

COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES

Led by the **State of Minnesota**

Master Agreement #: **23025**

Participating Addendum #: **PADD20257321**

Contractor: **NetApp U.S. Public Sector Inc.**

Participating Entity: **STATE OF IDAHO**

This Participating Addendum ("PA") is entered into by Contractor and Participating Entity (collectively, the "Parties").

1. Scope:

- 1.1 This PA includes the entire scope of the products and services available in Band 3, Servers and Storage Master Agreement referenced above.
- 1.2 Any scope exclusions specified herein apply only to this PA and shall not amend or affect other participating addendums or the Master Agreement itself.

2. Participation: This PA covers participation of Participating Entity in the above-referenced Master Agreement between the State of Minnesota and Contractor for Band 3 Servers & Storage. This PA may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the Idaho Division of Purchasing Administrator.

3. Term: This PA shall become effective on date of last signature, and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the PA is terminated sooner in accordance with the terms set forth herein.

4. Value: The estimated value of this PA is \$500,000.00 per year. The dollar amount listed is an estimate and cannot be guaranteed. The actual dollar amount of the PA may be more or less depending on the orders placed by each Purchasing Entity.

5. Primary Contacts: The following (or their named successors) are the primary contact individuals for this PA:

CONTRACTOR:

Name:	Harry Franks
Address:	8350 Broad St., Ste 1200, McLean, VA 22102
Telephone:	703.918.7317
Email:	harry.franks@netapp.com

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PARTICIPATING ENTITY:

Name:	Division of Purchasing, Contract Administration
Address:	650 West State Street, Boise, ID 83720
Telephone:	(208) 327-7465
Email:	ContractAdmin@adm.idaho.gov

6. Participating Entity Modifications and Additions to the Master Agreement: This PA incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions:**

6.1 Governing Law: This PA shall be construed in accordance with and governed by the laws of the state of Idaho. Any action to enforce the provisions of this PA shall be brought in state district court in Ada County, Boise, Idaho. In the event any term of this PA is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms of this PA will remain in full force and effect.

6.2 Amendments: Amendments to the Master Agreement, including but not limited to extensions, renewals, and modifications to the terms, conditions, and pricing, will automatically be incorporated in this PA unless the Participating Entity elects not to incorporate an amendment by providing written notification to the Contractor, which notice must be provided within ten (10) working days of the date of the amendment to the Master Agreement, in order to be effective. Failure to provide notice in accordance with this Section will result in the Master Agreement amendment automatically being incorporated in this PA.

6.3 Termination:

6.3.1 Termination of PA Convenience. The State of Idaho may terminate this PA for its convenience, in whole or in part, with or without cause, up to 10 days prior to shipment. Product returns are subject to NetApp approval. upon thirty (30) calendar days' written notice to the Contractor specifying the date of termination.

6.3.2 Termination of Order for Convenience. A Purchasing Entity may terminate its Order for its convenience, in whole or in part, with or without cause, upon thirty (30) calendar days' written notice to the Contractor specifying the date of termination. This authority shall apply to all new Orders as well as any Orders incorporated pursuant to Section 9 of this PA. Contractor will be compensated for products or services rendered prior to termination effective date.

6.3.3 Termination for Fiscal Necessity. The State of Idaho is a government entity, and it is understood and agreed that the State's payments under an Order placed under the PA shall be paid from Idaho State Legislative appropriations, funds granted by the federal government, or both. The Legislature is under no legal obligation to make appropriations to fulfill the Contract. Additionally, the federal government is not legally obligated to provide funds to fulfill the Contract. The Contract shall in no way or manner be construed so as to

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bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the Idaho State Legislature, or beyond any federal funds granted to the State, as may exist from time to time.

The State reserves the right to terminate the PA in whole or in part, and a Purchasing Entity reserves the right to terminate its order placed under the PA if, in its sole judgement, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State or Purchasing Entity to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available (e.g. through repeal of enabling legislation), or if the State discontinues or makes a material alteration of the program under which funds were provided, or if federal grant funds are discontinued. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable.

All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the contractor. Contractor will be compensated for products or services rendered prior to the termination effective date. Further, in the event funds are no longer available to support the Contract, as described herein, the State and Purchasing Entity shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom. In the event of early Contract termination under this section, the State will collect all Contractor-owned equipment and accessory items distributed under the Contract within thirty (30) calendar days of Contract termination. Items will be collected at a central (or regional) location(s), which must be completed within thirty (30) calendar days of written notification from the state. If Contractor fails to remove its items within that period, the State may charge Contractor costs associated with storing the items; and may otherwise dispose of the items as allowed by applicable law. At Contractor's request, the State shall promptly provide supplemental documentation as to such Termination for Fiscal Necessity. Nothing in this section shall be construed as ability by the State to terminate for its convenience.

6.4 Taxes: The State is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service (Chapter 32 Internal Revenue Code [No. 82-73-0019K]). Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State, it shall be solely responsible for the payment of those taxes. If, after the effective date of the Contract, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time the Contract becomes effective, the State will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the State be responsible for personal property taxes affecting items subject to the Contract at the time it becomes effective.

6.5 Certification Concerning Boycott of Israel: On April 26, 2021, Governor Little signed Senate Bill 1086. The bill creates a new section of code requiring all public entities in Idaho

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to insert a certification regarding boycotts of Israel in contracts and renewals of contracts that are effective on or after July 1, 2021. The Contractor certifies as follows:

Certification Concerning Boycott of Israel. Pursuant to Idaho Code section 67-2346, if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

6.6 Disclosure of Abortion Related Matters: The State is subject to the No Public Funds for Abortion Act, Idaho Code title 18, chapter 87 (the "Act") and State employees who intentionally violate the provisions of the Act are subject to criminal prosecution. This provision is included in this letter to aid in compliance with the Act. The state of Idaho (State) requests that Contractor disclose, unless Contractor is within one of the exemptions provided in the Act, if it or an affiliate is or becomes, during the term of the Contract, an abortion provider and if it will use State facilities or public funds to provide, perform, participate in, promote or induce, assist, counsel in favor, refer or train a person for an abortion related activity. Please refer to the Act for definitions of the terms used in this section.

6.7 Certification Concerning Government of China: Pursuant to Idaho Code section 67-2359, Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China. The terms in this section defined in Idaho Code section 67-2359 shall have the meaning defined therein.

6.8 Certification Concerning Boycott of Various Industries: Pursuant to Idaho Code section 67-2347A (Effective July 1, 2024), if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Agreement, engage in, a boycott of any individual or company because the individual or company: (a) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (b) engages in or supports the manufacture, distribution, sale, or use of firearms. The terms in this section defined in Idaho Code section 67-2347A shall have the meaning defined therein, including through reference to another section of Idaho Code.

6.9 Idaho Administrative Fee and Quarterly Usage Report: This PA is subject to an Administrative Fee of one and one-quarter percent (1.25%), based on orders placed against the PA, as follows:

The prices to be paid by the Purchasing Entity must be inclusive of a one and one-quarter percent (1.25%) Administrative Fee. On a quarterly basis, Contractor must remit to **State of Idaho, Attn: Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075** an amount equal to one and one-quarter percent (1.25%) of Contractor's net (sales minus credits) quarterly PA sales.

Contractor must furnish detailed usage reports as designated by the Participating Entity. The Contractor must also submit a summary quarterly report of purchases made from the PA to

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purchasing@adm.idaho.gov, utilizing the PADD Summary Usage Report Form available for download at <https://purchasing.idaho.gov/information-for-vendors/>.

For example: if the total of Contractor's net sales to the Purchasing Entity for one quarter = \$10,000, Contractor would remit $\$10,000 \times 0.0125 = \125 to the Division of Purchasing for what that quarter, along with the required quarterly usage report.

Reporting Timeline (Fiscal Year Quarters):	Fee and Report Due:
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1st Quarter:	July 1 – September 30	October 31st
2nd Quarter:	October 1 – December 31	January 31st
3rd Quarter:	January 1 – March 31	April 30th
4th Quarter:	April 1 – June 30	July 31st

Refund of Administrative Fee: In the event that this PA is cancelled by the Participating Entity through no fault of the Contractor, or if item(s) are returned by the Purchasing Entity through no fault, act, or omission of the Contractor after the sale of any such item(s) to the Purchasing Entity, the Participating Entity will refund the Contractor any Administrative Fees remitted. Administrative Fees will not be refunded or returned when an item is rejected or returned, or declined, or the PA cancelled by the State due to the Contractor's failure to perform or comply with specifications or requirements of this PA or Master Agreement. If, for any other reason, the Contractor is obligated to refund to the Participating Entity all or a portion of the Participating Entity's payment to the Contractor, or the Participating Entity withholds payment because of the assessment of liquidated damages, the Administrative Fee will not be refunded in whole or in part.

Failure to Remit Administrative Fee: If a Contractor fails to remit the Administrative Fee, as provided above, the Participating Entity, at its discretion, may declare the Contractor in default; cancel the Contract; assess and recover re-procurement costs from the Contractor (in addition to all outstanding Administrative Fees); seek State or federal audits, monitoring or inspections; and/or exclude Contractor from participating in future participating addenda.

6.10 Assignment: Contractor shall not assign this PA, or its rights, obligations, or any other interest arising from this PA, or delegate any of its performance obligations, without the express written consent of the Administrator of the Division of Purchasing. Transfer without such approval shall cause the annulment of the PA, at the option of the State. All rights of action, however, for any breach of the PA are reserved to the State. (I.C. § 67-9230).

Notwithstanding the foregoing, to the extent required by applicable law (including I.C. § 28-9-406), Contractor may assign its right to payment on an account provided that the State shall have no obligation to make payment to an assignee until thirty (30) days after Contractor (not the assignee) has provided the responsible procurement officer with (a) proof of the assignment, (b) the identity of the specific state contract to which the assignment applies, and (c) the name of the assignee and the exact address to which assigned payments should be made. The state may treat violation of the clause as an event of default.

6.11 Public Records and Trade Secret: A) Pursuant to Idaho Code Section 74-101, et seq., information or documents received by the State will be open to public inspection and copying unless the material is exempt from disclosure under applicable law. The person or entity

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submitting the material must clearly designate specific information within the document as "exempt," if claiming an exemption; and indicate the basis for such exemption (e.g. Trade Secret). The State will not accept the marking of an entire document as exempt; or a legend or statement on one page that all, or substantially all, of the document is exempt from disclosure.

B) Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate specific information within the document as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release. If the State receives a request for materials claimed exempt by the Contractor, the Contractor shall provide the legal defense for such claim.

6.12 Terms and Conditions in the Master Agreement that Do Not Apply to this PA:

6.12.1 Any terms or conditions contained in the Master Agreement that do the following are not applicable to this PA:

6.12.1.1 Waive the sovereign immunity of the state of Idaho;

6.12.1.2 Subject the state of Idaho, its agencies, or political subdivisions of the State of Idaho to the jurisdiction of the courts of other states.

6.12.1.3 Limit the time in which the state of Idaho, its agencies, or political subdivisions of the state of Idaho may bring a legal claim to a period shorter than that provided in Idaho law.

6.12.1.4 Impose a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code; or,

6.12.1.5 Require the state of Idaho, its agencies, or political subdivisions of the state of Idaho to accept arbitration or to waive right to a jury trial.

6.12.1.6 Require indemnification not specifically authorized by the Idaho legislature or subject to appropriation (pursuant to Section 67-9213, Idaho Code, and Section 59-1016, Idaho Code).

6.12.1.7 Hold employees or officers of the state of Idaho and of political subdivisions of the state of Idaho personally liable.

6.12.1.8 Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

7. Lease Agreements: Reserved

8. Subcontractors: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-specific

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webpage, may provide sales and service support to users of this PA. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.

9. Orders: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this PA shall be deemed to be a sale under, and subject to the pricing and other terms and conditions of, the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to the order.
10. Purchasing Card (PCARD) Payment: Payments under this agreement may be made by ordering agencies using a government issued credit card (Pcard). The Contractor agrees to accept Pcard payments without any additions or surcharges to the State.
11. Insurance: Prior to starting work under the contract (or as otherwise designated by the Purchasing Activity), the Contractor must provide certificates of insurance required herein and will maintain the insurance during the life of the Contract. There are no provisions for exceptions to this requirement. Failure to provide the certificates of insurance within the requisite time period may be cause for cancellation of the contract.

Contractor shall carry liability and property damage insurance that will protect it and the State of Idaho from claims for damages for bodily injury, including accidental death, as well as for claims for property damages, which may arise from operations under the Contract whether such operations be by themselves or by anyone directly or indirectly employed by either of them.

Contractor shall not commence work under the Contract until it obtains all insurance required under this provision and furnishes a certificate or other form showing proof of current coverage to the State. All insurance policies and certificates must be signed copies. After work commences, Contractor will keep in force all required insurance until the Contract is terminated.

11.1 Commercial General and Umbrella Liability Insurance. Contractor shall maintain Commercial General Liability (CGL) and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Contract.

11.1.1 CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

11.2 Commercial Automobile and Commercial Umbrella Liability Insurance. Contractor shall maintain Commercial Automobile Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.

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Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

- 11.2.1 Contractor may request a waiver from providing Commercial Automobile and Commercial Umbrella Liability Insurance in its bid or proposal if the bidder or offeror will not use any owned, hired or non-owned vehicles to conduct business under the contract, if it is awarded the contract, and the State of Idaho will consider the request. If the bidder or offeror submits a request to waive the provision of Commercial Automobile and Commercial Umbrella Liability Insurance after the due date and time for receipt of bids or proposals, the State of Idaho may not consider the request.
- 11.3 Workers Compensation Insurance and Employer's Liability. Contractor shall maintain workers compensation and employer's liability. The employer's liability shall have limits not less than \$1,000,000 each accident for bodily insurance by accident, \$1,000,000 disease policy limit, and \$1,000,000 disease, each employee.
 - 11.3.1 Contractor must provide either a certificate of workers compensation insurance issued by a surety licensed to write workers compensation insurance in the State of Idaho, as evidence that the contractor has in effect a current Idaho workers compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.
- 11.4 State of Idaho as Additional Insured: The liability insurance coverage required for performance of the Contract shall include the State of Idaho, the (agency) and its divisions, officers and employees as additional insured, but only with respect to the Contractor's activities to be performed under this Contract.
 - 11.4.1 The Contractor must provide proof of the State of Idaho, the (agency) and its divisions, officers and employees being additional insured by providing endorsements to the liability insurance policies showing the State of Idaho, the (agency) and its divisions, officers and employees as additional insured. The endorsements must also show the policy numbers and the policy effective dates.
 - 11.4.2 If a liability insurance policy provides for automatically endorsing additional insured when required by contract, then, in that case, the Contractor must provide proof of the State of Idaho, the (agency) and its divisions, officers and employees being additional insured by providing copies of the policy pages that clearly identify the blanket endorsement.
- 11.5 Notice of Cancellation or Change: Contractor shall ensure that should any of the above described policies be cancelled before the expiration date thereof, or if there is a material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s), that written notice will be delivered to the Division of Purchasing (if the Contract was issued by the Division) or to the Purchasing Activity (contracting state agency) in accordance with the policy provisions.

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- 11.6 Contractor shall request that all policies of insurance are endorsed to read that any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the State of Idaho, and its divisions, officers and employees.
- 11.7 Acceptable Insurers and Deductibles: Insurance coverage required under the Contract shall be obtained from insurers rated A-VII or better in the latest Bests Rating Guide and in good standing and authorized to transact business in Idaho. The Contractor shall be financially responsible for all deductibles, self-insured retention's and/or self-insurance included hereunder. The coverage provided by such policy will be primary to any coverage of the State on or related to the contract and shall provide that the insurance afforded applies separately to each insured against whom a claim is made, except with respect to the limitation of liability
- 11.8 Waiver of Subrogation: All policies shall contain waivers of subrogation. The Contractor waives all rights against the State and its officers, employees, and agents for recovery of damages to the extent these damages are covered by the required policies. Policies may contain deductibles but such deductibles will not be deducted from any damages due to the State.

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

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

PARTICIPATING ENTITY

CONTRACTOR

Signature: <i>Jake Nay</i>	Signature: <u><i>Robert Green</i></u> Robert Green (May 21, 2025 14:35 EDT)
Name: Jake Nay	Name: Rob Green
Title: Contract Administrator	Title: President, NetApp U.S. Public Sector Inc.
Date: 5/21/2025	Date: 5/21/2025

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.