

STEP Resources Communications LLC – added as a subcontractor on 06-22-15.  
See Section 40.085.

Cincinnati Bell Technology Solutions (CBTS) -added as a subcontractor on 10-18-10.  
See Section 40.085.

**CONTRACT FOR ENTERPRISE NETWORKING ROUTING AND  
SWITCHING EQUIPMENT AND COMPONENTS**

**BETWEEN**

**AVAYA**  
211 Mount Airy Road  
Basking Ridge, NJ 07920-2311  
CONTACT: KELLY PEACH  
PHONE: Office: (513) 228-9015  
PHONE: Cell (502) 468-8245  
EMAL: [kpeach@avaya.com](mailto:kpeach@avaya.com)

**And**

**THE COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
COMMONWEALTH OFFICE OF TECHNOLOGY (COT)**

**MA 758 1000000828**

\*\*\*\*\*

This Master Agreement (“Contract”) is entered into, by and between the Commonwealth of Kentucky, Finance and Administration Cabinet, Commonwealth Office of Technology (“the Commonwealth”) and Avaya, as the Prime Contractor to establish a Contract for Enterprise Networking Routing and Switching Equipment and Components.

The Commonwealth and Contractor agree to the following:

**I. Scope of Contract**

- This Contract is to provide enterprise and business class network routing and switching equipment. The Contract shall encompass any software licenses, hardware maintenance, technical support agreements, and

license and support renewals pertaining to that network equipment. Avaya shall provide the enterprise and business class network routing and switching equipment. **Avaya shall provide the core network equipment and the network equipment outside of the core.**

## **II. Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer in response to Solicitation RFP 758 1000000175, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to Solicitation RFP 758 1000000175 ;
3. Solicitation RFP 758 1000000175 and all attachments thereto, including Section 40--Terms and Conditions of a Contract with the Commonwealth of Kentucky;
4. General Conditions contained in 200 KAR 5:021 and Office of Procurement Services' FAP110-10-00;
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor's proposal in response to Solicitation RFP 758 1000000175 ;
7. The Contractor's proposal in response to Solicitation RFP 758 1000000175.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

## **III. Negotiated Items**

- Avaya shall provide the Commonwealth a **one-time discount of 100% off** for the Network Monitoring Tool. The Commonwealth shall only be responsible for annual maintenance at 26.42% beginning after the first year of the contract. Avaya shall provide an installer for the implementation of the Network Monitoring Tool at no additional charge to the Commonwealth. The installer shall ensure that the tool is successfully implemented. Avaya shall also provide knowledge transfer/training on the Network Monitoring Tool.
- Avaya shall provide the Commonwealth with a 58% discount off MSRP for all hardware and software products.
- Avaya shall provide the Louisville Remote Data Center's network equipment to include the 1<sup>st</sup> year of maintenance at a cost of \$345,000. This price shall be valid twelve (12) months after the execution of the Contract.
- Avaya shall provide a Maintenance Discount of 26.42% off MSRP for the 1<sup>st</sup> year annual maintenance paid quarterly.

- Avaya shall provide a Maintenance Discount of 27% off MSRP for two (2) year paid upfront maintenance.
- Avaya shall provide a Maintenance Discount of 31% off MSRP for three (3) – five (5) year paid upfront maintenance.
- Avaya shall apply all negotiated discount percentages mentioned above for hardware and software to the existing KETS Nortel Contract MA 758 ~~C-03364253~~. **C-03377493**
- All leases shall comply with the Amendment to the State and Local Government Master Lease Purchase Agreement (Attachment A).
- The Commonwealth awards one (1) All State Agency contract. Avaya will provide the core network equipment and the network equipment outside of the core as agreed upon by both parties during negotiations.

#### **IV. Terms and Conditions**

##### **Section 40.015—Final Agreement**

The Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

##### **Section 40.016—Agencies to Be Served**

This contract shall be for use by the following agencies of the Commonwealth of Kentucky:

##### **All State Agencies**

No shipments shall be made except upon receipt by Vendor of an official Delivery Order from a using agency.

##### **Section 40.017—Political Subdivisions**

Under Kentucky Statutes, political subdivisions of this State including cities, counties and school districts may participate in All State Agency Master Agreements to the same extent as agencies of the Commonwealth.

##### **Section 40.019- Quantity Basis of Contract – Estimated Quantities**

Any and all quantities mentioned in this Contract are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of the contract. Requirements may exceed the quantities shown and the contractor will be required to furnish all requirements shown on Delivery Orders dated during the life of the contract.

#### **Section 40.020—Contract Provisions**

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

#### **Section 40.025—Type of Contract**

This contract shall be on the basis of a **firm fixed unit price**.

#### **Section 40.030—Term of Contract and Renewal Options**

The initial term of the Contract shall be for a period of **six (6) years** from the effective date upon approval of the Contract.

This Contract may be renewed at the completion of the initial Contract period for **four (4) additional one (1) year** periods upon the mutual agreement of the Parties. Such mutual agreement shall take the form of an addendum to the Contract under Section 40.050—Changes and Modifications to the Contract.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

#### **Section 40.040—Multiyear Contracts**

The initial contract term extends beyond the end of the biennium in which the Contract was made, payment and performance obligations for succeeding fiscal years are subject to the availability of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance of the Contract beyond the biennium, the Contract for such subsequent year(s) may be canceled and the Contractor shall be reimbursed in accordance with Section 40.150—Provisions for Termination of the Contract.

#### **Section 40.045— Contract Usage**

The contractual agreement with Avaya will in no way obligate the Commonwealth of Kentucky to purchase any services or equipment under this contract. The Commonwealth agrees, in entering into any contract, to purchase only such services in such quantities as necessary to meet the actual requirements as determined by the Commonwealth.

#### **Section 40.050—Changes and Modifications to the Contract**

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

#### **Section 40.055—Changes in Scope**

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in Section 40.050—Changes and Modifications to the Contract.

#### **Section 40.060—Contract Conformance**

If the Commonwealth Buyer determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

#### **Section 40.065—Assignment**

The Contractor shall not assign the Contract in whole or in part or any payment arising there from without the prior written consent of the Commonwealth Buyer. Any purported assignment is void.

**Section 40.070—Notices**

After the Award of Contract, all programmatic communications with regard to day-to-day performance under the contract are to be made to the Agency technical contact(s) identified below:

Brett McDonald, Director  
Division of Communications  
Office of Infrastructure Services  
101 Cold Harbor  
Frankfort, KY 40601  
Phone: 502-564-8747  
Email: [Brett.McDonald@ky.gov](mailto:Brett.McDonald@ky.gov)

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Commonwealth Buyer identified below:

Susan S. Noland  
Commonwealth Buyer  
Office of Procurement Services  
Finance and Administration Cabinet  
Capitol Annex, Room 096  
702 Capitol Avenue  
Frankfort, KY 40601  
Phone: 502-564-5951  
Email: [Susan.Noland@ky.gov](mailto:Susan.Noland@ky.gov)

**Section 40.075—Payment**

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person or his representative.

**Section 40.080—Contractor Cooperation in Related Efforts**

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

#### **Section 40.085—Subcontractors**

The Contractor shall make no contract with any other party for furnishing any of the work or services contracted herein, without the consent, guidance and approval of the Commonwealth. Any subcontract hereunder entered into, subsequent to the execution of the contract with the prime vendor, must be annotated and approved by the Commonwealth. Name and address of subcontractors must be submitted for approval by the Commonwealth. This provision will not be taken as requiring the approval of contracts of employment between the prime vendor and personnel assigned for services hereunder. The prime vendor shall be solely responsible for all price, performance, quality, and security stipulations contained in the contract regardless of whether the work is performed by the employees of the prime vendor or a subcontractor.

The Commonwealth reserves the right to require replacement of a subcontractor for non-compliance.

The Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

The contract shall be fulfilled through a fully certified Avaya Partner which has been identified by Avaya.

Pomeroy IT Solutions  
5 Fountain Place  
Frankfort, KY 40601  
Contact: Brett Kiser, Senior Account Executive  
Telephone: (859) 586-0600 ext. 1174  
Email: [bkiser@pomeroy.com](mailto:bkiser@pomeroy.com)

**Cincinnati Bell Technology Solutions (CBTS) (added 10-18-10)**  
4600 Montgomery Road, Suite 400  
Cincinnati, OH 45212

Contact: Kevin Klaber  
Telephone: 800-889-0960  
Mobile: 513-678-8173  
Email: [Kevin.klaber@cbts.cinbell.com](mailto:Kevin.klaber@cbts.cinbell.com)

STEP RESOURCES COMMUNICATIONS, LLC  
8366 Princeton-Glendale Rd, Suite B1  
West Chester, OH 45069  
Contact: Rob Huff  
Telephone: (859) 653-0960  
Email: [rhuff@stepcg.com](mailto:rhuff@stepcg.com)

#### **Section 40.090—Contractor Affiliation**

"Affiliate" shall mean a branch, division or subsidiary that is effectively controlled by another party. If any affiliate of the Contractor shall take any action that, if done by the Contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

#### **Section 40.100—Commonwealth Property**

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this Contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

#### **Section 40.105—Insurance**

The Contractor shall provide professional liability insurance for its professional employees, public liability, property damage, and workers' compensation insurance, insuring as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the Contractor's operations under the terms of this Contract. In the event any carrier of such insurance exercises cancellation, notice of such cancellation shall be made immediately to the Commonwealth Buyer.

#### **Section 40.110—Confidentiality of Contract Terms**

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of the Contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of the Contract by all Parties, terms of the Contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

#### **Section 40.115—Confidential Information**

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- Information which the Commonwealth has released in writing from being maintained in confidence;
- Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

#### **Section 40.120—Advertising Award**

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

#### **Section 40.125— Patent or Copyright Infringement**

The Contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

The Commonwealth agrees to notify the Contractor promptly, in writing, of any such claim, suit or proceeding, and at the Contractor's expense give the Contractor proper and full information needed to settle and/or defend any such claim, suit or proceeding.

If, in the Contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Commonwealth's written consent, substitute other equally suitable equipment, materials, and information, or at the Contractor's option and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

The Commonwealth agrees that the Contractor has the right to defend, or at its option, to settle and the Contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the Contractor to the Commonwealth under this agreement. The Contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the Contractor.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the Contractor's written consent.

The Contractor shall have no liability for any infringement based upon:

- the combination of such product or part with any other product or part not furnished to the Commonwealth by the Contractor
- the modification of such product or part unless such modification was made by the Contractor
- the use of such product or part in a manner for which it was not designed

#### **Section 40.130—Permits, Licenses, Taxes and Commonwealth Registration**

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

### **Section 40.135—Contract Claims**

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

### **Section 40.140—Rights and Remedies**

The rights and remedies of the Commonwealth provided in Section 40 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

### **Section 40.145—EEO Requirements**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The Contractor shall comply with all terms and conditions of the Act. A copy of the EEO forms may be obtained by downloading them from the E-Procurement website at <https://eprocurement.ky.gov>. Select **STANDARD ATTACHMENTS AND GENERAL TERMS** and scroll down the page to **Attachment #4**.

### **Section 40.150—Provisions for Termination of the Contract**

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

### **Section 40.160—Bankruptcy**

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

### **Section 40.170—Conformance with Commonwealth & Federal Laws/Regulations**

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state or federal court in **Franklin County, Kentucky**.

### **Section 40.190—Recycling**

The Contractor is required to comply with the recycling requirements of 200 KAR 5:330.

### **Section 40.210—Accessibility**

Vendor hereby warrants that the products or services to be provided under this Contract comply with the accessibility requirements of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor further warrants that the products or services to be provided under this Contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the Vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

### **Section 40.220—State Vendor Eligibility Request Form**

Revenue Form 10A105, "State Vendor Eligibility Request Form", effective July 2008, is a form to be completed by any person or entity wishing to contract with the Commonwealth to provide goods or services subject to sales and use tax pursuant to KRS 139.200. The form is located at this web-link as Attachment 5:

<http://eprocurement.ky.gov/attachments.htm>

In accordance with administrative regulation 200 KAR 5:390, this form has to be completed and submitted, before a contract can be awarded. Section 2 of the regulation also notes: "Failure to submit the required documentation or to remain registered and in compliance with the sales and use tax filing and remittance requirements of KRS 139.540 and KRS 139.550 throughout the duration of the contract shall constitute a material breach of the contract and the contract may be terminated."

### **Section 40.230— Disclosure of contractor's financial records and information to certain governmental entities. (200 KAR 5:314.)**

The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. The contractor also recognizes that any such books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884

### **Section 40.240—Funding-Out Provision**

The contractor agrees that if funds are not appropriated to the agency or are not otherwise available for the purpose of making payments, the agency shall be authorized, upon sixty (60) days written notice to the contractor, to terminate this contract. The termination shall be without any other obligation or liability of any cancellation or termination charges, which may be fixed by the contract.

## V. Pricing

**Pricing for this contract shall be as follows:**

Local/State Account Team - Resident Engineer	Total cost of supplying an on-site Resident Engineer, forty (40) hours per week for one (1) year, including backfill if required for vacation and sickness	\$220,000.00
Training Services-On Site	Daily Cost of On-Site Training, per student, regardless of the class being taken.	\$995.00
Training Services-Off Site	Daily Cost of Off-Site Training, per student, regardless of the class being taken	\$495.00
Network Monitoring Tools and Services	Cost of Network Monitoring Tools – One-Time Only within the first 12 months	\$0.00
Network Monitoring Tools and Services	Annual Maintenance Cost for One (1) Year Engagement	26.42% off MSRP
Hardware/Software Discount		58% off MSRP
Louisville Remote Data Center network equipment to include the 1 <sup>st</sup> year of maintenance		\$345,000
Maintenance Discount	1 <sup>st</sup> year annual paid quarterly	26.42% off MSRP
Maintenance Discount	2 year paid upfront	27% off MSRP
Maintenance Discount	3 – 5 year paid upfront	31% off MSRP

**VI. Approvals**

This Contract is subject to the terms and conditions as stated. By affixing their signatures below, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of this agreement.

**1st Party: Avaya as Contracting Agent (Prime Contractor)**

**ORIGINAL SIGNATURES ON FILE**

Printed name

Title

Signature

Date

**2nd Party: Finance and Administration, Commonwealth Office of Technology**

Printed name

Title

Signature

Date

**Approved by the Finance and Administration Cabinet  
Office of Procurement Services**

Donald R. Speer

Executive Director

Printed name

Title

Signature

Date