

**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 Washington
(hereinafter "Participating State/Entity")
Contract No: Q1114

WSCA-NASPO DATA COMMUNICATIONS
WASHINGTON PARTICIPATING ADDENDUM
WSCA Master Agreement No: AR603
Washington Contract No: 01114

1.	Scope	3
2.	Products and Services	3
3.	Primary Contacts	3
4.	Participation	4
5.	Acquisition Authority	4
6.	Participating State Modifications or Additions to Master Agreement	4
6.1	Minority and Women's Business Enterprises (MWBE)	4
6.2	Liens, claims and encumbrances	4
6.3	Contract administration	4
6.3.1	State contract administrator	4
6.3.2	Administration of term contract	4
6.4	Contractor supervision and coordination	5
6.5	Statewide Payee Desk	5
6.6	Management fee	5
6.7	Contract sales report	6
6.8	Other required term contract reports	6
6.9	Common vendor-registration and bid-notification system	6
6.10	Contractor qualifications and requirements	7
6.10.1	Qualified and established business	7
6.10.2	Contractor authority and infringement	7
6.11	Payment	7
6.11.1	Advance payment prohibited	7
6.11.2	Payment	7
6.11.3	Invoicing and discounts	8
6.12	Taxes, fees and licenses	8
6.12.1	Taxes	8
6.12.2	Collection of retail sales and use taxes	8
6.12.3	Department of Revenue registration for out-of-state contractors	9
6.12.4	Fees/Licenses	9
6.12.5	Customs/Brokerage Fees	9
6.12.6	Taxes on invoice	9
6.11.7	Overpayment to Contractor	9
6.13	Ownership of Intellectual Property Rights	9
6.14	Additional Roles	9
6.15	Lease Agreement	10
7.	Indemnification	10
8.	Records Retention	10
9.	Termination	10
10.	Subcontractors	10
11.	Orders	11
12.	Term	11
13.	Notices	11
14.	Entire Agreement	13

WSCA-NASPO DATA COMMUNICATIONS
WASHINGTON PARTICIPATING ADDENDUM
 WSCA Master Agreement No: AR603
 Washington Contract No: 01114

1. SCOPE

Contractor and the Division of Purchasing and General Services, an agency of the Lead State have executed State Cooperative Contract, Contract Number AR214 for Data Communications Products and Services 14-19 ("WSCA-NASPO Master Price 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 Participating Addendum covers the Data Communications Products and Services contracts led by the State of Utah for use by state agencies and other entities located in the Participating state of Washington authorized by that state's statutes to utilize state of Washington 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. PRODUCTS AND SERVICES

Avaya has been awarded in the following categories:

- 5.2.2 Networking Software
- 5.2.4 Optical Networking
- 5.2.5 Routers
- 5.2.6 Security
- 5.2.8 Switches
- 5.2.9 Wireless
- 5.3.0 Unified Communications

3. PRIMARY CONTACTS

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

Contractor

Name:	Linda Grande
Address:	4655 Great America Parkway Santa Clara, CA 95054
Telephone:	(212) 841-4858
Fax:	(212) 841-4858
E-mail:	lgande@avaya.com

Washington State

Name:	Neva Peckham
Address:	1500 Jefferson Street SE/ PO Box 41411
Telephone:	(360) 407-9411
Fax:	(360) 586-2426
E-mail:	neva.peckham@des.wa.gov

The Parties will keep and maintain current at all times a primary point of contact for administration of this *Participating Addendum*.

4. 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 of Washington 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.

5. ACQUISITION AUTHORITY

The Washington State Department of Enterprise Services (DES), issues this Participating Addendum acting under the authority of the Revised Code of Washington (RCW) 39.26 which regulates the manner in which state agencies may acquire services.

6. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT

6.1 Minority and Women's Business Enterprises (MWBE)

In accordance with the legislative findings and policies set forth in RCW 39.19, the State of Washington encourages participation in all of its contracts by minority and woman-owned businesses firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). While the state does not give preferential treatment, it does seek equitable representation from the minority and women's business community. In addition, the state welcomes participation by self-identified minority and woman-owned firms and strongly encourages such firms to become certified by OMWBE.

Participation may be either on a direct basis or on an indirect basis, or as a subcontractor to a contractor.

6.2 Liens, claims and encumbrances

Subject to the terms of Section 30 of the Master Agreement hardware for which DES or the Purchaser has paid in full, shall be free of all mechanic's and materialmen's liens, claims, or encumbrances of any kind, and if DES or the Purchaser requests, written documentation of same shall be delivered to the respective requestor.

6.3 Contract administration

6.3.1 State contract administrator

DES will appoint a single point of contact that will be the Contract Administrator for this Participating Addendum and will provide contract oversight. The Contract Administrator will be the principal contact for the Contractor for business activities under this Participating Addendum. DES will notify Contractor, in writing, when there is a new Contract Administrator assigned to this Participating Addendum.

6.3.2 Administration of term contract

DES may maintain Participating Addendum information and pricing and make it available on DES's web site. The Participating Addendum prices are the maximum price Contractor can charge. The Contractor may also offer volume discounts to Purchasers.

6.4 Contractor supervision and coordination

Contractor shall:

- a. Supervise and coordinate the implementation and completion of all Participating Addendum requirements specified herein.
- b. Identify the Contractor's Authorized Representative, who will be the principal point of contact for DES concerning Contractor's performance under this Participating Addendum.
- c. Promptly notify the Contract Administrator in writing of any change of the designated Authorized Representative assigned to this Participating Addendum.

Violation of any provision of this section may be considered a material breach establishing grounds for Participating Addendum termination.

6.5 Statewide Payee Desk

Contractors must register with the Statewide Payee Desk, maintained by DES, in order to be paid for sales under this Participating Addendum. Washington state agencies cannot make payments to a Contractor until Contractor is registered. Registration materials are available here: [Receiving Payment from the State](#)

<http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>

6.6 Management fee

Contractor will pay a management fee of 0.74 percent to DES on the Net Purchase Price (as later defined) of all state contract sales. The management fee must be rolled into the Contractor's current pricing, and not shown as a separate line item on an invoice. Payment will be calculated for all sales, net of returns and credits. "**Net Purchase Price**" means: Contractor's product list price, minus all applicable contract discounts, rebates or value added incentives and excluding sales, use or other applicable taxes, surcharges or like fees, to the extent applicable to an order.

DES may increase, reduce or eliminate the management fee, and reserves the right to negotiate Participating Addendum pricing with the Contractor when adjustment of the management fee might justify an increase in pricing. Written notifications of the management fee by DES become effective for new purchases or new change orders to existing purchases at the later of: 1) 30 calendar days after notification (unless DES grants additional time), or 2) an Amendment to this Participating Addendum signed by both parties.

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced and all management fees have been paid. Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the management fee may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law. Such audit 1) will be with at least ten (10) business days advanced written notice, 2) will be during normal business hours, 3) shall not unduly interrupt or interfere with Contractor's normal business operations, and 4) in the event that such an audit is conducted by a third party, such third party shall, prior to conducting such audit, execute a confidentiality agreement for the benefit of Contractor in a form reasonably satisfactory to

Contractor.

The management fee does not include or supersede fee terms owed to other entities such as the Western States Contracting Alliance (WSCA), National Association of State Procurement Officials (NASPO) or governmental entities other than the state of Washington.

Management fee payment must reference the Participating Addendum number, work request number (if applicable), the year and quarter for which the management fee is being remitted, and the Contractor's name as it is known to DES, if not already included on the face of the check. All payments are sent to:

Washington State Department of Enterprise Services
Finance Department
1500 Jefferson St. SE
PO Box 41460
Olympia, WA 98504-1460

6.7 Contract sales report

The management fee will be based on total contract usage (Net Purchase price of sales) under this Participating Addendum,, which must be reported quarterly by the Contractor in the Contract Sales Reporting System at <http://gaapoly01/CUS/Login.aspx?ReturnUrl=%2fCUS%2fDefault.aspx> .DES will provide a login password and a vendor number.

For each report, Contractor must identify every Purchaser who has made purchases during the reporting period. The "Miscellaneous" option may be used only with prior approval by DES, and use of this option without prior approval by DES may be cause for termination of this Participating Addendum. Refer sales reporting questions to the Contract Administrator.

Due date: Reports must be submitted electronically within 30 days after the end of the calendar quarter: no later than April 30, July 31, October 31 and January 31.

Failure to provide reports in accordance with the schedule above may be cause for termination of this Participating Addendum.

6.8 Other required term contract reports

DES may require the Contractor to provide a detailed annual contract sales history report. This report, if requested, will include at a minimum, but is not limited to: product description, part number or other product identifier, per unit quantities sold, and contract price. This report must be provided to DES in an electronic format that can be read by MS Excel. Unless this Participating Addendum specifies otherwise, all other required reports will be designed and approved by the parties by mutual agreement.

6.9 Common vendor-registration and bid-notification system

Contractor shall be registered in Washington's Electronic Business Solution (WEBS) at <https://fortress.wa.gov/ga/webscust/>, the state's common vendor-registration and bid-notification

system. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register and maintain an accurate vendor profile.

6.10 Contractor qualifications and requirements

DES reserves the right to require receipt of proof of compliance with any of the requirements in this section within 20 calendar days from the date of request, and to terminate this Participating Addendum as a material breach for noncompliance with any requirement of this Section 6.10. Contractor shall maintain compliance with these requirements throughout the life of this Participating Addendum.

6.10.1 Qualified and established business

Prior to performance, or prior to that time if required by DES, law or regulation, Contractor must be an established business with all required licenses, fees, bonding, facilities, equipment, and trained personnel necessary to meet all requirements and perform the work as specified in the Participating Addendum.

6.10.2 Contractor authority and infringement

Under this Participating Addendum, Contractor is authorized to sell only those Products and Services as stated in Section 2 herein. Contractor shall not intentionally misrepresent to Purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment under this Participating Addendum. Further, Contractor may not intentionally violate other established state of Washington contracts.

6.11 Payment

6.11.1 Advance payment prohibited

No advance payment shall be made for the products and services furnished by Contractor under this Participating Addendum, with the exception of maintenance and subscription-based services. If mutually agreed with Purchaser, Contractor may invoice the Purchaser in advance for up to, but not more than a one-year period for maintenance services unless Purchaser is not prohibited from doing so by statute, administrative regulation, policy or otherwise. .

Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

6.11.2 Payment

Payment is the sole responsibility of, and will be made by, the Purchaser.

Under Chapter 39.76 RCW , if Purchaser fails to make timely payment(s), Contractor may invoice for 1 percent per month on the amount overdue or a minimum of \$1. Payment will not be considered late if payment is deposited electronically in Contractor's bank account or a check or warrant is mailed within the payment term specified in the Master Agreement.

Payment for Products received and for Services rendered shall be made by Purchaser and be redeemable in U.S. dollars.. Any bank or transaction fees or similar costs associated with the use of purchasing/credit cards shall be fully assumed by the Contractor.

6.11.3 Invoicing and discounts

Contractor must provide an invoice to Purchaser, as specified in this Section. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice must be identified by the associated contract number,, the applicable Purchaser's order number, and must be in U.S. dollars. Invoices must be prominently annotated by the Contractor with all applicable volume discount(s) and shipping charges unless otherwise specified in the Participating Addendum. Contractors and Subcontractors shall maintain a statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM)

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received. If Purchaser does not receive a properly completed invoice or receive an invoice that contains items not received, Purchaser shall immediately notify Contractor in writing.

6.12 Taxes, fees and licenses

6.12.1 Taxes

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, the Purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the Contractor shall be made for federal excise taxes and the Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

6.12.2 Collection of retail sales and use taxes

In general, contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with contractor's ability to establish or maintain a market for its products in Washington. Examples of such activity include where the contractor either directly or by an agent or other representative:

- Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;

- Maintains an in-state inventory or stock of goods for sale;
- Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;
- Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with purchasers in an attempt to establish or maintain market(s); or
- Other factors identified in WAC 458-20.

6.12.3 Department of Revenue registration for out-of-state contractors

Out-of-state contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state contractors are not required to collect and remit "use tax," purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

6.12.4 Fees/Licenses

After award of contract, and prior to commencing performance under the contract, the contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for contract performance. It is the contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Participating Addendum.

6.12.5 Customs/Brokerage Fees

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or contract. Neither DES nor the Purchaser will incur additional costs related to Contractor's payment of such fees.

6.12.6 Taxes on invoice

Contractor shall calculate and enter the appropriate state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

6.12.7 Overpayments to Contractor

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment (as verified by Contractor) under this Participating Addendum within 60 days' receipt of written notice.

6.13 Ownership of Intellectual Property Rights

Ownership of Intellectual Property Rights is as provided in Section 17.2 of the Master Agreement.

6.14 Additional Roles

Upon request, the Contractor shall provide to the state of Washington a description of their roles and responsibilities related to electronic discovery, litigation holds, discovery searches and expert

testimonies. The Contractor shall disclose its process for responding to subpoenas, service of process and other legal requests within a mutually agreed upon timeframe.

6.15 Lease Agreement

NOTE: Where permitted by the law of the Participating State/Entity, lease financing is an allowable payment option under the resulting contract. The terms and conditions of any financing arrangement will be set forth between the Purchaser and its financing partner.

The terms and conditions of the capital lease financing arrangement will be separately negotiated and set forth in an agreement between the Purchaser and its financing partner. All lease agreements issued by Washington State agencies must follow the rules and guidelines for capital leases (Such rules & guidelines at the following link: [Washington State Treasurer's Office](#)). Political subdivisions will follow their specific leasing processing and procedures.

7. INDEMNIFICATION

Indemnification-Intellectual Property Is as provided in Section 12 of the Master Agreement.

8. RECORDS RETENTION

The Contractor will maintain, or require the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this Participating Addendum. These records will be retained by the Contractor for at least six years after the Participating Addendum terminates or until all audits initiated within the six years have been completed, whichever is later. The Contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access, so authorized by law, rule, regulation or contract, when applicable, to all the records of this Participating Addendum and any order placed under this Participating Addendum, for audit and inspection, and monitoring of services. Such access will be 1) with at least ten (10) business days advance written notice, during normal business hours, 2) shall not unduly interrupt or interfere with Contractor's normal business operations, and 3) in the event that such audit is conducted by a third party, such third party shall, prior to conducting such audit, execute a confidentiality agreement for the benefit of the Contractor in a form reasonably satisfactory to Contractor. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review.

9. TERMINATION

This Participating Addendum may be terminated in accordance on the same terms as set forth in the WSCA-NASPO Master Agreement.

10. SUBCONTRACTORS

All Contractor's Fulfillment Partners, as defined in the Master Agreement, authorized in the State of XXX, 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 state of Washington, 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.

11. 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.

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 state of Washington, 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 state of Washington.

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

12. 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.

13. 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 deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile or electronic mail (in the case of Avaya to lglnoticescomm@avaya.comAvaya); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. All communications will be sent to the addresses set forth Section 3 of this Participating Addendum (and notices to Avaya shall be further

WSCA-NASPO DATA COMMUNICATIONS
WASHINGTON PARTICIPATING ADDENDUM
WSCA Master Agreement No: AR603
Washington Contract No: 01114

addressed to the Vice President Commercial Law at the address provided 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.

Attention: Vice President Commercial Law
Avaya Inc.
4655 Great America Parkway
Santa Clara, CA 95054-1233
United States
Facsimile: 408-562-3749
Email: lglnoticescomm@avaya.com)

If to Avaya for Customer's written notice of cancellation or intent not to renew maintenance, managed service and subscription services:

Avaya World Services Inc., Customer Care Center
14400 Hertz Quail Spring Pkwy, Oklahoma City, OK 73134
E-mail: mycontract@avaya.com
Facsimile 800-441-6371

Attn: Services Termination

In case of an Avaya Affiliate the notice of cancellation must be sent to the e-mail or address stated on the relevant order.

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.

WSCA-NASPO DATA COMMUNICATIONS
WASHINGTON PARTICIPATING ADDENDUM
 WSCA Master Agreement No: AR603
 Washington Contract No: 01114

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 Participating Addendum as of the date of execution by both parties below.

State of Washington Department of Enterprise Services	Contractor: Avaya Inc.
By: 	By: 
Name/Title: Neva Peckham, Contracts Specialist	Name: Michael Lopez
Date: 1/20/15	Date: 01-14-16
	Regional Sales Director
Name/Title: Scott Smith, IT Statewide Procurement Manager	
Date:	11/25/16
Name: Christine Warnock Farrell Presnell	
Name/Title: Deputy Director, DES Christine Warnock / NASPO Director	
Date:	01/20/2016

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

