

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

MASTER AGREEMENT

Master Agreement No: MNWNC-115 and MNNVP-134
Hewlett Packard Enterprise (hereinafter "Contractor")

And

State of North Dakota (hereinafter "STATE", "Participating State" or "Participating Entity")

North Dakota Contract #022-MNNVP-134-PA

1. Scope: This addendum allows for purchase from the Computer Equipment, Peripherals and Related Services cooperative purchasing program, led by the State of Minnesota along with a multi-state sourcing team for use by the Participating State's entities, governmental boards and commissions, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, nonprofit entities established on behalf of public entities, tribal agencies, and the International Peace Garden.

The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor, eligible for purchase under this Addendum to include: Band 4– Server; and, Band 5 – Storage. The Products and Services available under this Participating Addendum include all Products and Services in scope for the Master Agreement, with the exception of the following change for the configuration limits:

- a) Server and Storage category is increased to \$750,000.

This Addendum will be coterminous with the Master Agreement and any extensions of the Master Agreement, unless terminated pursuant to MASTER AGREEMENT TERMS AND CONDITIONS B. WSCA-NASPO TERMS AND CONDITIONS, Section 6 Cancellation.

2. Participation: Use of specific NASPO ValuePoint cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) are authorized pursuant to N.D.C.C. § 54-44.4-13. Issues of interpretation and eligibility for participation shall be determined by the State Procurement Office.

3. Order of Precedence:

1. A Participating State's Participating Addendum ("PA"); A Participating State's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota WSCA-NASPO Master Agreement
2. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms & Conditions)
3. The Solicitation including all Addendums; and
4. Contract Vendor's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Participating State Modifications or Additions to Master Agreement Award – Exhibit A, section B WSCA-NASPO Terms and Conditions and where applicable, section C - Minnesota Terms and Conditions:

- a. **Prepayment.** STATE will not make any advance payments before performance by CONTRACTOR under this Participating Addendum (this section modifies Exhibit A, section B).
- b. **Payment of Taxes by State.** STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by CONTRACTOR (this section modifies Exhibit A, section B).
- c. **Applicable Law and Venue.** This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be brought and solely litigated in the District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens* (this section modifies Exhibit A, sections B and C).
- d. **Insurance.** CONTRACTOR shall keep in force during the term of this Participating Addendum and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to keep in force during the term of this Participating Addendum, and with the exception of any wholly owned captive, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages (this section modifies Exhibit A, section B):
 - i. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - ii. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - iii. Workers compensation coverage meeting all statutory requirements.

The policy must provide coverage for all states of operation that apply to the performance of this Participating Addendum.

- iv. Employer's liability or "stop gap" insurance of \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- v. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.
- vi. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe with the exception of any wholly owned captive form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- vii. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- viii. The state of North Dakota and its agencies, officers, and employees shall be included on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall be limited to the limits of insurance required by this agreement or by the contractual indemnity obligations of the CONTRACTOR.
- ix. The insurance required in this agreement, through a policy or endorsement, shall include:
 - 1. Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
 - 2. A provision that CONTRACTOR's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
 - 3. Cross liability/severability of interest for all policies and endorsements.
 - 4. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
 - 5. The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- x. CONTRACTOR shall furnish a certificate of insurance to the

- undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- xi. Failure to provide insurance as required in this agreement is a material breach of Participating Addendum entitling STATE to terminate this agreement immediately.
 - xii. CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.
- e. **Indemnification.** In addition to any indemnity obligations found within the Master Agreement, CONTRACTOR agrees that any attorney appointed to represent the STATE must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08 (this section modifies Exhibit A, sections B and C).
- f. **Limitation of Liability.** Except for direct damages that cannot be limited under N.D.C.C. § 32-12.2-15, CONTRACTOR's limitation of liability shall be that specified in Section 19 of Exhibit C to the Master Agreement (this section modifies Exhibit A, section C).
- g. **Confidentiality.** CONTRACTOR shall not use or disclose any information it receives from STATE under this Participating Addendum that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Participating Addendum or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Participating Addendum (this section modifies Exhibit A, section B).
- h. **Compliance with Public Record Law.** CONTRACTOR understands that, except for disclosures prohibited in this Participating Addendum, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Participating Addendum, except for records that are confidential under this Participating Addendum, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request (this section modifies Exhibit A, section B).
- i. **Severability.** If any term of the Master Agreement, including this Participating Addendum, is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Master Agreement or Participating Addendum did not

contain that term (this section modifies Exhibit A, sections B and C).

- j. Spoliation – Notice of Potential Claims.** CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Participating Addendum. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident (this section modifies Exhibit A, section B).
- k. Alternative Dispute Resolution – Jury Trial.** STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial (this section modifies Exhibit A, section B).
- l. Attorney Fees and Costs.** In the event a lawsuit is instituted by STATE to obtain performance under this Participating Addendum, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. §28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit (this section modifies Exhibit A, section B).
- m. State Audit.** Except for confidential and proprietary records, all records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Participating Addendum, to prove proper invoicing and payments, are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Participating Addendum and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice (this section modifies Exhibit A, sections B and C).
- n. Takeback and Other Environmental Programs.** Takeback and/or recycling of products by agencies covered by this Addendum are subject to approval of OMB State Surplus Property pursuant to N.D.C.C. § 54-44.4-05.5 (this section modifies Exhibit A, section B).

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

Contractor

Name	Stacey Kearns
Address	355 LedgeLawn Drive, Conway, AR 72204
Telephone	512-319-3018
Fax	501-339-2377
E-mail	Stacey.lyn.kearns@hpe.com

Participating State

Name	Tricia Opp
Address	North Dakota State Procurement Office, 600 East Boulevard Avenue, Dept 012, Bismarck, ND 58505-0310
Telephone	701-328-1721
Fax	701-328-1615
E-mail	topp@nd.gov

6. **Partner Utilization:** Each Participating State represented by NASPO ValuePoint participating in this Master Agreement independently have the option of utilizing partners. Only HP partners are authorized for the State of ND as mutually agreed and outlined at www.hp.com/buy/northdakota. The Contractors partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement and this Participating Addendum. Approved partners are shown on the Contractor's dedicated website for the Participating Entity and its respective eligible Purchase Entities.

Contractor has two (2) distinct Servicing Subcontractor Programs: (1) the Reseller Agent Program; and (2) the Fulfillment Subcontractor Program. Both are available to authorized Purchasing Entities to select from under this Participating Addendum.

A. Reseller Agent Program:

Under the Reseller Agent Program the purchase order ("Order") is made out to Hewlett-Packard Enterprise ("HP"). HP fulfills and ships the Order to the Purchasing Entity and invoices the Purchasing Entity directly. The Reseller Agents provides pre- and post-sales support. Pre- and post-sales support includes, but is not limited to, providing advice on specifications, quotes, assist in escalation of order(s), and returns. The authorized Reseller Agent(s) under this Participating Addendum are listed on the HP Participating State landing page at www.hp.com/buy/NASPOVP-PC4 (www.hpe.com/buy/NASPOVP-PC4 after 11/1).

Orders and payment are issued by the Purchasing Entity direct to HP under the Reseller Agent Program. The Reseller Agent HP Authorization Number must be listed in all quotes and related Order activities for sales and tracking purposes. Orders must include the Participating State/Entity Contract Number. HP Order information, including the HP remittance address, is available in the Information Center located at the HP website www.hp.com/buy/NASPOVP-PC4.

B. Fulfillment Subcontractor Program:

Under this Fulfillment Subcontractor Program the purchase order ("Order") is made out to the named Fulfillment Subcontractor. The Fulfillment Subcontractor receives the Order(s) and invoices the Purchasing Entity directly, in addition to handling all Order tracking and escalations and offering pre- and post-sales support. The authorized Fulfillment Subcontractor(s) for receipt of Orders from Participating Entities under this Participating Addendum are listed on the HP Participating State/Entity landing page at www.hp.com/buy/NASPOVP-PC4 (www.hpe.com/buy/NASPOVP-PC4 after 11/1).

Orders and payment are issued by the Purchasing Entity direct to the named Fulfillment Subcontractor under the Fulfillment Subcontractor Program. Orders must include the Participating State/Entity Contract Number.

7. Terms: The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

8. Orders: Any Order placed by a Participating Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement.

9. Separation: This Participating Addendum is based on Master Agreement No. MNWNC-115 until November 1, 2015. Neither Party may, nor will it have the power to, assign or novate this Participating Addendum without the consent of the other, provided that in accordance with the Assignment Agreement, as of November 1, 2015, this Participating Addendum is assigned to Master Agreement No. MNNVP-134.

This Participating Addendum is based on Master Agreement No. MNWNC -115 until November 1, 2015. In accordance with the Assignment Agreement, as of November 1, 2015, this Participating Addendum is assigned to Master Agreement No. MNNVP-134.

10. Participating Addendum: To the extent applicable, this Addendum is effective and will replace and supersede the existing Participating Addendum between Contractor and Participating State/Entity under the WSCA Master Price Agreement Number B27164, effective as of September 1, 2015.

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

Participating State: ND	Contractor:
By: <i>Tricia O'P</i>	By: <i>Matthew C. Keck</i>
Name: <i>Tricia O'P</i>	Name: Matthew C. Keck
Title: <i>Procurement Officer II</i>	Title: Senior Counsel
Date: <i>8/28/15</i>	Date: August 27, 2015

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases]