

WESTERN STATES CONTRACTING ALLIANCE
MASTER PRICE AGREEMENT

for

COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

Number B27170

This Agreement is made and entered into by NetApp, Inc., 1921 Gallows Road, Suite 600, Vienna, VA 22182 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities.

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desire to sell; and,
WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. Delivery, support, warranty, and maintenance may be provided by the Contractor using subcontractors. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished under this Agreement. The Contractor is responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by individual Participating Entities, who have the sole discretion to determine if they will accept services from a subcontractor.

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process, and if the Contractor submitted copies of its lease agreements with its response to the RFP. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. The agreements are located in Exhibit C, Value-Added Services.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage

(SANs, etc.) should not exceed \$300,000 each. Desktop per unit/configuration costs should not exceed \$100,000. Printers of all types and monitors per unit/configuration costs should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. Definitions

“Announced Promotional Price” are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

“Consumables” those items that are required for the operation of the Equipment offered or supplied which are consumed over time with the purchaser’s use of the equipment are included – printer cartridges, batteries, projector bulbs, etc. *Consumables such as magnetic media, paper and generally available office supplies are excluded.*

“Configuration” in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

“Contract” means a binding agreement for the procurement of items of tangible personal property or services. Contract and Master Price Agreement are used interchangeably in this document.

“Contractor” means the successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof. For the purposes of this Contract, the term Contractor and Contract Vendor are synonymous.

“CPV Member” is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota’s Cooperative Purchasing Venture (CPV) program.

“CPV Program.” The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the commissioner of Administration to “enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as

described in section 471.59, subdivision 1.” Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the “State contract price.”

“Cumulative Volume Discount” means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of the Master Price Agreement.

“Documentation” refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor’s web site.

“E-Rate” is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

“Educational Discount Price” means the price offered in a nationally announced promotion, which is limited to educational customers only.

“Equipment” means workstations, desktop, laptop (includes Tablet PC’s), handheld (PDA) devices, projectors, servers, printers, monitors, computing hardware, including upgrade components such as memory, storage drives, and spare parts. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in this RFP or subsequent contracts. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item.

“FCC” means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

“General Price Reduction Price” means the price offered to consumer, business or governmental purchasers at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this Master Price Agreement, the Lead State is Minnesota.

“Mandatory” The terms “must” and “shall” identify a mandatory item or factor.

“Manufacturer” means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC’s) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer must provide direct un-infringed unlimited USA OEM warranties on the products. The manufacturer’s

name(s) shall appear on the computer equipment. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Master Price Agreement” means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of the Contractor’s products and/or services by Purchasing Entities. The “Master Price Agreement” is a permissive price agreement. In order for a Purchase Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

“Materials Management Division” or “MMD” means the procurement official for the State of Minnesota or a designated representative.

“NASPO” means the National Association of State Procurement Officials

“Participating Addendum” or “Participating Addenda” means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions, including but not limited to payment terms, may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One digitally formatted, executed copy of the Participating Addendum must be submitted to the WSCA/NASPO Contract Administrator PRIOR to any orders being processed.

“Participating State” or “Participating Entity” means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement.

“PDA” means a Personal Digital Assistant and refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA’s usually can store phone numbers, appointments, and to-do lists. PDA’s can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which is later entered into a larger computer. NOTE: For this procurement, all Tablet PC’s are NOT considered PDA’s. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Peripherals” means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software,

as defined in the RFP, is not considered a peripheral. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the WSCA/NASPO Contract Administrator. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in the contract. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Permissive Price Agreement” means that placement of orders through the Price Agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the Price Agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the Price Agreement as long as applicable procurement statutes and rules are followed.

“Per Transaction Multiple Unit Discount” means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

“Political Subdivision” means local public governmental subdivisions of a state, as defined by that state’s statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

“Price Agreement/Master Price Agreement” means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

“Procurement Manager” means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

“Product(s)” means personal computer equipment, peripherals, LAN hardware, pre-loaded Software, and Network Storage devices, but not unrelated services. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Products and Services Schedule Prices” or **“PSS”** refers to a complete list, grouped by major product and/or service categories, of the Products and services provided by the contractor that consists of an item number, item description and the Purchasing Entity's price for each Product or Service. All such Products and services shall be approved by the WSCA/NASPO Contract Administrator prior to being listed on a Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty service and maintenance for all equipment listed on the PSS on a Master Price Agreement as well as a Takeback Program.

“Purchase Order” means an electronic or paper document issued by the

Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

“Refurbished Products” are products that may have been powered on or used by another customer that have been fully retested, defective parts replaced, and repackaged to meet original factory specifications.

“Services” are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

“Servicing Subcontractor/Subcontractor/Reseller Agent” means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor’s Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided for in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor’s providing products and services, as well as warranty service and maintenance for equipment the subcontractor has provided on a Master Price Agreement as well as the Takeback Program.**

“Standard Configurations” or **“Premium Savings Configurations”** means deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. Any entity, at any time, that commits to purchasing the standard configuration adopted by other Purchasing Entities shall receive the same price from the contract awardees. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

“State Procurement Official” means the director of the central purchasing authority of a state.

“Storage Solution/Auxiliary Storage” means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS) and Storage Area Networks (SAN). **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

“Takeback Program” means the Contractor’s process for accepting the return of the equipment or other products at the end of life—as determined by the State utilizing the Master Price Agreement.

“Trade In” refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

“Travel” means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

“Universal Resource Locator” or “URL” means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

“WSCA” means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

“WSCA/NASPO Contract Administrator” means the person or designee authorized by MMD to manage all actions related to the Master Price Agreements on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

2. Scope of Work

The Contractor, or its approved subcontractor, shall deliver computing system Products and services to Purchasing Entities in accordance with the terms of this agreement. This Agreement is a “Master Price Agreement”. Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid “Purchase Orders”. Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor’s PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor’s PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official.

The Contractor is required to provide and/or agree to take legal responsibility for the warranty and maintenance of all proposed equipment, including peripherals. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon receipt of payment by the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document; and
- F. Contractor's proposal including best and final offer.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

A. Acceptance

A Purchasing Entity shall determine whether all Products and services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within 30 days following delivery of non-acceptance of a product or service. All Products and Services shall be deemed accepted by the Purchasing Entity at thirty (30) days following delivery should the Purchasing Entity not notify the Contractor within that time period of either acceptance or non-acceptance of said Products and Services.

B. Payment of Invoice

Payments shall be submitted to the Contractor at the address shown on

the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. The ordering entity is not required to pay the Contractor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all goods and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card".

In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Invoices shall match the line items on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2012. The Agreement may be mutually renewed for two (2) additional one-year terms, or one additional two-year term, unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the WSCANASPO Contract

Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

D. The Contractor's Rights

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

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

10. Shipment and Risk of Loss

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid

by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to fully-litigated latent defects, fraud and Contractor's warranty obligations.

B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all Products shall be shipped within 15 to 25 days after receipt of a purchase order, by a reliable and insured shipping company.

11. Warranties

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished through this Agreement. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process, and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:

1. The Product conforms to the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
2. The product will meet mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
3. The Product will be suitable for the ordinary purposes for which such Product is used,
4. The Product has been properly designed and manufactured for its intended use,
5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned, and
6. The Product is in the legal possession of the Purchasing Entity, as defined in Article 10 Shipment and Risk of Loss, before any warranty period begins.
7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem

arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or the use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:

- a) Hardware Products Warranty
- b) Software Products Warranty
- c) Hardware and Software Extended Warranties

B. Contractor may modify the warranties described in Exhibit A from time to time with the prior approval of the WSCA/NASPO Contract Administrator.

C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products.

D. The basic warranty shall be three year, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:

- 1. Give the Contractor prompt written notice of any claim;
- 2. Allow the Contractor to control the defense or settlement of the claim; and
- 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- 1. Provide a Purchasing Entity the right to continue using the Products or Services;
- 2. Replace or modify the Products or Services so that it becomes non-infringing; or
- 3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service,

less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.

- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
 2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
 3. Product modifications by the Purchasing Entity or a third party;
 4. Product use prohibited by Specifications or related application notes; or
 5. Product use with products that are not the Contractor branded.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit Discount. Only General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial base-line, Cumulative, and Per Transaction Multiple Unit Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed prices discount levels on file with WSCA/NASPO Contract Administrator for the following Products:

Band 4 – Storage Solutions

Operating Systems

Local Area Network Devices

- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the WSCA/NASPO Contract Administrator. The Contractor agrees that the PSS on the State's

administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.

- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the WSCA/NASPO Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA/NASPO Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the WSCA/NASPO Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the Contractor during a product warranty period or during a support agreement.

17. Takeback and Other Environmental Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in the following paragraphs.

A. Takeback/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are list on the web site.

B. Environment: Compliance with the following standards as applicable: Blue Angel, EcoLogo, Energy Star, EPEAT (by level), Green Guard, Nordic Swan, and

TCO.

C. Product labeling of compliance with Items B & C above, as well as a identification of such information on the web site.

18. Product Delivery

Contractor agrees to deliver Products to Purchasing Entities within (30) days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract or transaction must be made available and subject to examination by the contracting agency or its agents, the Legislative Audit and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or participating entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

A. Reseller Agent, Service Provider or Servicing Subcontractors shall be

identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontract that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property rights and ownership sections of this Contract. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification, Hold Harmless and Limitation of Liability

The Contractor shall indemnify, protect, save and hold harmless the Lead State, Participating Entities, and its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of the Contract by the Contractor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contractor may have with the State's or Participating Entities' failure to fulfill its obligations pursuant to the Contract.

The State agrees that the Contractor, its principals, members and employees

shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$10,000,000. This limitation of liability does not apply to damages for personal injury or death, or to Contractor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement or copyright claims under paragraph 12 of this Agreement. This indemnification does not include liabilities caused by the State's gross negligence, or intentional wrong doing of the State.

NOTWITHSTANDING ANY OTHER PROVISION HEREIN, IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) SHALL CONTRACTOR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR LOST OR CORRUPTED DATA ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION OF ITS PRODUCTS.

25. Amendments

Contract amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

28. Enforcement of Agreement/Waivers

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or

indulgence.

B. Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

C. Neither party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids described in the RFP, and/or in accordance with instructions provided by the WSCA/NASPO Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A. above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reports.
- D. Once the website is approved, the Contractor may not make changes to the website without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes.

30. Equal Opportunity Compliance

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Contract.

31. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in any Contractor key personnel, in writing, and in advance if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

33. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Data Practices

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (and where applicable, if the state contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either

the Contractor or the State.

- C. The Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

35. Organizational Conflicts of Interest

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
 - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
 - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "WSCA/NASPO Contract Administrator" modified appropriately to preserve the State's rights.

36. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be manufacturer-certified refurbished parts carrying USA OEM warranties.

37. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

38. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

39. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Contract. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Contract due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Contract.

40. WSCA/NASPO Contract Administrator

The State shall appoint an WSCA/NASPO Contract Administrator whose duties shall include but not be limited to the following:

- A. The WSCA/NASPO Contract Administrator may provide instructions concerning the contents of the Contractor's website.
- B. The WSCA/NASPO Contract Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the State for resolution.
- C. The WSCA/NASPO Contract Administrator shall promote and support the use of this Agreement by NASPO members and other Participating Entities.
- D. The WSCA/NASPO Contract Administrator shall advise the State regarding the Contractor's performance under the terms and conditions of this Agreement.
- E. The WSCA/NASPO Contract Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- F. The WSCA/NASPO Contract Administrator shall periodically verify the Product and Service prices in the PSS conform to the Contractor's volume price and other guarantees. The WSCA/NASPO Contract Administrator may require the Contractor to perform web site audits to accomplish this task.
- G. The WSCA/NASPO Contract Administrator shall conduct annual Contractor performance reviews.

- H. The WSCA/NASPO Contract Administrator shall maintain an Agreement administration website containing timely and accurate information.

41. Survival

The following rights and duties of the State and Contractor will survive the expiration or cancellation of the resulting Contract. These rights and duties include, but are not limited to Paragraph 12. Patent, Copyright, Trademark and Trade Secret Indemnification; Paragraph 20. Records and Audit; Paragraph 24. Indemnification, Hold Harmless, and Limitation of Liability; Paragraph 31, Governing Law; Paragraph 34. Data Practices; and Paragraph 52. Right to Publish.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

- A. If one party is required to give notice to the other under the Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisitions Supervisor
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996
Email: bernie.kopischke@state.mn.us

44. Reporting and Fees

- A. Administration Reporting and Fees
 - 1. The Contractor agrees to provide monthly utilization reports to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th of March; etc.). The report shall be in the format developed by the Lead State and supplied to the Contractor.

2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor. Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

3. The Contractor agrees to include all Reseller Agent sales in the monthly utilization reports described above. In addition, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the utilization report the environmental information shown in the report format provided; as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the WSCA/NASPO Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed format. Such request shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The WSCA/NASPO Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All

such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.

2. Purchasing Entities will be encouraged to use the reporting format developed by the lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
 1. Nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 1. Exercise any remedy provided by law or equity;
 2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 3. Impose liquidated damages, as specified in a Participating Addendum;
 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.
 5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor.
- D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

46. Audits

- A. Website Pricing Audit

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on the requirements described in the Vendor Mandatory meeting presentation. Website pricing audits will be performed on a quarterly basis.

1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the WSCA/NASPO Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

B. Sales Audit

The Contractor further agrees to provide sales audit reports based on the formulas described in the Vendor Mandatory meeting presentation. These presentations were held the week of March 30-April 3, 2009.

- C.** Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

49. Ownership

- A. Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Contract. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Contract without the prior written consent of the State.

Any reports, studies, photographs, negatives, databases, computer programs, or other documents so prepared by the Contractor for the State shall first be subject to written agreement between the State and the

Contractor detailing the tangible items to be delivered, the delivery schedule, and Third Parties involved in the effort, specific intellectual property to be developed (if any) and the terms and conditions of said intellectual property development and/or document delivery. Contractor asserts that it is a provider of commercial –off-the-shelf (COTS) Products and Services developed entirely at private expense, is not in the ordinary business of producing works for hire, and will provide intellectual property for sale or license to the State only under exceptional conditions supported by detailed documentation.

50. Prohibition Against Gratuities

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

52. Right to Publish

- A. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the WSCA/NASPO Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. 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 this Contract that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Contract, 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.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

55. Customer Satisfaction/Complaint Resolution

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will survey its customers in each Participating State approximately two (2) months prior to the annual meeting with the Contract Administrator using, at a minimum, the survey questions provided by the State.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**.

57. E-Rate Program

The Contractor's E-Rate identification number is: 143021227; qualifying products are as follows: network storage products.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the State of Minnesota Commissioner of Administration, below.

1. NETAPP INC.

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By:

Title: Mark Weber

NetApp, Inc. Vice-President

Date: June 22, 2009

By:

Title:

Date:

2. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By:

Title: Acquisitions Supervisor

Date:

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By:

Date:

Original signed

JUN 23 2009

By Brenda Willard

EXHIBIT A – ADDITIONAL WARRANTIES

- A. Hardware Products Warranty.** Hardware Products shall have a warranty of three (3) years, unless otherwise noted in specific Product documentation. All warranties begin on the date that NetApp ships the hardware Product to Customer. NetApp warrants that each hardware Product sold by NetApp will operate in accordance with NetApp's published specifications and accompanying documentation for the hardware Product on the date it is shipped, or NetApp will repair or replace the hardware Product, or refund the purchase price at NetApp's sole discretion. Hardware Products may contain some refurbished parts warranted as new. Replacement parts shall be warranted for the remainder of the warranty period in effect on the original hardware Product, unless otherwise mandated by local law.
- B. Software Products Warranty.** For a period of ninety (90) days from the date that NetApp delivers the software Product to Customer, NetApp warrants that (a) the software Product will materially conform to NetApp's then-current documentation and specifications, as may be published by NetApp, for such software Product; and (b) that the media containing the software Product is free from physical defects.
- C. Hardware and Software Extended Warranties.** NetApp offers Customers the ability to purchase an extended warranty, as well as hardware and software support offerings for a term of up to sixty (60) months after a product has reached End of Availability (EOA).

Detailed information regarding NetApp extended warranty through support offerings can be located in Exhibit C of this Agreement.

EXHIBIT B – COMPLAINT RESOLUTION

Any customer problems and complaints not related to services, hardware and software are initially routed to the Participating State's or Entity's NetApp Sales Representative or NetApp Reseller from which the NetApp equipment was purchased. For problems with billing, the Sales Representative or Reseller should be the first line of contact. Any inconsistencies in billing will be initially routed to the NetApp Field Administrator that in turn is then escalated to NetApp's Account Receivable Department located in Sunnyvale, California.

All customer problems and complaints associated with services, equipment and software are handled by NetApp Global Services. NetApp has a breadth of offerings that address hardware support referred to as SupportEdge. Software support is provided through a program called Software Subscription Plan.

Proactive NetApp SupportEdge services leverage innovative NetApp technology to detect, diagnose, respond to, and resolve problems, often before the customer even knows they have occurred. This level of support provides reliable performance and constant data availability. NetApp offers three distinct SupportEdge services, which can be tailored to meet your unique requirements:

- **SupportEdge Premium.** Comprehensive support for enterprise and mission-critical applications where on-site support is essential to business success.
- **SupportEdge Secure for Government.** A version of SupportEdge Premium that includes security-cleared representatives and management of data. This offering addresses the security demands of worldwide classified and sensitive but unclassified (SBU) government customers.
- **SupportEdge Standard.** Basic support package for noncritical systems on which the customer performs their own hands-on support.

Problem Escalation Policy

NetApp has an established methodology for case management. Cases can be initiated automatically by our systems installed at customer sites via our AutoSupport technology, or can be generated by our customers, third parties or other NetApp employees. All cases are assigned case owners based in our Technical Support Center (TSC).

Cases are also assigned priorities to establish an overall response time and the resolution process for the case. NetApp uses the following guidelines for establishing case priorities. However the customer can request an increase in priority at any time through the TSC hotline.

Definitions of Priorities

Priority 1 (P1)

NetApp node, system or cluster is down, unable to serve data, is in a state of frequent or repeating "Panic" or "Hang", or is in a state of degraded performance sufficient to prevent normal business operations. At this Priority, both NetApp and the Customer must commit to around-the-clock action and involvement by all necessary and appropriate personnel and systems until a mutually agreeable workaround is provided and normal business operations are restored.

Priority 1 Notification Matrix

Elapsed Time	Who's notified: NetApp
0 - 30 minutes	TSC Duty Manager
1 hour	TSC Group Manager TSC Duty Manager
2 hours	TSC Group Manager TSC Duty Manager TSC Regional Director
4 hours	TSC Group Manager TSC Duty Manager TSC Regional Director TSC Site VP
8 hours	Sr. VP, Global Support Network Appliance Executives

NOTE: When a case with a priority of 2 is raised to a Priority 1, the time triggers for a Priority 1 are activated.

Priority 2 (P2)

NetApp node, system, or cluster is experiencing an infrequent, isolated, or intermittent "Panic" or "Hang", or is in a state of degraded performance that allows business operations to continue but at an inconsistent or less than optimal rate. At this Priority, NetApp is committed to a commercially reasonable best effort to provide a workaround and/or restore normal operations as quickly as possible.

Priority 3 (P3)

NetApp node, system, or cluster is experiencing an issue, anomaly, or cosmetic defect that inflicts little or no business impact, and where a viable and mutually agreeable workaround or hardware/software upgrade exists to mitigate the problem.

Priority 4 (P4)

Normal requests for information regarding the installation, configuration, use and maintenance of your NetApp equipment. This includes administrative inquiries and return material authorization (RMA) information. There is no impact to your production systems or business operations.

Escalation Guidelines

Upon notification, a customer issue is escalated to various levels of NetApp management in accordance with the notification guidelines in the table above. Our objective is to ensure that the most appropriate support resource(s) is/are utilized to quickly resolve the problem. The NetApp Technical Support Center Manager, to which the incident is escalated, takes responsibility for problem resolution oversight and provides progress updates to the customer on a timely basis.

NetApp uses every reasonable method available aligned with the most appropriate skilled resources to expedite a resolution. It is important to recognize that this service level target requires shared responsibility from the customer to ensure success.

EXHIBIT C – VALUE-ADDED SERVICES

The NetApp Professional Services organization provides end-to-end technical service solutions to your storage-related business technology problems. NetApp helps you choose and deploy best-in-class solutions and realize the full value of your NetApp investment in the context of your environment.

Implementation/Rapid Deployment Services (RDS)

NetApp Professional Services can be engaged to support full implementations by engaging NetApp or an Authorized Reseller who can develop a Statement of Work based on daily rates of the required roles. Additional services offered by NetApp include a Rapid Deployment Service (RDS). A RDS is a fixed scope-fixed price service offering that is designed to supplement basic installation and custom scoped ConsultingEdge services.

ADD-ON SERVICE COMPONENTS

A customer chooses add-on service components depending on their specific business needs.

RDS+ STORAGE IMPLEMENTATION

- **SAN Add-on Service Component:** Up to two NetApp purchased switches integrated with a single-node storage controller or one active-active storage cluster per package. A maximum of five hosts will be configured.
- **SnapMirror Add-On Service Component:** Two storage controllers. The source must be configured as part of the FAS base service. The destination can be an existing controller, but must have a compatible configuration (the same major release of Data ONTAP). Limited to five relationships.
- **MetroCluster Add-On Service Component:** One MetroCluster configuration per package. Installation is limited to a single data center campus (facilities within 500 meters of each other). Covers only Stretch (standard active-active) configurations. Limited to two disk shelves per controller.
- **SnapVault Add-On Service Component:** Two storage controllers. The source must be configured as part of the FAS base service. Not to exceed a total of five SnapVault relationships.
- **Open Systems SnapVault Add-On Service Component:** Up to two storage controllers. The destination must be configured as part of the FAS base service. One supported Open Systems SnapVault Microsoft® Windows® operating system only. Not to exceed a total of five client hosts located in the same data center.

RDS+ V-SERIES IMPLEMENTATION

- **SAN Add-On Service Component:** Up to two NetApp purchased switches integrated with a single-node storage controller and/or one active-active storage cluster per package. A maximum of five hosts will be configured.

Training

NetApp's innovative solutions are designed to reduce the time, cost, and complexity of managing enterprise data. Storage system administrators are able to perform the efficient administration of NetApp storage systems when they are knowledgeable and proficient. NetApp offers extensive training courses to transfer knowledge and increase proficiency.

SupportEdge Services Overview

The SupportEdge family of services provides hardware and software support so that customers with best-in-class NetApp solutions can manage storage and data optimally. Organizations and groups of all sizes - and even classified government customers - can choose the offering that best fits their needs.

SupportEdge Standard

SupportEdge Standard provides basic support for noncritical systems for which your own staff performs the hands-on support:

- **Semiannual Storage Availability Audits (SAAs).** The report contains comprehensive 360° reporting on your NetApp infrastructure, delivered by a NetApp Authorized Service Engineer (NetApp ASE) who will be available to answer questions about the report information.
- **Replacement parts delivery.** Required replacement parts arrive based on a Return Materials Authorization (RMA) issued by NetApp Technical Support, in the timeframe consistent with your agreement (Next Business Day [NBD], 4-hour, or 2-hour replacement).
- **Unlimited software updates.** You are entitled to software updates, maintenance releases, and feature releases for all licensed NetApp software.
- **NetApp AutoSupport.** A sophisticated 24x7 monitoring alerts your staff and NetApp to potential issues. This service can be beneficial for identification and problem resolution during non business hours when staffing is minimal.
- **Phone and online support (NOW).** 24x7 phone and Web access to Technical Support and Knowledge Base services.

Options Available

- **Technician to replace parts.** A NetApp ASE comes to your site to remove the defective part and install the replacement part.
- **Proactive Support Advisor (PSA)** service is designed for organizations that direct the majority of the resources towards prevention and use SupportEdge Standard service for reactive support. PSA is a scaled-down version of Technical Global Advisor (TGA) that provides proactive support through standard reports, processes, and customer interfacing. Your PSA will advise you of system vulnerabilities that could adversely affect system availability.
- **Non Returnable Disk (NRD).** As an additional security precaution, NetApp offers NRD parts exchange.

SupportEdge Premium

SupportEdge Premium is our premiere support package. It offers optimal performance, availability, and expedited remote and on-site problem resolution for mission-critical data centers and other business-critical operations. This offering combines expert on-site resources with innovative remote capabilities, for superior comprehensive and proactive support.

SupportEdge Premium provides:

- **Priority case management** - As a SupportEdge Premium customer, you are given priority before SupportEdge Standard and Warranty customers.
- **Initial basic installation** - SupportEdge Premium provides basic hardware and software installation, configuration, and verification services to ensure that all NetApp products are properly installed.
- **On-site troubleshooting support** - A NetApp authorized service engineer will come on site as needed to resolve your hardware and software issues. NetApp service engineers work in concert with other NetApp Global Support personnel to provide the fastest possible problem resolution.

- **Physical inspection** - An authorized NetApp partner conducts a semiannual physical inspection of your NetApp systems and the findings are integrated into your Storage Availability Audit report. The inspection checks more than a dozen critical items, including mounting, identification, seating of components and electrical connections, fan status, system monitoring LEDs, and fibre cabling.
- **Quarterly Storage Availability Audits (SAAs)** - Comprehensive 360° reporting on your NetApp infrastructure presented in person by a NetApp Authorized Service Engineer (NetApp ASE) who can make suggestions and answer your questions. The customized SAA report provides meaningful analysis of your capacity and utilization trends, along with recommendations targeted to your business-strategy objectives and based on proven NetApp best practices.

Note: To receive Storage Availability Audits, your NetApp systems must have AutoSupport enabled and reporting to NetApp.
- **Technician to replace parts** - A NetApp technician comes to your site to remove defective part and install the replacement.
- **Replacement parts delivery** - When a case is opened in NetApp Technical Support, any necessary replacement part is shipped to arrive at your site in a timeframe based on your support agreement: Next Business Day (NBD), 4-hour, or 2-hour parts delivery.
- **Unlimited software updates** - You are entitled to software updates, maintenance releases, and feature releases for all licensed NetApp software.
- **Premium NetApp AutoSupport** - A new and exciting suite of NOW (NetApp on the Web) applications for NetApp SupportEdge Premium customers. These premium tools build on the functionality of basic AutoSupport to offer advanced features for configuring and managing your NetApp systems. With Premium NetApp AutoSupport, you can:
 - ◆ Visualize the configuration at the company or device level
 - ◆ View timeline history of critical events and alerts
 - ◆ Check configuration differences
 - ◆ Generate Data ONTAP upgrade plans
 - ◆ **NetApp AutoSupport** - A sophisticated 24x7 monitoring service that alerts your staff and NetApp to potential issues. This service can be beneficial for identification and problem resolution during non business hours when staffing is minimal.
 - ◆ **24x7 phone and on-line support (NOW)** - 24x7 phone and Web access to Technical Support and Knowledge Base self-help resources.

Options Available

- ◆ **Technical Global Advisor (TGA)**. A NetApp professional is assigned to monitor and coordinate support activities and cases across your enterprise locations to ensure consistency and maximum effectiveness. Your TGA understands the details of your environment and applications and serves as a liaison to NetApp Technical Support to facilitate problem resolution and coordinate activities between your staff, NetApp support services, and NetApp engineering.
- ◆ **Proactive Support Advisor (PSA)** - A service designed for organizations that direct the majority of the resources towards prevention and use SupportEdge Premium service for reactive support. PSA is a scaled-down version of TGA that provides proactive support through standard reports, processes, and customer interfacing. Your PSA will advise you of system vulnerabilities that could adversely affect system availability.

- ◆ **Non Returnable Disk (NRD).** For customers who are concerned about data security on returned defective disks, this feature can be added to your NetApp Support agreement. NRD allows you to keep any defective disks and dispose of them according to your company's security requirements.

SupportEdge Secure for Government (SESG)

SupportEdge Secure for Government is the industry's first support offering to address the mission-critical security requirements of government customers. This service delivers the most comprehensive and secure support infrastructure available to both classified and unclassified government agencies.

There are two versions of this service to choose from: Onsite Support and Parts Delivery. The following table summarizes the featured components of SupportEdge Secure for Government. The self-help tools, remote support capabilities, and cleared on-site resources of SupportEdge Secure for Government provides a level of service unmatched in the storage industry.

NetApp Leasing Information

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. A sample lease agreement can be found at:

<http://www.netapp.com/us/how-to-buy/wsca/wsca/html>.

Addendum to Master Price Agreement

Between

NetApp, Inc.

And

State of Minnesota, Materials Management Division

Representing the Western States Contracting Alliance (WSCA) and

the National Association of State Procurement Officials (NASPO)

Lead State Contract #: B27170

Executed on: June 23, 2009

July 20, 2009

Page 1 of 1

This Master Price Agreement Addendum governs NetApp, Inc's (hereinafter "CONTRACTOR") use of the NASPO/WSCA name and logo during the term of this Master Price Agreement and amendments to this Master Price Agreement. CONTRACTOR may use the name and logo only as set forth below. Any use not expressly permitted herein is prohibited, and such use constitutes a material breach of the Master Price Agreement with the Lead State and all Participating States.

1. CONTRACTOR may display the NASPO/WSCA name and logo on the face of the Master Price Agreement, including all electronic and hard copy versions.
2. CONTRACTOR and its subcontractors, resellers, and agents may display the NASPO/WSCA names and logos on a web site as a "click on" link to the Master Price Agreement. No other use of the logos or names is permitted on any web site, except as permitted in paragraphs 1 and 3.
3. With, and only with, prior written approval of the Lead State Contract Administrator, CONTRACTOR may advertise the Master Price Agreement in publications and promotional materials aimed at state and local government entities eligible to use the Master Price Agreement. The sole focus and intent of such advertisements must be to increase participation in the Master Price Agreement. The NASPO/WSCA names may be used and the logos displayed in the advertisement ONLY as it relates to the Master Price Agreement. The Lead State Contract Administrator's approval must encompass the content and appearance of the advertisement and the media in which the advertisement will appear.
4. CONTRACTOR may not make explicit or implicit representations concerning the opinion of NASPO/WSCA, the Lead State, or any Participating State regarding CONTRACTOR or its products or services. This restriction includes general use of the NASPO/WSCA names and logos NOT directly linked to or related to this Master Price Agreement.
5. CONTRACTOR must ensure that its sub-contractors, resellers, and agents adhere to the terms of this Addendum, and CONTRACTOR is responsible for any breach by these entities.
6. CONTRACTOR must immediately cease all use of the NASPO/WSCA names and logos if directed to do so in writing by the Lead State Contract Administrator, and CONTRACTOR must ensure that its sub-contractors, re-sellers, and agents immediately cease all use.
7. CONTRACTOR shall not make, or permit its subcontractors, resellers, or agents to make, any alterations to NASPO's or WSCA's names or logos (including characters, style and colors) and CONTRACTOR shall not use or permit the use of NASPO's or WSCA's names or logos in a manner or context that could adversely affect NASPO's/WSCA's integrity, goodwill, or reputation.
8. Upon termination or expiration of the Master Price Agreement, CONTRACTOR and its sub- contractors, re-sellers, and agents must cease all use of the NASPO/WSCA names and logos; except that, CONTRACTOR may use the NASPO/WSCA names for reference purposes in a description of its prior experience.

Acknowledged:

CONTRACTOR:

The Contractor certifies that the appropriate person(s) have executed this agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Signature

Tom, Mihich, Director, Operations

Title

July 20, 2009

Date

LEAD STATE:

In accordance with state statutes or rules.

Signature

Title

Date

Bernadette Kopischke

Acq. Supvr.

7/21/09



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: ONE (1)
TO CONTRACT NUMBER: B27170**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, and on behalf of the WSCA/NASPO ("Lead State") and NetApp, Inc., 1921 Gallows Road, Suite 600, Vienna, VA 22182 (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. B27170, effective September 1, 2009, through August 31, 2012, to provide direct-from-manufacturer personal computer equipment, peripherals and related services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract specifically state that the Contractor shall provide the basic warranty, three year, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule. (Band 4. Storage Solutions).

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

1. The Contractor may offer one-year and/or two-year warranties for each Band of equipment provided under the Contract. Should the Contractor elect to reduce the warranty, the Contractor shall show these as options when configuring a system/obtaining a quote, as a reduction in the cost of the equipment.
2. Notwithstanding any language to the contrary including paragraph 1, the Lead State agrees that the Contractor will offer a one-year warranty for all Cisco OEM products provided under the Contract.

This Amendment is effective beginning on the date that the final required signatures are obtained, and shall remain in effect until August 31, 2012, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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WSCA/NASPO Contract Administration
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Fax: 651.297.3996
TTY: MN Relay Service 1.800.627.3529
http://www.mmd.admin.state.mn.us

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. NETAPP INC.

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]
Title: Sr. Vice President, NetApp, Inc.
Date: 10/14/2010

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: [Signature]
Title: Acquisitions Supervisor
Date: 10/19/10

By:
Title:
Date:

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: [Signature]
Date: 10/19/10

Approved by NetApp/USPS legal
[Signature] 10/13/10



WSCA/NASPO Contract Administration

112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529
<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: TWO (2)
TO CONTRACT NUMBER: B27170**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, and on behalf of the WSCA/NASPO ("Lead State") and NetApp, Inc., 1921 Gallows Road, Suite 600, Vienna, VA 22182 (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. B27170, effective September 1, 2009, through August 31, 2012, to provide direct-from-manufacturer personal computer equipment, peripherals and related services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

- 1. Exhibit D – NetAPP standard EULA is hereby added to the Contract.

This Amendment is effective beginning on the date that the final required signatures are obtained, and shall remain in effect until August 31, 2012, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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2011 JUN 21 A 10 34
DEPT OF ADMINISTRATION
ST. PAUL, MN 55155

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. NETAPP INC.

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]
 Title: SVP, NetApp Inc
 Date: 1/20/2011

By: _____
 Title: _____
 Date: _____

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke
 Title: Acquisitions Supervisor
 Date: 1/21/2011

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Brenda Melland
 Date: 1/21/11

Reviewed - NetApp USPS Legal	
AMW	1/19/2011

EXHIBIT D

END USER LICENSE AGREEMENT FOR NETAPP, INC. SOFTWARE

IMPORTANT – READ CAREFULLY: This End User License Agreement (“EULA”) is a legal agreement between You either as an individual or as an authorized representative of a business entity (hereafter referred to as “You” and/or “Your”), and NetApp, Inc. (“NetApp”). NetApp is willing to license to You the NetApp software product accompanying this EULA, which includes, without limitation, computer software features, protocols, authorized updates and upgrades or other supplements to the software, images, music, text and/or animations incorporated into the software, media, printed materials, or online or electronic documentation, provided by NetApp or made available for download (collectively referred to as the “Software”). Your download, installation and/or use of the Software constitutes acceptance of all of the terms stated herein. If You do not agree with all of these terms, You must promptly return the Software to NetApp or the authorized reseller from which You obtained the Software.

1. **License Grant.** Subject to payment of the applicable fees and the limitations and restrictions set forth herein, NetApp and its licensors grant to You a non-exclusive, non-transferable, worldwide, limited license, without right of sublicense, to install and use the Software in object code form only on a host computer or storage controller for Your internal business use, in accordance with the terms contained within Your ordering documentation (Your “Software Entitlement”) or as specified in the user documentation accompanying the Software (the “Documentation”). If the Software is licensed in a cluster, then You are licensed to use one (1) copy of the Software per cluster system. Your license to the Software is further restricted to the particular protocols and Documentation licensed hereunder. Use of the Software outside the scope of Your Software Entitlement or Documentation is unauthorized and shall constitute a material breach of this EULA and void the warranty and/or support obligations of which You may otherwise be entitled.

2. **License Restrictions.** For Software licensed to You for use on a storage controller or cluster, the license is for a specific controller or cluster identified by a unique serial number. If Software is licensed on a clustered system basis, then You shall not be permitted to decompile, split, breakup or reassign within a cluster any parts of such a cluster. Subject to any express restrictions contained within Your Software Entitlement or Documentation, You shall not nor shall You allow any third party to: (a) decompile, disassemble, decrypt, extract, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas, algorithms, or file formats of, or of any components used in the Software by any means whatever; (b) remove or conceal any product identification, copyright, proprietary, patent or other notices contained in or on the Software or Documentation; (c) use any “locked” or restricted feature, function, service, application, protocol, operation, or capability without first purchasing the applicable license(s) and/or obtaining a valid license enablement key from NetApp, even if such feature, function, service, application, protocol, operation or capability is technically achievable without a key; (d) sell, lease, rent, lend, sublicense, distribute or otherwise transfer in whole or in part the Software or the applicable license enablement key to another party or to a different storage controller or cluster; (e) use the Software to operate in a service bureau, managed service provider or commercial hosting services environment, or (f) modify the Software, incorporate it into or with other software, or create a derivative work of any part of the Software. Your modification of the Software will breach this EULA, and such derivative work is and shall be owned entirely by NetApp or its licensors; You hereby assign and agree to assign to NetApp or the licensor of the Software all right, title and interest in and to said derivative work. You agree to use Software which NetApp has embedded in the NetApp equipment (“Embedded Software”) solely as embedded in, and for execution on, NetApp equipment You originally purchased from NetApp or its authorized resellers. You acknowledge that the Software is not designed, licensed or intended for use in the design, construction, operation or maintenance of any nuclear facility, aircraft operation, air traffic control or life support system. NetApp disclaims any express or implied warranty of fitness for such uses.

3. **Benchmark Results.** The results of any benchmark or comparison tests run on Software is considered to be the confidential information of NetApp. You may not publish or provide the results of any benchmark or comparison tests run on Software to any third party without the prior written consent of NetApp.

4. **Evaluation License.** The Software may be licensed to You for evaluation use, either through the activation of an evaluation Software license key or pursuant to Your corresponding order documentation (“Evaluation Software”). If licensed to You for evaluation use, You have a non-exclusive, non-transferable, worldwide, limited license, without right of sublicense, to use the Evaluation Software and Evaluation Software license keys in a non-production environment, if applicable, for thirty (30) days from the date You receive the Evaluation Software or the evaluation period referenced within the order documentation. Notwithstanding the foregoing, if You have licensed Single Mailbox Recovery (“SMBR”) Evaluation Software You are licensed to use the SMBR Evaluation Software for no more than sixty (60) days. Your use of the Evaluation Software is authorized solely for the purpose of evaluating the suitability of the Evaluation Software for licensing on a for-fee basis. The warranty offered below is not applicable to Evaluation Software licensed to You; the Evaluation Software is licensed to You “AS IS” without warranty of any kind, whether express, implied, statutory or otherwise. NETAPP AND ITS LICENSORS BEAR NO LIABILITY FOR ANY DAMAGES RESULTING FROM USE (OR ATTEMPTED USE) OF THE EVALUATION SOFTWARE THROUGH AND AFTER EXPIRATION OF THE EVALUATION PERIOD. NetApp has no duty to provide support of any kind to You with respect to Your use of the Evaluation Software.

5. **Intellectual Property Rights.** The Software and Evaluation Software are licensed, not sold, to You. The Software and Evaluation Software are protected by intellectual property and copyright laws and treaties worldwide, and may contain trade secrets of NetApp or its licensors, who have and maintain exclusive right, title and interest in and to the Software and Evaluation Software, and reserve and retain all rights not expressly granted to You herein. No right, title or interest in or to any trademark, service mark, logo or trade name of NetApp or its licensors is granted under this EULA. All title and intellectual property rights in and to software content which is not contained in the Software, but may be accessed or used through use of the Software, is the product belonging to the respective content owner and may be protected by patents, intellectual property and copyright laws and treaties worldwide. This EULA grants You no rights to such content, but use of such content may be governed by the respective terms and conditions of use relating to such content.

6. **Audit.** You agree to give NetApp or its licensors and its independent accountants the right to examine Your books, records, systems and usage associated with the Software during regular business hours upon reasonable notice to verify compliance with this EULA. If such audit discloses non-compliance with this EULA, You shall promptly pay to NetApp the appropriate license fees, plus the reasonable costs of conducting such audit.

7. **Termination.** This EULA is effective until terminated. NetApp may terminate this EULA immediately and without notice if You fail to comply with any term of this EULA. Termination of this EULA shall not relieve You from Your obligations to immediately pay NetApp, or any third party in connection with the financing of fees payable under this EULA, any sums owed hereunder or under any other agreement with NetApp or such third party. Upon termination, all rights to use the Software will cease, and You shall promptly destroy the original and all copies of the Software and any license enablement keys in Your possession or under Your control. Termination is not an exclusive remedy and all other remedies otherwise entitled by law shall remain. Sections 2, 3, 4, 5, 7 through 12 shall survive termination of this EULA.

8. Limited Warranty and Disclaimer. NetApp warrants that the Software, in the form originally licensed or downloaded by You, and under normal use and conditions, will materially conform to then-current Documentation, and its media will be free from defects in workmanship, for a period of ninety (90) days from the earlier of Your receipt of the Software or the date of delivery of the Software to You. This warranty covers only problems that are reproducible and verifiable, and does not cover software, or other items or any services provided by any persons other than NetApp or its authorized resellers and agents. Maintenance and support, if any, are governed by a separate agreement. NetApp does not provide support or maintenance services for software acquired from a party other than NetApp. You must obtain support or maintenance services for third party software from the third party licensor or its third party representatives. Software which has been abused, misused, damaged in transport, modified, or subjected to unauthorized use or installation, as determined by NetApp, shall void this warranty. NetApp's sole obligation and Your exclusive remedy under the limited warranties above shall be replacement of the Software provided that You return the Software to NetApp with a copy of Your receipt or other such acceptable proof of purchase.

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