

PARTICIPATING ADDENDUM
WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION
DATA COMMUNICATIONS PRODUCTS AND SERVICES 14-19
Administered by the State of Utah (hereinafter "Lead State")

MASTER AGREEMENT
Cisco Systems, Inc.
(hereinafter "Contractor" or "Cisco")

Master Agreement No: AR233

And

State of South Dakota
(hereinafter "Participating State/Entity")
Participating State Contract Number: 16660)

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1. Scope: Contractor and the Division of Purchasing and General Services, an agency of the Lead State have executed State Cooperative Contract, Contract Number AR233 for Data Communications Products and Services 14-19 ("WSCA-NASPO Master Price 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 Participating Addendum covers the Data Communications Products and Services 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 WSCA-NASPO cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **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.

The State of South Dakota, acting through its Bureau of Administration, Office of Procurement Management, is a member of the WSCA-NASPO Cooperative Purchasing Organization and has legal authority to execute this Participating Addendum pursuant to SDCL 5-18A-37.

Eligible participants in this Participating Addendum 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 Participating Addendum 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 Participating Addendum according to their own procurement guidelines.

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State Agencies and Institutions (other than Board of Regents Institutions): All state agency purchases from this Participating Addendum 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.

Board of Regents Institutions: Institutions under the control of the Board of Regents may make direct purchases from this Participating Addendum by issuing a local purchase order.

Local political subdivisions of the State of South Dakota including municipalities and public school corporations may purchase from this Participating Addendum according to their own procurement guidelines.

3. Participating State Modifications or Additions to Master Agreement:

A. Master Agreement Amendments

Attachment A, § – Confidentiality, Non-Disclosure and Injunctive Relief

The parties hereby clarify that records under this Participating Addendum 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 A, § 12 – Intellectual Property Infringement

The parties hereby clarify that the Contractor's obligation to indemnify the State against third party IPR claims under § 12 shall survive termination of Participation Agreement for three (3) years, provided the State is not in breach of the Participating Addendum. 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

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attorney fees.

Attachment A, § 12.1 -- Intellectual Property Infringement

The damages under § 12.1 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 A, § 12.4.1 -- "Use or Combination" Exception

The parties clarify that the exception to the Contractor's IPR claim indemnification obligation under § 12.4.1 shall apply to any product, device, or software not supplied by Contractor used in combination, operation or use of a Product supplied under this Participating Addendum.

Attachment A, § 12.3 -- "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 Contractor's reasonable opinion is likely to be commenced, Purchaser agrees to permit Contractor, 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 Contractor and Contractor will refund to Purchaser the price originally paid by Purchaser to Contractor for the Product, as depreciated or amortized by an equal annual amount over five years from date of original shipment.

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Attachment A, § 11 – Indemnification

A. The parties clarify that the Contractor's general indemnification obligation under § 11 shall survive termination of contract provided the State is not in breach of the Participating Addendum.

B. The parties amend the language to delete the obligation of the State to indemnify Contractor, 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."

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Attachment A, § 10 – Governing Law

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

B. 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 Participating Addendum.

4. Lease Agreements: Leases are not authorized under this agreement.

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

Contractor

Name	Angelene Feril
Address	170 West Tasman Drive, San Jose, CA 95134
Telephone	(408) 424-0712
Fax	(408) 608-1729
E-mail	aferil@cisco.com

Participating Entity

Name	Chuck Clark, Purchasing Specialist, South Dakota Office of Procurement Management
Address	523 E. Capitol Avenue, Pierre, SD 57501
Telephone	(605) 773-4276
Fax	(605) 773-4840
E-mail	Chuck.Clark@state.sd.us

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The Parties will keep and maintain current at all times a primary point of contact for administration of this *Participating Addendum*.

6. Subcontractors: All Contractor's Fulfillment Partners, as defined in the Master Agreement, authorized in the State of South Dakota, as shown on the dedicated Contractor's (cooperative contract) website, are approved to provide sales and service support to participants in the WSCA-NASPO 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.

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.

Purchasers 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

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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.

10. Notices: Notwithstanding anything contained in the Master Agreement to the contrary, all notices required or permitted under this Participating Addendum 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**); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. All communications will be sent to the addresses set forth Section 5 of this Participating Addendum (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 Participating Addendum 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.

11. Entire Agreement: This Participating Addendum and the Master Agreement (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or

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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 Participating Addendum may be modified only by a written document executed by the parties hereto.

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

Participating State: State of South Dakota	Contractor: Cisco Systems, Inc.
By: 	By: 
Name: Steven L. Berg	Name: Juan Pablo Brockmann
Title: Procurement Director	Title: Director, Finance
Date: 7/29/14	Date: August 4, 2014

[Additional signatures as required by Participating State] **APPROVED BY LEGAL**

For questions on executing a participating addendum, please contact:

WSCA-NASPO	
Cooperative Development Coordinator	Paul Stembler
Telephone	651-206-3858
E-mail	pstembler@wsca-naspo.org

[Please email fully executed PDF copy of this document to
PA@wsca-naspo.org to support documentation of participation and posting in
appropriate data bases]