

**WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
For Data Communications Products and Services
Between
The State of Louisiana and Alcatel-Lucent**

This Participating Addendum will add the State of Louisiana as a Participating State to purchase from the WSCA Price Agreement, Number AR-1466, with Alcatel-Lucent.

1. Scope

This Addendum covers Data Communications Products and Services within the scope of the WSCA Master Agreement lead by the State of Utah for use by all state agencies and local government entities, institutions of higher education, and school districts located in the State of Louisiana who are authorized by the State of Louisiana statutes to utilize state contracts.

2. Participation

Use of specific WSCA/NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the 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.

3. Term

The term of this Participating Addendum shall be effective upon the date of final execution by the State of Louisiana, through May 31, 2014.

4. Changes

A. The following Product Line(s) are excluded from purchase under this contract:

- Genesys Software
- Consulting Services
- Professional Services
- Hosting Services
- Lease Agreements

B. The following Product Line(s) are included for purchase under this contract:

- Network Management Software, Alcatel Lucent 5620 Service Aware Manager

C. **Storage Area Networking Purchases** are limited to an individual contract line item cost not to exceed a cost of \$50,000 each and a total release/purchase order amount not to exceed \$1,000,000. Procurements shall not be artificially divided to circumvent the \$1,000,000 threshold.

- D. Equipment Installation** is limited to the unpacking, inventory, assembly of components, rack mounting of chassis, patch cord/cross connects and powering up of equipment. Vertical and horizontal wiring and cabling materials, equipment room patch panels/frames/racks, etc. and labor charges are specifically excluded from the contract.
- E. Initial Software Configuration** is limited to the configuring of software to support the routing, switching, feature/function assignments and/or security parameters required on the initial turn up of the equipment and software to deliver a functioning network product to the customer. Consulting services of any type to include, but not limited to, system design, capacity analysis, network performance evaluation, as well as any ongoing technical support are specifically excluded.
- F. Training** is limited to pre-developed training in support of products available through this participating addendum that is included in a publicly available course catalog of training. **No customized training is allowed.**
- G. Taxes, REVISE to read as follows:**
- Any taxes, other than State and local sales and use taxes from which the State of Louisiana is exempt, shall be assumed to be included within the total cost.
- H. Cancellation, REVISE to read as follows:**
- The State may terminate this Agreement at any time by giving thirty (30) days written notice to contractor of such termination or negotiating with the Contractor an effective date.
- I. ADD Termination for Cause, to read as follows:**
- The State may terminate this agreement for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Agreement provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the Agreement shall terminate on the date specified in such notice.
- The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this agreement, provided that the Contractor shall give the State written notice specifying the State's failure and a reasonable opportunity for the State to cure the defect.

J. ADD Termination for Non-Appropriation of Funds, to read as follows:

The continuation of this contract is contingent upon the continuation of an appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriations for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

Contractor should be aware that our legislative process is such that it is often impossible to give prior notice of the non-appropriation of funds.

K. Usage Reporting Requirements, ADD the following language:

Louisiana Quarterly Usage Reports

Contractor shall submit quarterly reports to the State of Louisiana Contracts Manager. Initiation and submission of the quarterly report to the State of Louisiana is the responsibility of the contractor without prompting or notification by the State of Louisiana contracts Manager. The due dates of each quarterly report are April 30, July 31, October 31 and January 31. Quarterly usage reports must contain total dollar usage figures for the State of Louisiana, per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option. The reports shall be in the format developed by the Lead State and supplied to the Contractor.

L. Governing Law, REVISE to read as follows:

This Participating Addendum shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this Agreement shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

M. Amendments, ADD the following language:

Amendments to the Master Price Agreement, that have been approved by the WSCA/NASPO Contract Administrator, will not be applicable to this Participating Addendum and will not be valid unless made in writing as an amendment to this Participating Addendum, signed by the parties and approved as required by the laws of the State of Louisiana. No oral understanding or agreement not incorporated in this Participating Addendum is binding on any of the parties.

N. Payment, ADD the following language:

The State of Louisiana has implemented a purchasing card program, "LaCarte", using the Visa platform. Vendors may receive payment from State Agencies by the procurement card in the same manner as other Visa purchases. "LaCarte" acceptance is not mandatory nor will it be the exclusive method of payment. As the State continues to roll out the program, it may become a preferred method of payment.

A purchase order will not be issued for purchases paid by the "LaCarte" procurement card – VISA. All terms and conditions of the contract will apply to the credit card purchases.

The orders must be placed against the contract net discounted prices. The Contractor must keep on file a record of all orders for purchases paid by the "LaCarte" procurement card – VISA, issued against this Contract during the Contract period where a purchase order was not issued. Contractor will be required to furnish the State with the following information: item number, quantity, line total and order total, as part of the provided monthly utilization reporting.

Late Payments: Interest due by a State agency for late payments shall be in accordance with R.S. 39:1695 and 13:4202.

O. Audit of Records, REVISE to read as follows:

The State Legislative auditor, federal auditors and internal auditors of the State, or others so designated by the State, shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years after project acceptance or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

P. Website Development and Maintenance, ADD the following language:

The State of Louisiana Website Internet Catalog Purchasing Information (REV: 11/11/05) is incorporated into this Addendum. In the event the referenced Louisiana Procedure and the Master Price Agreement conflict, the Louisiana Procedure will prevail.

Q. ADD Indemnification and Limitation of Liability, to read as follows:

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors in the performance of this contract,

without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State harmless, **without limitation**, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products, Materials or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) State's unauthorized modification or alteration of a Product, Material or Service; ii) State's use of the Service in combination with other products, materials, or services not furnished by Contractor; iii) State's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the state's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Agreement as being without limitation, and regardless of the basis on which the claim is made, Contractor's liability for **direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for services rendered by the Contractor under the Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or

may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

R. ADD Contract Controversies, to read as follows:

Any claim or controversy arising out of the Participating Addendum shall be resolved by the provisions of Louisiana Revised Statute 39:1673.

S. ADD Code of Ethics, to read as follows:

The contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this agreement. The Contractor agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this agreement.

5. Louisiana Pricing Schedule ("LAPS") Contract

This contract has been designated as a Louisiana Pricing Schedule ("LAPS") contract and LAC 34.I.1709 must be followed by Louisiana purchasing entities utilizing the contract.

6. Primary Contacts

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

Lead State

Debbie Gundersen
State of Utah
Division of Purchasing and General Services
State Office Building, Capitol Hill
Room 3150
Salt Lake City, UT 84114-1061
Email: dgundersen@utah.gov
Voice: (801) 538-3150
Fax: (801) 538-3882

Contractor

Wade Clark
Alcatel-Lucent
5825 Vineyard Lane
McKinney, TX 75070
Email: wade.clark@alcatel-lucent.com
Voice: (214) 326-3293
Fax: (214) 975-2863

Participating State

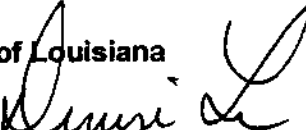
Denise Lea
Director
Office of State Purchasing
P. O. Box 94095
Baton Rouge, LA 70804-9095
Email: denise.lea@la.gov
Voice: (225) 342-8062
Fax: (225) 342-8688


8. Contract Number:

The contract number for the Participating State is 409321.

This Participating Addendum and the WSCA Master Price Agreement, Number AR-1466, (administered by the State of Utah) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Contract, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the Master contract and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Contract and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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

State of Louisiana
By: 
Denise Lea, Director
Office of State Purchasing

Alcatel-Lucent
By: 
Name: Patrick Stewart

Title: Contract Management

Date: 7/3/12

Date: May 31, 2012