

STATE OF MONTANA TERM CONTRACT

Department of Administration
 State Procurement Bureau
 165 Mitchell Building
 PO Box 200135
 Helena, MT 59620-0135
 Phone: (406) 444-2575 Fax: (406) 444-2529
 TTY Users-Dial 711
<http://gsd.mt.gov/>

T.C. #: NASPO ValuePoint AR-608
Aruba Networks, Inc.
Title: Data Communications Products and Services

CONTRACT TERM	FROM	June 1, 2014	CONTRACT STATUS	NEW (x)
	TO	May 31, 2019		RENEW ()
VENDOR ADDRESS	Aruba Networks, Inc. 1344 Crossman Avenue Sunnyvale CA 94089		ORDER ADDRESS	
ATTN:	Andrew Tanguay		ATTN:	
PHONE:	408-419-4260		PHONE:	
FAX:	408-752-0626		FAX:	
E-MAIL:	atanguay@arubanetworks.com		E-MAIL:	

PRICES: Per NASPO ValuePoint Master Agreement
 DELIVERY: Per NASPO ValuePoint Master Agreement
 TERMS: Per NASPO ValuePoint Master Agreement

REMARKS: This contract was established by the NASPO ValuePoint Cooperative Purchasing Organization. NASPO ValuePoint competitively issues and awards cooperative contracts while leveraging the demand of multiple states to achieve the best possible contracts.

Current pricing schedules may be viewed by going to www.naspovaluepoint.org clicking on "current contracts", scrolling down to Data Communications Equipment and Associated OEM Maintenance & Training (NASPO ValuePoint -UT), Aruba Networks Inc., Webpage for NASPO ValuePoint Contracts.

Executive Branch agencies; excluding elected official agencies, SITSD, and the entities identified in §2-17-516, MCA; **may not procure servers, storage, and cloud services.**

This contract is for University System and qualified Political Subdivision use ONLY. This contract is NOT for State Agency use without SITSD approval.

NASPO ValuePoint	 Rick Dorvall, CONTRACTS OFFICER	DATE: 10/28/2014
------------------	--	------------------

AUTHORIZED SIGNATURE

PARTICIPATING ADDENDUM
NASPO ValuePoint 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 Montana
(hereinafter "Participating State/Entity")

Page 1 of 8

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 NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use Participating 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.

COOPERATIVE PURCHASING: Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units. However, the State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

3. Participating State Modifications or Additions to Master Agreement:
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

Section 17.1 A. Scope, paragraph two, is amended as follows (amendment underlined): With respect to third party elements subject to a Shrinkwrap License or other Third Party Terms, this Participating Addendum shall take precedence over any conflict. Some or all of the Software may be remotely hosted or accessible to you through the internet.

PARTICIPATING ADDENDUM
NASPO ValuePoint 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 Montana
(hereinafter "Participating State/Entity")

Page 2 of 8

Section 17.1 B. License Grant, (i), (d) is amended as follows (amendment underlined): You acknowledge that (1) you may be charged additional fees when moving RTU's as per Contractor's then-current License Portability Policy, (2) maintenance services do not cover system errors caused by moves not performed by Contractor, (3) you are responsible for any programming, administration, design assurance, translation or other activity to make sure the Software will scale and perform as specified as a result of any license moves, and if any such transfer results in a requirement for Contractor system engineering or requires the use of on-site Contractor personnel, you will be charged fees for such activity, agreed to by both parties in a Statement of Work;

Section 17.1 D. General License Restrictions, paragraph two is amended as follows (amendment underlined;the last two sentences are deleted): Participating State/Entity agrees not to allow anyone other than its authorized employees, contractors, Fulfillment Partners, agents or representatives who have a need to use the Software or Documentation to have access to the Software or Documentation.

Section 17.1 F. Backup Copies is amended as follows (amendment underlined): Participating State/Entity may create a reasonable number of archival and backup copies of the Software and the Documentation. Participating State/Entity may replicate the Software onto its servers in its Disaster Recovery Data Center in Miles City, MT, for the purpose of utilizing the State's licenses, at no additional cost, for testing the Participating State/Entity disaster recovery plans during a 10-day test period, twice annually. The server shall remain in a cold stand-by state, or off, until testing is carried out, or a disaster occurs that shuts down the State's primary data center in Helena, MT. The Miles City Data Center is located approximately 350 miles from Helena. Also, the Participating State/Entity shall be prohibited from making additional copies of the software for any other reason without permission.

Section 17.1 G. Upgrades is amended as follows (amendment underlined): Participating State/Entity's right to use any upgrades to the Software shall be conditioned upon Participating State/Entity having a valid license to use the original Software. Participating State/Entity is not required to pay any license fee to Contractor or Fulfillment Partner for such upgrade.

Section 17.1 I. Compliance is amended as follows (amendment underlined): Upon giving Participating State/Entity 60 days' prior written notice, Contractor and the Fulfillment Partner who

PARTICIPATING ADDENDUM
NASPO ValuePoint 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 Montana
(hereinafter "Participating State/Entity")

Page 3 of 8

provided the Software have the right to inspect Participating State/Entity's books, records, and accounts during normal business hours to determine Participating State/Entity's compliance with these Software License Terms, including but not limited to usage levels. In the event such inspection or audit uncovers non-compliance with these Software License Terms, then without prejudice to Contractor's termination rights hereunder, Participating State/Entity shall promptly pay Contractor the same license fees charged upon Agreement execution. Participating State/Entity agrees to keep a current record of the location of the Software.

Section 17.1 K. paragraph seven Shrinkwrap License (SR) is amended as follows (amendment underlined): You may install and use the Software in accordance with the terms and conditions of the terms and conditions of the applicable license agreements, such as "shrinkwrap" or "clickthrough" license accompanying or applicable to the Software ("Shrinkwrap License"). Each order shall define the licensing matrix regarding how license use is measured and tracked.

Section 17.1 M. Last sentence of Third Party Components is deleted and a new sentence is substituted as follows: Contractor shall pay for any additional fee associated with any Third Party Components.

Section 17.1 O. First sentence of Protection of Software and Documentation is amended as follows (amendment underlined): Subject to Montana's open records laws, Participating State/Entity acknowledges that the software and documentation are confidential information of Contractor and its suppliers and contain trade secrets of Contractor and its suppliers.

Section 17.1 T. Acknowledgement is amended by adding the following sentence to the end of this paragraph: Before Participating State/Entity and Fulfillment Partner sign an order, Licensor or Fulfillment Partner shall inform Participating State/Entity if the Software contains the above programming functions.

ACCESS AND RETENTION OF RECORDS: Contractor agrees to provide the department, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

PARTICIPATING ADDENDUM
NASPO ValuePoint 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 Montana
(hereinafter "Participating State/Entity")

Page 4 of 8

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

COMPLIANCE WITH LAWS: Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. The Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

NON-COMPLIANCE WITH DEPARTMENT OF ADMINISTRATION REQUIREMENTS: The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, with mutual written agreement of Contractor, project or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

NON-EXCLUSIVE CONTRACT: The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

REDUCTION OF FUNDING: The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's

PARTICIPATING ADDENDUM
NASPO ValuePoint 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 Montana
(hereinafter "Participating State/Entity")

Page 5 of 8

termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

VENUE: This interpretation of this Participating Addendum or any order placed against the Master Agreement are governed by the laws of Montana without reference to Montana's conflict of laws principles. The parties agree that any litigation concerning this Participating Addendum or an order placed against the Master Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

To the extent of a conflict in terms between the WSCA-NASPO Master Agreement and this Participating Addendum, the following descending order of precedence shall apply:

1. Participating Addendum "Statutory Requirements"
2. Participating Addendum (remainder of addendum)
3. WSCA Master Agreement

4. Lease Agreements: Contractor's Master Agreement allows for leasing under Section 22. The terms and conditions of the capital lease financing arrangement will be separately negotiated and set forth in an agreement between the State and either Cisco Capital or it's designated

PARTICIPATING ADDENDUM
NASPO ValuePoint 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 Montana
(hereinafter "Participating State/Entity")

Page 6 of 8

and/or approved financing partner. Equipment lease agreement terms and conditions included in the Master Agreement have been approved for use by the Participating State.

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

Contractor

Name	Avaya Inc. – Linda Grande
Address	HQ: 4655 Great America Parkway, Santa Clara, CA 95054-1233
Telephone	212-841-4858
Fax	
E-mail	lgrande@avaya.com

Participating Entity

Name	Rick Dorvall
Address	125 N. Roberts St., Helena, MT 59620
Telephone	406-444-3366
Fax	406-444-2529
E-mail	rickdorvall@mt.gov

6. Fulfillment Partners:

All Contractor's Fulfillment Partners, as defined in the Master Agreement, authorized in the State of Montana, as shown on the dedicated Contractor's (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint 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.

PARTICIPATING ADDENDUM
NASPO ValuePoint 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 Montana
(hereinafter "Participating State/Entity")

Page 7 of 8

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. If a purchase order or task order has terms and conditions that conflict with the Master Agreement or Participating Addendum terms and conditions, the Master Agreement or Participating Addendum terms and conditions govern.

Participating State/Entity 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.

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.

**PARTICIPATING ADDENDUM
 NASPO ValuePoint (Formerly 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 Montana
 (hereinafter "Participating State/Entity")

Page 8 of 8

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

Participating State: Montana	Contractor: Avaya Inc.
By: 	By: 
Name: Cheryl Grey	Name: Michael Lopez
Title: Administrator	Title: Sales Dir.
Date: 12-23-15	Date: 12/23/15

Approved as to Legal Content


 Legal Counsel (Date)

Chief Information Officer Approval


 CIO Dept. of Administration (Date)

