



PARTICIPATING ADDENDUM

Under
WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE MASTER AGREEMENT
("WSCA Master Agreement")
[State of Utah Contract Ref. No. AR-233].

Participating State:

Participating State Name	State of South Dakota
Office/Department Name:	Office of Procurement Management
Primary Business Address:	PMB 01231 523 East Capital Avenue, Pierre, SD 57501
Participating Addendum State Contract ID #:	15287
Other (Group / Award) ID #:	

Contractor:

Contractor Name:	Cisco Systems Inc. ("Contractor" or "Cisco") 170 West Tasman Drive San Jose, California 95314
Participating Addendum Cisco Contract ID #:	

This WSCA *Participating Addendum* between the above-referenced Participating State and Cisco (collectively hereafter referred to as the "Parties") is entered into for good and valuable consideration, the mutual receipt of which is hereby acknowledged by the Parties, on the terms and conditions set forth below as of the date of last signature below (the "Effective Date" of this *Participating Addendum*).

1. Authority & Scope

As an inducement to Cisco to enter into this agreement, the Participating State hereby warrants and represents to Cisco its legal authority to enter into this *Participating Addendum* for the purposes and upon the terms set forth herein.

The State of South Dakota, acting through its Bureau of Administration, Office of Procurement Management, is a member of the Western States Contracting Alliance and has legal authority to execute this Participating Addendum pursuant to SDCL 5-23-44.

Eligible participants in this agreement include all South Dakota state government agencies and all political subdivisions of the State, including counties, municipalities, public school corporations and all officers, boards or commissions of the State of South Dakota.

Agencies of the State of South Dakota, public institutions, and public universities may make purchases of commodities on this contract in accordance with the Local Purchase Policy as adopted by the South Dakota Bureau of Administration.

All political subdivisions of the State, including counties, municipalities and public school corporations may purchase from this price agreement according to their own procurement guidelines.

2. State-Specific Constitutional & Statutory Requirements

The provisions of this *Participating Addendum*, Appendix A are incorporated and apply to the transactions under this agreement to the extent mandated by state constitution or applicable law(s).

3. Incorporation of WSCA Master Agreement

The WSCA Master Agreement, as now or hereafter amended made by the original parties thereto during the term of this *Participating Addendum*, is incorporated as if set forth at length. All rights and obligations between the Parties are governed by the terms of the WSCA Master Agreement, as amended by this *Participating Addendum*. (“*Agreement*”) Capitalized terms in this *Participating Addendum* shall be defined as set forth in the WSCA Master Agreement, Attachment B.

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

1. *Participating Addendum* – Appendix A, “Statutory Requirements”
2. *Participating Addendum* (remainder of addendum)
3. WSCA Master Agreement

4. State-Specific Purchasing Guidelines

The provisions of this *Participating Addendum*, Appendix B - “State-Specific Purchasing Guidelines”, apply to all transactions under this *Agreement*.

5. **Cisco Fulfillment Partners**

Cisco has the right to utilize alternate Fulfillment Partners, including Value Added Resellers (VARs) and/or distributors and dealers (hereafter "Reseller[s]") as fulfillment agents under this *Agreement*, e.g., for direct order taking, processing, fulfillment or provisioning.

Subject to approval of the Participating State, Fulfillment Partners may be added at any time during the *Agreement* term at the sole discretion of Cisco, with a minimum of two Resellers and no set maximum number of Resellers who may be used, subject to the approval of the Participating State. Cisco, in its sole discretion, is not required to add and may delete upon thirty (30) days written notice any Reseller who does not meet Cisco's established qualifying criteria, or where the addition of the entity would violate any state or federal law or regulation.

The name, address and approved contact number for Cisco approved Fulfillment Partners shall be separately set forth at the Contractor's website, as amended by Cisco during the term of this *Agreement*, including any applicable technical certifications or general limitations (e.g., geographic) or Cisco qualifying criteria as applicable (qualifying criteria).

6. **Ordering/Invoices**

Purchasers may place orders directly only through these Fulfillment Partners or through Cisco on products or services only provided through Cisco. Only those Fulfillment Partners approved and listed during the term of *Agreement* at Contractor's website are authorized to directly receive purchase orders, invoice Customers, and receive payment from Purchasers on Contractor's behalf. All authorized Fulfillment Partners are eligible to quote pricing to Purchasers for procurements under this *Participating Addendum* which otherwise meet the Partner's qualifying criteria.

Except as otherwise set forth in the qualifying criteria, Cisco will not, directly or indirectly, restrict any Fulfillment Partner's participation or ability to quote pricing for a Customer. Fulfillment Partner will not offer less favorable pricing discounts than the contract discounts established by Cisco under the WSCA Master Agreement. However, any additional incremental discounts available to WSCA Purchasers, if offered, may be provided in the discretion and as the sole legal obligation of the Fulfillment Partner to the Participating State.

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

Authorized Fulfillment Partners are responsible for delivering required contract reports and remittances to the WSCA Contract Manager in accordance with the requirements and schedule for delivery established in the WSCA Master Agreement.

7. **Product & Services Offering**

The **full suite** of product and service offerings available under the WSCA Master Agreement may be procured under this *Participating Addendum*.

8. **Primary Point of Contact**

The Parties will keep and maintain current at all times a primary point of contact for administration of this *Participating Addendum*. The Parties' primary points of contact shall be set forth in this *Participating Addendum*, Appendix C - "Primary Points of Contact."

9. **Term**

The term of this *Participating Addendum* shall begin on the Effective Date and shall continue for a period ending on the Termination Date of the WSCA Master Agreement or when this Participating Addendum is terminated in accordance with the WSCA Master Agreement, whichever shall occur first.

10. **Entire Agreement/Amendment**

This *Agreement* constitutes the entire agreement between the parties concerning the subject matter of this *Agreement* 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 *Agreement* may be modified only by a written document executed by the parties hereto.

11. **Notices**

Notwithstanding anything contained in the Agreement to the contrary, all notices required or permitted under this Agreement 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 Cisco to Agreement-notice@cisco.com), (provided that the original document is placed in air mail/air courier or delivered personally, within seven days of the facsimile electronic notice); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or six (6) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the cover sheet of this *Agreement* (and notices to Cisco shall be further addressed to the Office of the General Counsel, Attn: Contract Notice) 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 *Agreement* was sent before notice is served.

Notwithstanding the foregoing, notices regarding changes in pricing, Software license terms, policies or programs may be by posting on Cisco.com or by e-mail or fax.

The WSCA Master Agreement, together with this *Participating Addendum* and its Appendices, set forth the entire *Agreement* between the Participating State and Cisco with respect to the subject matter and supersedes and replaces 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 the *Agreement* shall not be added to or incorporated into the *Agreement* 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 *Agreement* shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this *Participating Addendum* as of the date of last execution by the Parties below.

[Affix signatures as required by State Statutes, Rules or Policies below.]

Cisco Systems, Inc.

State of South Dakota

By: Anthony Savastano
Printed Name: Anthony Savastano
Title: V.P. Finance
Date: 12/6/2007

By: Jeff T. Holden
Printed Name: Jeff T. Holden
Title: Procurement Director
Date: October 31, 2007



Appendix A

State –Specific Constitutional & Statutory Requirements

None



Appendix B

State –Specific Purchasing Guidelines

1. **State Agencies and Institutions (other than Board of Regents Institutions):** All state agency purchases from this agreement must be processed through the Bureau of Administration, Office of Procurement Management (OPM). Moratorium exemption approval from the Bureau of Information and Telecommunications (BIT) is required. A purchase order issued by OPM will authorize state agency purchases from this agreement.
2. **Board of Regents Institutions:** Institutions under the control of the Board of Regents may make direct purchases from this agreement by issuing a local purchase order.
3. **Local political subdivisions** of the State of South Dakota including counties, municipalities and public school corporations may purchase from this price agreement according to their own procurement guidelines.



Appendix C

WSCA Master Agreement Primary Points of Contact

1. Primary Contact: The primary state government contact for this participating addendum is as follows:

Contact:	Chuck Clark, Purchasing Specialist
State/Political Entity:	South Dakota Office of Procurement Management
Address:	523 E. Capitol Avenue
City, State, Zip:	Pierre, SD 57501
Phone:	605) 773-4276
Fax:	(605) 773-4840
Email:	Chuck.Clark@state.sd.us

1. **Contract Amendments**

The following terms amend the State of South Dakota *Participating Addendum* to the WSCA Master Agreement as previously entered into between the parties:

Attachment A, § 7 Right to Publish

The parties hereby clarify that records under this agreement are subject to statutory disclosure requirements pursuant to SDCL chapter 1-27. Where applicable, Contractor will be given prior written notice of any proposed release to provide the Contractor the reasonable opportunity to take any action to protect against disclosure to the extent provided under relevant laws.

Attachment B, § 9 – Intellectual Property Infringement

The parties hereby clarify that the Contractor's obligation to indemnify the State against third party IPR claims under § 9 shall survive termination of contract, for three (3) years from date of termination, provided the State is not in breach of the agreement. The parties further clarify that the Contractor's obligation to indemnify the State includes all cost and expenses incurred by the State in association with any IPR claim, including without limitation reasonable attorney fees.

Attachment B, § 9.1 -- Intellectual Property Infringement

The damages under § 9.1 associated with Contractor's indemnification obligations are hereby deemed by the parties to constitute direct damages, provided however, that the contractual Limitation of Liability shall not apply to settlement of such third party claims.

Attachment B, § 9.4.1 – “Use or Combination” Exception

The parties clarify that the exception to the Contractor's IPR claim indemnification obligation under § 9.4.1 shall apply to any product, device, or software not supplied by Cisco used in combination, operation or use of a Product supplied under this Agreement.

Attachment B, § 9.3 – “Useful Life” Calculation

The parties amend the language to increase the length of time for depreciation or amortization used by Contractor to determine a refund to the Purchaser from three years to five years from the date of original shipment, to read as amended as follows:

“If an IPR Claim has been made, or in Cisco's reasonable opinion is likely to be commenced, Purchaser agrees to permit Cisco, at its option and expense, either to: (a) procure for Purchaser the right to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing; or (c) immediately terminate both parties' respective rights and obligations under this Agreement with regard to the Product, in which case Purchaser will return the Product to Cisco and Cisco will refund to Purchaser the price originally paid by Purchaser to Cisco for the Product, as depreciated or amortized by an equal annual amount over five years from date of original shipment..”

Attachment B, § 17.2 – General Indemnity

A. The parties clarify that the Contractor's general indemnification obligation under § 17.2 shall survive termination of contract provided the State is not in breach of the agreement.

B. The parties amend the language to delete the obligation of the State to indemnify Cisco, to read as amended as follows:

"Contractor shall defend, indemnify and hold harmless the Purchaser, its affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), including without limitation those based on contract or tort, arising out of or in connection with a claim, suit or proceeding brought by a third party based upon bodily injury (including death) or damage to tangible personal property (not including lost or damaged data) arising from the negligent or intentional acts or omissions of the Contractor or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them. In the event that the indemnified party's or a third party's negligent or intentional acts or omissions contributed to cause the injury or damage for which a claim of indemnity is being asserted against the indemnifying party hereunder, the damages and expenses (including, without limitation, reasonable attorneys' fees) shall be allocated or reallocated, as the case may be, between the indemnified party, the indemnifying party and any other party bearing responsibility in such proportion as appropriately reflects the relative fault of such parties, or their subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them, and the liability of the indemnifying party shall be proportionately reduced.

The foregoing indemnification obligations are conditioned upon the Purchaser promptly notifying the Contractor in writing of the claim, suit or proceeding for which the Contractor is obligated under this Subsection, cooperating with, assisting and providing information to, the Contractor as reasonably required, at Contractor's expense, and granting the Contractor the exclusive right to defend or settle such claim, suit or proceeding; provided that any such settlement or compromise is for money damages only and includes a release of the Purchaser from all liability arising out of such claim, suit or proceeding."

Attachment B, § 19.2 – Governing Laws Participating Addendum

The parties clarify that venue for any claim, dispute or action shall be Circuit Court Sixth Judicial Circuit Hughes County.

2. Assignment of Antitrust Claims

The parties clarify that the Contractor hereby agrees to convey, assign and transfer to the State of South Dakota all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States, 15 U.S.C.A. §1, et seq. (1973), and under the antitrust laws of the State of South Dakota, SDCL 37-1, and amendments thereto, relating to the particular goods, services and materials purchased by the State of South Dakota in connection with this agreement.

3. Remainder of Terms – Unchanged

Other than as set forth above, the State of South Dakota *Participating Addendum* to the WSCA Master Agreement as previously entered into between the parties remains in effect and unaltered.


The WSCA Master Agreement, together with this Amendment #1 to the *Participating Addendum* and its Appendices, set forth the entire *Agreement* between the Participating State and Cisco with respect to the subject matter and supersedes and replaces 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 the *Agreement* shall not be added to or incorporated into the *Agreement* 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 *Agreement* shall prevail and govern in the case of any such inconsistent or additional terms.


IN WITNESS WHEREOF, the parties have executed this Amendment #1 to the *Participating Addendum* as of the date of last execution by the Parties below.

[Affix signatures as required by State Statutes, Rules or Policies below.]

Cisco Systems, Inc.

State of South Dakota

By: 
Printed Name: Ted Howe
Title: VP-CSF
Date: 1/25/2008

By: 
Printed Name: Jeff T. Holden
Title: Procurement Director
Date: January 22, 2008