

**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  
Mitel Business Systems, Inc.  
Master Agreement No: AR623  
(hereinafter "Contractor")

And

State of Arkansas  
Contract No: 4600040285  
(hereinafter "Participating State/Entity")

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1. Scope: This Addendum covers the Data Communications Products and Services 14-19 contracts led by the State of Utah for use by Arkansas state agencies and other entities authorized by the Arkansas Department of Finance and Administration Office of State Procurement (Office of State Procurement) to utilize State contracts. The general purpose of this contract is to authorize Mitel Business Systems, Inc. to provide data communications equipment and services in the following categories: Data Center Applications, Networking Software, Network Optimization & Acceleration, Optical Networking, Routers, Security, Storage Networking, Switches, Wireless, and Unified Communications.
2. Participation: All eligible purchasers ("Purchasing Entity" or "Participating Entity") within the State of Arkansas, including State agencies, K-12 educational institutions, and local public procurement units (cities, counties, municipalities), are authorized to purchase products and services under the terms and conditions of this Addendum.
3. Order of Precedence:
  - A. Arkansas's Participating Addendum (PA); Arkansas'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 Contractor under the Terms of the Lead State's Master Agreement.
  - B. Lead State's Master Agreement AR623 (includes negotiated Terms & Conditions)
  - C. The Statement of Work
  - D. The Solicitation including all Addendums; and
  - E. Contractor'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. Contractor terms and conditions that apply to the 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. Notwithstanding the foregoing, ordering documents (purchase orders) may contain transaction-specific terms and each ordering document that is accepted by the Contractor **shall** become a part of this Agreement as to the products and services listed on the ordering document only. No other terms and conditions **shall** apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or references on the Contractor's website, in the Contractor's quotation/sales order or in

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similar documents subsequently provided by the Contractor (unless such terms are referenced in the Master Agreement).

4. Participating State Modifications or Additions to Master Agreement:

A. **Reporting.** The contractor **must** provide sales/utilization reports in accordance with the following requirements:

The contractor **must** provide annual sales/utilization reports electronically to the Office of State Procurement buyer, via email to [OSP.ITContracts@dfa.arkansas.gov](mailto:OSP.ITContracts@dfa.arkansas.gov), for the fiscal period of July 1 through June 30. The annual report is due no later than September 1<sup>st</sup> of each year. The Contract Activity Report format **must** be in Microsoft Excel format. The State **shall** have the right to request such sales/utilization reports to be produced for other timeframes as deemed necessary. The report **must** include at a minimum:

- 1) Vendor Contract Number
- 2) State
- 3) Customer Type (State and Local Government, Education (K-12), and Education (Higher-Ed))
- 4) Bill To Name
- 5) Customer PO Number
- 6) Customer Number
- 7) Order Date
- 8) Product/Service Description
- 9) Retail Price
- 10) Discount Applied
- 11) Discounted Unit Price
- 12) Quantity
- 13) Total Price

B. **Payments.** Payments will be submitted to the Contractor at the address shown on the invoice. Payments should be tendered to the Contractor within thirty (30) days of the date of invoice. After the sixtieth (60) day from the date of invoice, unless mutually agreed to, interest may be paid on the unpaid balance due to the Contractor at the rate of one half (1/2) of one (1) percent per month in accordance with Arkansas Code Annotated §19-11-224. The Purchasing Entity will make a good-faith effort to pay within thirty (30) days after the date of invoice. The State **shall** have the right to dispute billed goods or services and withhold payment for those goods or services that are in dispute. Interest **shall not** be charged on disputed amounts while in dispute.

C. **Exclusions.** The foregoing warranty and remedies are for Customer's exclusive benefit and are nontransferable. Any and all warranties **shall** be deemed void and no warranty will apply if the Hardware or Software: (i) has been altered except by Contractor; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor in the enclosed documentation; or (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident. In addition, Hardware or Software is not designed or intended for use in (i) the design, construction, operation or maintenance of any nuclear facility, (ii) navigating or operating aircraft; or (iii) operating life-support or life-critical medical equipment, and Contractor disclaims any express or

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implied warranty of fitness for such uses. Customer is solely responsible for backing up its programs and data to protect against loss or corruption. Contractor warranty obligations do not include installation support.

- D. **Records.** Financial and accounting records relevant to State of Arkansas transactions under this Addendum **shall** be subject to examination by appropriate Arkansas government authorities for a period of five (5) years from the expiration date and final payment under this Addendum or extension thereof, provided, however, that such government authorities will provide thirty (30) days written notice to the Contractor of its intent to conduct such examination contemplated by this section.
- E. **Governing Law.** The laws of the State of Arkansas **shall** govern this Agreement. Nothing under this Agreement or the Master Agreement **shall** be deemed or construed as a waiver of the State's right of sovereign immunity.
- F. **Travel Expenses.** Expenses for travel **shall not** be reimbursed unless specifically permitted under the duties of the Contractor. All travel **must** be approved in advance by the State. Approved expenditures made by the contractor for travel will be reimbursed at the current rate paid by the State and in accordance with Arkansas Travel Guidelines and Procedures.
- G. **Cancellation.** In the event the State of Arkansas no longer needs the service or commodity specified in the Participating Addendum or purchase order due to program changes, changes in law, rules, regulations, lack of funds appropriated for this purpose, or relocation of offices, the State may cancel the Participating Addendum or purchase order by giving the Contractor written notice of such cancellation thirty (30) days prior to the date of cancellation. In the event of such cancellation, Contractor **shall** be paid for all products delivered and services performed and accepted by the State of Arkansas up to the date of cancellation.
- H. **Indemnification.** The following indemnification clause replaces in its entirety the Section 11 Indemnification clause specified in the Master Agreement.

**INDEMNIFICATION** - The Contractor **shall** indemnify, defend, and hold harmless the Purchasing Entity and the State, and their officers, agents, and employees from any third-party suits and actions of every name and description to the extent they arise out of personal injury and damage to real or personal property, or infringement of intellectual property rights, alleged to be caused in whole or in part by the Contractor, its agents, employees, partners, and subcontractors in providing the services or products under this Agreement. Contractor **shall** also pay any finally awarded damages and attorney's fees. Language in these terms and conditions **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly. This section is not subject to any limitations of liability in the Master Agreement or in any other document executed in conjunction with the Master Agreement.

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- I. **Confidential Information.** Under Arkansas law, the release of public records is governed by The Arkansas Freedom of Information Act found at Section 25-19-101 et. seq. of the Arkansas Statutes.
- J. **Contingent Fee.** The Contractor guarantees that Contractor has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.
- K. **Disclosure.** Under Arkansas law, the Office of State Procurement (OSP) is required to have a copy of EO 98-04 Disclosure Form on file for the Contractor. Contractor **must** submit the disclosure form prior to entering into this Addendum. Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this Addendum. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the State.
- L. **Vendor Registration.** In order to receive payment, Contract Vendor **must** register online at <https://www.ark.org/vendor/index.html>
- M. **For Services Only:**
- 1) **Equal Opportunity Policy.** In compliance with Arkansas Code Annotated § 19-11-104, if a state agency is purchasing services, the Office of State Procurement (OSP) is required to have a copy of the Contractor's *Equal Opportunity (EO) Policy* prior to entering into this Addendum. *EO Policies* may be submitted in electronic format to the following email address: [eeopolicy.osp@dfa.arkansas.gov](mailto:eeopolicy.osp@dfa.arkansas.gov) or Contractor may submit a hard copy with this Addendum. The submission of an *EO Policy* to OSP is a one-time requirement. Contractor is responsible for providing updates or changes to its policy, and for supplying *EO Policies* upon request to other State agencies that **must** also comply with this statute. If Contractor is not required by law to have an *EO Policy*, Contractor **must** submit a written statement to that effect.
  - 2) **Prohibition of Employment of Illegal Immigrants.** Pursuant to Arkansas Code Annotated § 19-11-105, if a state agency is purchasing services, the Office of State Procurement (OSP) is required to have a certification on file from the Contractor stating that the Contractor does not employ or contract with illegal immigrants. The Contractor **must** certify online at [www.arkansas.gov/dfa/procurement](http://www.arkansas.gov/dfa/procurement) that the Contractor does not employ or contract with any illegal immigrant prior to entering into this Addendum.
  - 3) **Performance Standards** Under Arkansas law, all state agencies, boards, commissions, and institutions of higher education **must** include performance standards when purchasing services. Performance standards **shall** be mutually agreed upon by the parties hereto for any services purchased.

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- N. **Leasing.** Leasing **shall not** be authorized under this Participating Addendum.
- O. **Value Added Services.** The Contractor **shall not** propose or provide value-added services unless it meets one (1) or more of the following criteria:
- It is of no cost to the purchasing entity;
  - Services are linked to items the entity has purchased through a current or past transaction.
5. **Purchase Order Instructions:** All purchase orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum **shall** include the following:
- A. NASPO ValuePoint Master Agreement number AR623
  - B. State contract number [**SP-16-0027** 4600040285]
  - C. Agency Name, Address, Contact, and Phone-Number
  - D. IT procurement and/or other applicable approvals
  - E. Orders **shall** be made out to the Contractor or Reseller
6. **Individual Customer:** Each State agency and political subdivision, as a Participating Entity, that purchases products/services **shall** be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision **shall** be responsible to follow the terms and conditions of the Master Agreement; and they **shall** have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision **shall** be responsible for their own charges, fees, and liabilities. Each agency and political subdivision **shall** have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor **shall** apply the charges to each Participating Entity individually.
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 Arkansas law.
8. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Mitel Business Systems, Inc.

For contract administrative requests:	
Name	Susan Friendship
Title	Contracts Specialist
Address	350 Legget Drive, Kanata, K2k 2W7, Canada
Telephone	613-691-3342
E-mail	<a href="mailto:Susan.Friendship@mitel.com">Susan.Friendship@mitel.com</a>

For general sales inquiries	
Name	Sue Anders
Title	Director, Government Sales
Address	1146 North Alma School Road, Mesa, AZ 85201
Telephone	703-736-3105
E-mail	<a href="mailto:Sue.Anders@mitel.com">Sue.Anders@mitel.com</a>

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State of Arkansas

Name	Stephanie Cellers
Address	1509 W 7 <sup>th</sup> St. 3 <sup>rd</sup> Floor, Little Rock, AR 72201
Telephone	501-371-6065
Fax	501-324-9311
E-mail	<a href="mailto:Stephanie.Cellers@dfa.arkansas.gov">Stephanie.Cellers@dfa.arkansas.gov</a>

9. Subcontractors: All Mitel Business Systems, Inc. dealers and resellers authorized by Mitel Business Systems, Inc. and approved by the State of Arkansas, as shown on the State's website, are approved to provide sales and order processing of Mitel Business Systems, Inc. products and services to participants in the NASPO ValuePoint Master Price Agreement. The Mitel Business Systems, Inc. dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. The Contractor will be responsible for any agreements with the subcontractors. The Participating State/Entity is not agreeing to and is not responsible for any terms and conditions with a subcontractor.

Mitel Business Systems, Inc. **shall** submit a request, on company letterhead, to the State letter requesting the addition of any resellers to perform under this Participating Addendum. The request **shall** also provide the following reseller documentation to the State:

- W9 and remittance address (if applicable)
- 98-04 Contract and Grant Disclosure Form
- Equal Opportunity Policy—Required if reseller employs more than 25 employees. If reseller employs less than 25 employees and is not required by law to have an EO Policy, a statement to that effect is required.
- Illegal Immigrant Certification—  
<https://www.ark.org/dfa/immigrant/index.php/user/welcome>
- Reseller's primary contact information.

Reseller	Contact Name	Phone	Email

10. 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.
11. Entire Agreement: This Participating Addendum and the Master Agreement number AR623 (administered by the State of Utah) together with its exhibits (including any terms referenced in the Master Agreement), 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 Addendum and the Master Agreement, together with its exhibits, **shall not** be added to or incorporated into this Addendum or the Master Agreement 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 Addendum and the Master Agreement and its

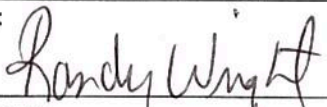

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exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

Participating State:	Contractor: Mitel Business Systems, Inc.
By: 	By: 
Name: Randy Wright	Name: Graham Bevington
Title: Asst. Admin.	Title: President
Date: 5/26/17	Date: May 17, 2017

**WSCA-NASPO**  
COOPERATIVE PURCHASING  
ORGANIZATION