

**PARTICIPATING ADDENDUM**  
**WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION**  
**DATA COMMUNICATIONS PRODUCTS AND SERVICES 14-19**  
**Administered by the State of Utah (hereinafter "Lead State")**

**MASTER AGREEMENT**

Avaya Inc.  
Master Agreement No: AR603  
(hereinafter "Contractor")

And

State of Oklahoma  
(hereinafter "Participating State/Entity")

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1. Scope: Contractor and the Division of Purchasing and General Services, an agency of the Lead State have executed State Cooperative Contract, Contract Number AR603 for Data Communications Products and Services 14-19 ("WSCA-NASPO Master Agreement" or "Master Agreement"). The Master Agreement, as now or hereafter amended, is incorporated into this addendum ("Participating Addendum") as if set forth at length. This addendum covers the Data Communications Products and Services 14-19 contracts led by the State of Utah for use by state agencies and other entities located in the Participating **State/Entity** authorized by that state's statutes to utilize **state/entity** contracts with the prior approval of the state's chief procurement official. Capitalized terms not defined in this Participating Addendum shall have the meaning set forth in the Master Agreement. To the extent of a conflict of terms between the Master Agreement and this Participating Addendum, the order of precedence set forth in Section 1 of Attachment A of the Master Agreement shall apply.

2. Participation: Use of specific WSCA-NASPO cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

**WSCA-NASPO**

Participating Entity - The defined term "Participating Entity" shall include the State of Oklahoma and any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee department or other entity designated to act in behalf of the political subdivision; a state county or local governmental entity in its state of origin; and entities authorized to utilize contracts awarded by the State via a multistate or multi-governmental contract, are eligible purchasers and authorized to purchase Contractor's products and services under the terms of this Participating Addendum.

3. Participating State Modifications or Additions to Master Agreement:

(These modifications or additions apply only to actions and relationships within the Participating Entity. This section is to be drafted by the Participating State/Entity and requires the entity to disclose and incorporate the provisions expressly mandated by state constitution or applicable law in contracts executed by the Participating State/Entity)

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**Attachment A., Section 9., Force Majeure first paragraph is revised and restated as follows:**  
Neither party to the Master Agreement shall be held responsible for delay or default caused by the fire, riot, acts of God and/or war which is beyond that party's reasonable control and that actually affect the parties obligation under the Master Agreement. The parties shall perform to the extent able under the circumstances. WSCA-NASPO may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**Attachment A., Section 10., Governing Law is revised to add the following sentence at the end of Section 10.**

Any claims, disputes or litigation relating to the Contract Documents, singularly or in the aggregate, or the execution, interpretation, performance, or enforcement thereof shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles.

Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents shall be in Oklahoma County, Oklahoma. Further, the State does not waive the doctrines of sovereign immunity and immunity from suit to the extent authorized by the constitution and laws of the State of Oklahoma.

**Attachment A., Section 12., Indemnification – Intellectual Property is hereby modified to add the following provision:**

IN CONNECTION WITH INDEMNIFICATION OF CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA, OR THE ATTORNEY GENERAL OF OKLAHOMA MAY AUTHORIZE THE VENDOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS PROVIDED HOWEVER VENDOR MAY NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OKLAHOMA ATTORNEY GENERAL. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS TO VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION BUT VENDOR SHALL REMAIN RESPONSIBLE TO INDEMNIFY THE CUSTOMER IN ACCORDANCE WITH AND TO THE EXTENT VENDOR PROVIDES AN INDEMNITY IN THE AGREEMENT. THE

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OKLAHOMA ATTORNEY GENERAL SHALL BEAR ITS OWN COSTS OF PARTICIPATION.

**Attachment A., Section 15.2., General Indemnity is hereby deleted in its entirety:**

**Attachment A., Section 16., Laws and Regulations is hereby modified to add the following provision:**

In connection with its performance of obligations under the terms of this Agreement, the Vendor shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, that are, by their terms, expressly applicable to Vendor's delivery of Products and/or services under this Agreement and impose obligations upon Vendor in its role as an information technology services provider including but not limited to the following:

- a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;
- b) Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
- c) Title VII of the 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 and Executive Orders 11246 and 11375;
- d) Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93; and
- e) Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit and be current on franchise tax payments to the State, as applicable.

**Attachment A., Section 20. Participants is hereby modified to add the following provision:**

The terms of any contract and any Purchase Order issued for multiple years under the contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other contract document, the procuring agency may terminate its obligations under the contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final and binding.

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**Attachment A., Section 22. Payment is hereby modified to add the following provision:**

As applicable, the parties shall comply with applicable Oklahoma law in invoicing and making payments. Payments for goods and services are due thirty (30) days after receipt of a proper invoice; however, Vendor agrees that payment received in accordance with applicable Oklahoma law allowing forty-five (45) days shall not constitute default hereunder nor entitle Vendor to late payment fees or interest.

**Attachment A., Section 24. Records Administration and Audit is hereby modified to add the following provision:**

As used in this clause, "records" includes invoice, Statement of Work, purchase order records or such other relevant documents regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the Customer, the Vendor agrees any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Contract.

The Vendor is required to retain records relative to this Contract for the duration of this Contract and for a period of seven (7) years following completion and/or termination of this Contract. If an audit, litigation, or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

**Attachment A., Section 25. Reports and Administrative Fees is hereby modified to add the following provision:**

For Oklahoma based Customers, Vendor agrees to submit a Contract Usage Report and said report shall be submitted on a quarterly basis. "Contract Usage Report" shall include the following: the Applicable State Contract Number, report amount(s), and reporting period covered and the State agency name. Reports shall include usage of this Contract by any other Government Entities (i.e. county, city, etc). Continuous failure to submit quarterly usage report may result in termination of the Contract.

Contract usage report shall meet the following criteria:

- a) Must be submitted electronically in Excel format
- b) Reports shall be submitted quarterly regardless of quantity
- c) Submitted within thirty (30) - calendar days upon performance completion

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d) Contract quarterly reporting periods shall be as prescribed:  
January 01 through March 31  
April 01 through June 30  
July 01 through September 30  
October 01 through December 31

Usage Reports shall be delivered to:  
State of Oklahoma Office of Management and Enterprise Services-ISD Procurement  
3115 N. Lincoln Blvd Oklahoma City OK 73105 or  
E-mail: [StatewideContractReports@omes.ok.gov](mailto:StatewideContractReports@omes.ok.gov)

For Oklahoma Based Customers, the State of Oklahoma assesses an administrative fee in the sum of one percent (1%) on all sales transacted by any entity under the Contract.

Failure to remit the fee quarterly may result in cancellation of the Contract. Administrative Fees shall not be reflected as a separate line item in Contractor's billing to participating State Agencies and Authorized Users.

Payment shall be made by via Company Check payable to OMES/ ISD Procurement within 30 calendar days from the completion of the quarterly reporting period stated under the section titled "Contract Usage Reporting."

Contractor agrees to notify OMES-ISD Procurement 24 hour in advance prior to submitting payment.

To ensure payment is properly credited, the Contractor must identify payment in the Contract Usage Report as an "Administrative Fee" and include the following information: the Applicable State Contract Number, Administrative Fee amount (s) paid and the reporting period covered

Administrative Fees should be mailed to:

Office of Management and Enterprise Services /ISD Procurement  
3115 North Lincoln Blvd  
Oklahoma City, Oklahoma 73105

**Attachment A., is hereby modified to add the following Section:**

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**Attachment A., Section 36. Accessibility/VPAT**

Vendor shall comply with federal and state laws, rules and regulations related to information technology accessibility, as applicable to Vendor as the provider of information technology products and services under this Contract, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at [http://www.ok.gov/cio/documents/isd\\_itas.pdf](http://www.ok.gov/cio/documents/isd_itas.pdf). Upon request, the Vendor shall provide a Voluntary Product Accessibility Template ("VPAT") for Vendor products which have compliance documented and which may be provided via a URL linking to the VPAT. If a Participating Entity has accessibility requirements, Participating Entity shall make those requirements known to Vendor. Such requirements may be stated in appropriate documents including but not limited to state bids, request for proposals, statements of work, riders, agreements, purchase orders and Amendments. Accordingly, in each statement of work or similar document issued pursuant to such request, Vendor shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.

All representations contained in the VPAT provided will be relied upon by the Customer for accessibility compliance purposes.

**Attachment A., Definitions is modified to add the following definition:**

Participating Entity - The defined term "Participating Entity" shall include the State of Oklahoma and any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee department or other entity designated to act in behalf of the political subdivision; a state county or local governmental entity in its state of origin; and entities authorized to utilize contracts awarded by the State via a multistate or multi-governmental contract.

4. Lease Agreements: Leasing provisions have not been approved by the State of Oklahoma by the procuring agencies within this jurisdiction. The State of Oklahoma reserves the right to exercise any leasing agreement at some future date.

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

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Contractor

Name	Avaya Inc. – Michael Fiocca
Address	HQ: 4655 Great America Parkway, Santa Clara, CA 95054-1233
Telephone	512-228-9217
Fax	
E-mail	fioccam@avaya.com

Participating Entity

Name	Allen Cook
Address	3115 N. Lincoln Blvd.
Telephone	405-522-0685
Fax	
E-mail	Allen.cook@omes.ok.gov

**6. Fulfillment Partners:**

All Contractor's Fulfillment Partners, as defined in the Master Agreement, authorized in the State of Oklahoma, as shown on the dedicated Contractor's (cooperative contract) website, are approved to provide sales and service support to participants in the WSCA-NASPO Master Price Agreement, e.g. for direct order taking, processing, fulfillment or provisioning. The Fulfillment Partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

Subject to approval of the Participating State/Entity, and at the sole discretion of Contractor, Contractor may add Fulfillment Partners at any time during the term of this Participating Addendum. Contractor may designate a minimum of two Fulfillment Partners and no set maximum number of Fulfillment Partners to provide sales and services support. Contractor, in its sole discretion, is not required to add, and may delete upon thirty (30) days written notice, any Fulfillment Partner who does not meet Contractor's established qualifying criteria, or where the addition of the entity would violate any state or federal law or regulation.

**7. Orders:** Any Order placed by a Participating Entity or Purchasing 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) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

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Purchasers may place orders directly only through Contractor's approved Fulfillment Partners or through Contractor for products or services as authorized under this Participating Addendum. Only those Fulfillment Partners approved and listed during the term of Participating Addendum at Contractor's website are authorized to directly provide quotes, receive purchase orders, invoice Customers, and receive payment from purchasers on Contractor's behalf.

Except as otherwise set forth in the qualifying criteria, Contractor will not, directly or indirectly, restrict any Fulfillment Partner's participation or ability to quote pricing for a Customer. The approved Fulfillment Partners will not offer less favorable pricing discounts than the contract discounts established by Contractor under the Master Agreement. However, the Fulfillment Partner may offer any additional incremental discounts to Participating State/Entity, and such additional discounts if offered, may be provided in the discretion and as the sole legal obligation of the approved Fulfillment Partner to the Participating State/Entity.

The Master Agreement number and the State Contract Number must appear on every Purchase Order placed under this Participating Addendum.

**8. Product & Services Offering:** The full suite of product and service offerings available under the Master Agreement may be procured under this Participating Addendum.

**9. Term:** The term of this Participating Addendum shall begin on the *later of* June 1, 2014, or the date of last signature below. The term shall continue for a period ending on the Termination Date of the Master Agreement or when this Participating Addendum is terminated in accordance with the Master Agreement, whichever shall occur first.

**10. Notices:** Notwithstanding anything contained in the Master Agreement to the contrary, all notices required or permitted under this Participating Addendum will be in writing and will be delivered to the facsimile numbers or the addresses of the relevant party set forth below or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph, or, in the absence of such an address from Customer, to the address to which the last invoice under this Participating Addendum was sent before notice is served. Such delivery will be affected by facsimile, courier or by first-class mail, postage pre-paid.

**FOR CUSTOMER:**

**If sent to the state of Oklahoma:**  
James L. Reese, II

**FOR AVAYA:**

ATTENTION: VICE PRESIDENT, LAW  
AVAYA INC.



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Chief Information Officer  
 3115 North Lincoln Boulevard  
 Oklahoma City, Oklahoma 73105

4655 GREAT AMERICA PARKWAY  
 SANTA CLARA, CA 95054-1233  
 UNITED STATES  
 FACSIMILE: 408-562-3749



**With a copy to:**

ISD Deputy General Counsel  
 3115 North Lincoln Boulevard  
 Oklahoma City, Oklahoma 73105

Notwithstanding the foregoing, notices regarding changes in pricing, Software license terms, policies or programs may be by posting on Avaya.com or by e-mail or fax.

11. **Entire Agreement:** This Participating Addendum and the Master Agreement (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the parties hereto.

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

Participating State:	Contractor: Avaya Inc.
By: 	By: 
Name: James L Reese II	Name: Carson Hostetter
Title: Chief Information Officer	Title: Area Sales Leader
Date: 5-5-15	Date: 4.23.15

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For questions on executing a participating addendum, please contact:

WSCA-NASPO	
Cooperative Development Coordinator	Paul Stembler
Telephone	651-206-3858
E-mail	pstembler@wsca-naspo.org

**[Please email fully executed PDF copy of this document to  
[PA@wsca-naspo.org](mailto:PA@wsca-naspo.org) to support documentation of participation and  
posting in appropriate data bases]**



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