillment Partners utilized for this Participating Addendum, and upon request, promptly provide Enterprise Services with such list and any updates. Parameters for approval by Enterprise Services are included in Exhibit A.
- (b) CONTRACTOR RESPONSIBILITY FOR AUTHORIZED FULFILLMENT PARTNERS. Contractor shall be responsible to ensure that all requirements of the Master Agreement (including, but not limited to, insurance requirements, indemnification, Washington state business registration, etc.) flow down to any and all Authorized Fulfillment Partners. In no event shall the existence of a subcontract between Contractor and its Authorized Fulfillment Partner operate to release or reduce Contractor's liability to the Participating State or any Purchaser for any breach of the Master Agreement or this Participating Addendum. As to Participating State and Purchasers hereunder, Contractor shall have full and complete responsibility and liability for any act or omission by Contractor's Authorized Fulfillment Partner.
- (c) PURCHASER PAYMENT REGARDING CONTRACTOR'S AUTHORIZED FULFILLMENT PARTNERS. Notwithstanding any provision to the contrary, the parties understand and agree that for any contract sales or service provided pursuant to the Master Agreement and this Participating Addendum, Purchaser payment shall be made directly to Contractor as the awarded vendor pursuant to the competitive procurement; *provided*, however, that, in the event any such sales or services are performed by a Authorized Fulfillment Partner for Contractor, Contractor may instruct such Purchaser to make payment for such sales or services to Contractor's identified Authorized Fulfillment Partner. Regardless of whether Contractor instructs a Purchaser to make such payment to Contractor's Authorized Fulfillment Partner, Contractor shall remain responsible for performance.
- (d) CONTRACT SALES REPORTING. Notwithstanding any provision to the contrary, Contractor shall report to Enterprise Services total contract sales, delineated by purchaser, made by each individual Authorized Fulfillment Partner, and also report total contract sales, delineated by purchaser, on a consolidated Contractor 'roll-up' basis. Contractor shall maintain records supporting such reports in accordance with the Master Agreement's records retention requirements.
- (e) SMALL, DIVERSE, AND VETERAN BUSINESS INCLUSION GOALS. Contractor shall make reasonable commercial efforts to include WA small, diverse, and veteran businesses as Authorized Fulfillment Partners, as defined by [RCW 39.26.010 \(22a\)](#), [RCW 39.26.010 \(22b\)](#), and [RCW 43.60A.190 \(2\)](#)

8. **ORDERS:** Unless the parties to the applicable purchase order agree in writing that another contract or agreement applies to such order, any order placed by a Purchaser for goods/services available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other

terms and conditions of) the Master Agreement as conditioned by this Participating Addendum.

9. **TRAVEL COSTS:** Travel costs, if any, must be approved by Purchaser and set forth in the Purchase Order; *Provided*, however, that any such costs must be in accordance with the Washington Office of Financial Management’s State Administrative & Accounting Manual (SAAM).

10. **GENERAL:**

- (a) TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Contract.
- (b) INTEGRATED AGREEMENT; MODIFICATION. This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.
- (c) AUTHORITY. Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- (d) ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Participating Addendum or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.
- (e) COUNTERPARTS. This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: *Elena McGrew*
Elena McGrew

Its: Statewide Enterprise Procurement Manager

Date: February 20, 2024

NETAPP U.S. PUBLIC SECTOR, INC.
A CALIFORNIA PROFIT CORPORATION

By: *Michelle Rudnicki*
Michelle Rudnicki (Feb 8, 2024 08:37 EST)
Michelle Rudnicki

Its: President

Date: Feb 8, 2024

State of Washington Contracts & Procurement Division Department of Enterprise Services P.O. Box 41411 Olympia, WA 98504-1411	NASPO PARTICIPATING ADDENDUM AMENDMENT	
	Contract No.:	05820
NETAPP U.S. PUBLIC SECTOR, INC. 8350 Broad St. 12th Floor Tysons, VA 22102	Amendment No.:	First
	Effective Date:	October 1, 2024

FIRST AMENDMENT

TO

**NASPO PARTICIPATING ADDENDUM CONTRACT No. 05820
COMPUTER EQUIPMENT, RELATED PERIPHERALS & SERVICES (NVP)**

This First Amendment (“Amendment”) to Contract No. 05820 is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“Enterprise Services”) and NETAPP U.S. PUBLIC SECTOR, INC., a California Profit Corporation (“Contractor”) and is dated as of October 1, 2024.

RECITALS

- A. Enterprise Services and Contractor (collectively the “Parties”) entered into that certain Contract No. 05820 dated effective as of 2/1/2024 (“Contract”).
- B. The Parties now desire to amend the Contract to include a ‘pay equality provision’ as required by the Washington State Legislature. See [LAWS OF 2023, ch. 475](#), § 919(4).
- C. The amendment set forth herein is within the scope of the Contract.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Contract as follows:

1. **PAY EQUALITY.** The following provision is added to the end of section 3.6 (Contractor Representations and Warranties) as a new subsection:
 - (j) **WASHINGTON STATE PAY EQUALITY FOR ‘SIMILARLY EMPLOYED’ INDIVIDUALS.** Contractor represents and warrants that, among Contractor’s employees, ‘similarly employed’ individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for Contractor’s workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but is not limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based

on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Contract and/or any agreement entered into pursuant to this Contract.

2. NO CHANGE OTHER THAN AMENDMENT. Except as amended herein, the Contract is unaffected and remains in full force and effect.
3. INTEGRATED AGREEMENT; MODIFICATION. This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict between this Amendment and the Contract or any earlier amendment, this Amendment shall control and govern. This Amendment may not be modified except in writing signed by the Parties.
4. AUTHORITY. Each party to this Amendment, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
5. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Amendment or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment or such other ancillary agreement for all purposes.
6. COUNTERPARTS. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Amendment at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Amendment.

EXECUTED AND EFFECTIVE as of the day and date first above written.

NETAPP U.S. PUBLIC SECTOR, INC.,
A CALIFORNIA PROFIT CORPORATION

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: Michelle Rudnicki
Michelle Rudnicki (Sep 30, 2024 15:08 EDT)

By: Kimberly Kirkland

Name: Michelle Rudnicki

Name: Kim Kirkland

Title: President

Title: IT Procurement Supervisor

Date: 9/25/2024

Date: 10/28/24