

NASPO ValuePoint

**PARTICIPATING ADDENDUM**
**NASPO**  
**ValuePoint**
**DATA COMMUNICATIONS PRODUCTS  
& SERVICES (2019-2026)**

Led by the State of Utah

Master Agreement #: AR3227

Participating Addendum #: AR3227-198783

Contractor: **CISCO SYSTEMS, INC.**Participating State: **STATE OF WYOMING**

The following products or services are included in this contract portfolio: All products and services listed on the Contractor page of the NASPO ValuePoint website and Contractor's contract website.

**Master Agreement Terms and Conditions:**

1. Scope: This addendum covers the Participating Addendum led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: NASPO ValuePoint Master Agreement # 3227 (the "Master Agreement") may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of Wyoming. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

|            |                                                              |
|------------|--------------------------------------------------------------|
| Name:      | Gigi Feril                                                   |
| Address:   | 170 West Tasman Dr., San Jose, CA 95134                      |
| Telephone: | 408-424-0712                                                 |
| Fax:       | 408-608-1729                                                 |
| Email:     | <a href="mailto:nvp-help@cisco.com">nvp-help@cisco.com</a> ; |

Participating State

|            |                                                                      |
|------------|----------------------------------------------------------------------|
| Name:      | Mandy Gershmel, Senior Buyer, A&I Procurement                        |
| Address:   | 2800 Central Avenue, Cheyenne, WY 82002                              |
| Telephone: | (307) 777-6718                                                       |
| Email:     | <a href="mailto:Mandy.gershmel1@wyo.gov">Mandy.gershmel1@wyo.gov</a> |

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4. This Participating Addendum, consisting of four (4) pages, and Attachment A, Wyoming General Conditions, consisting of six (6) pages, are added to the Master Agreement. In the event of any conflict or inconsistency between this Participating Addendum, Attachment A, Wyoming General Conditions, and the Master Agreement, the following order of precedence shall govern as between the Participating State and the Contractor: (1) Attachment A, Wyoming General Conditions, (2) this Participating Addendum, and (3) the Master Agreement, and then any other document incorporated by reference.
  5. Lease Agreements and Alternative Financing Methods: The Master Agreement, which allows for leasing under Section 45, is approved for use by the Participating State. The terms and conditions of the capital lease or financing arrangement will be separately negotiated and set forth in an agreement between the purchaser and either Cisco Capital or its designated and/or approved financing partner.
  6. Subcontractors: All contractors, dealers, and resellers authorized in the State of Wyoming, as shown on the dedicated Contractor website, are approved to provide sales and service support to Purchasing Entities in the Master Agreement. The Contractor's 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, 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 or maximum number of Fulfillment Partners to provide sales and services support. Contractor, in its sole discretion, is not required to add Fulfillment Partners. Notwithstanding the foregoing, Contractor may remove, at its sole discretion, upon ten (10) business days advance written notice, any Fulfillment Partner who does not meet Contractor's established qualifying criteria, or where the addition of the Fulfillment Partner would violate any state or federal law or regulation.

7. Orders: The Master Agreement number and the Participating Addendum number must appear on every Purchase Order placed under this Participating Addendum

Purchasers may place orders directly only through Contractor's approved Fulfillment Partners or through Contractor (only on an as-needed basis) 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 Partner may offer any additional incremental discounts to Participating State, and such

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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.

Any order placed by the Participating State or a Purchasing Entity for a product and/or service under the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement, as modified by this Participating Addendum and Attachment A, Wyoming General Conditions, unless the parties to the order agree in writing that another contract or agreement applies to such order. *For clarity, sales of Contractor's product or services by Contractor or an authorized reseller made under a separate contract, where the applicable quoting or ordering documents reference that separate contract, are not deemed to be sales under this Master Agreement.*

8. The term of this Participating Addendum shall begin on 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.
9. 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 3 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.
10. Entire Agreement: This Participating Addendum; Attachment A, Wyoming General Conditions; 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 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.

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

|                                                                                                 |                                                                                            |
|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Participating State: State of Wyoming                                                           | Contractor: Cisco Systems, Inc.                                                            |
| By: <small>DocuSigned by:</small><br><i>Mandy Gershmel</i><br><small>88EEC7841EB84C3...</small> | By: <small>DocuSigned by:</small><br><i>Jenn Pate</i><br><small>1F6559B1886841F...</small> |
| Name: Mandy Gershmel                                                                            | Name: Jenn Pate                                                                            |
| Title: Senior Buyer, A&I Procurement                                                            | Title: Authorized Signatory                                                                |
| Date: 4/22/2020                                                                                 | Date: 4/22/2020                                                                            |

**ATTORNEY GENERAL APPROVAL AS TO FORM ONLY WITH ATTACHMENT A:**

*hw. [Signature]* #198783 4-13-2020  
 Tyler M. Renner, Assistant Attorney General Date

**WYOMING DEPARTMENT OF ADMINISTRATION & INFORMATION:**

DocuSigned by:  
*Patricia L. Bach*  
6F4BEF2B8DF5404  
 Patricia L. Bach, Director

4/27/2020

Date

## **Attachment A Wyoming General Conditions**

This Attachment A, Wyoming General Conditions, supplements and replaces conflicting terms and conditions contained in Utah NASPO ValuePoint Master Agreement – Number AR3227, dated October 1, 2019, and Participating Addendum for NASPO Valuepoint Cooperative Purchasing Program for Data Communications Products and Services (collectively referred to as "Participating Addendum") entered into between Cisco Systems, Inc. ("Contractor") and the State of Wyoming ("State"). In the event of any inconsistencies between the terms and conditions contained in the Participating Addendum and this Attachment A, the terms and conditions in this Attachment A shall control and shall supersede and replace the terms contained in the Participating Addendum.

The following General Conditions are incorporated into the Participating Addendum:

1. **Acceptance.** Contractor shall notify State if State's purchase order is not accepted by Contractor. State has thirty (30) days after hardware product delivery to inspect the hardware Product for external damage and for any concealed damage ("Acceptance Period"). If external or concealed damage is revealed during the Acceptance Period, then State shall notify Contractor. At Contractor's option, Contractor shall (i) repair such damage, (ii) ship a replacement, or (iii) refund the purchase price (upon return of the hardware product). After such Acceptance Period the products shall be deemed accepted. Acceptance does not relieve the Contractor of liability or responsibility under Contractor's warranty obligation for the hardware product.
2. **Partial Shipments** Contractor will not make partial shipments of any product on a single vendor order, unless authorized by State.
3. **General Provisions.**
  - A. **Amendments.** Any changes, modifications, revisions or amendments to this Participating Addendum which are mutually agreed upon by the parties to this Participating Addendum shall be incorporated by written instrument, executed by all parties to this Participating Addendum.
  - B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Participating Addendum shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Participating Addendum as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Participating Addendum and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

**C. Assignment Prohibited and Participating Addendum Shall Not Be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Participating Addendum without the prior written consent of the other party; provided however that Contractor may hire subcontractors to assist Contractor in the performance of Contractor duties and Contractor will remain primarily responsible for such performance. The Contractor shall not use this Participating Addendum, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the State.

**D. Availability of Funds.** Each payment obligation of the State is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for the continuance of the services performed by the Contractor, the Participating Addendum may be terminated by the State at the end of the period for which the funds are available. The State shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

**E. Award of Related Contracts.** The State may award supplemental or successor contracts for work related to this Participating Addendum or may award contracts to other contractors for work related to this Participating Addendum. The Contractor shall reasonably cooperate with other contractors and the State in all such cases.

**F. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Participating Addendum.

**G. Confidentiality of Information.** Confidentiality, nondisclosure and injunctive relief shall be as outlined in the NASPO ValuePoint Master Agreement AR3227 Attachment A, Section 30, except that the parties acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming to agree to injunctive relief, and that to the extent the Master Agreement provides for injunctive relief, any such right against the State of Wyoming shall be waived.

**H. Extensions.** Nothing in this Participating Addendum shall be interpreted or deemed to create an expectation that this Participating Addendum will be extended beyond the term described herein. Any extension of this Participating Addendum shall be initiated by the State, and shall be effective only after it is reduced to writing and executed by all parties to the Participating Addendum.

**I. Force Majeure.** Neither party shall be liable for failure to perform under this Participating Addendum if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

**J. Indemnification.** The NASPO ValuePoint Master Agreement AR3227 Attachment A Section 40(a) regarding general indemnity is replaced with the following: Contractor shall defend, indemnify, and hold harmless the State of Wyoming, along with its officers and employees, from and against third-party claims, damages, or causes of action, including reasonable attorneys' fees and related costs, for any death, bodily injury, or damage to tangible personal property (not including lost or damaged data) where such third-party claim, damage, or cause of action for death, bodily injury, or damage to tangible personal property is arising from negligent or willful misconduct act(s), error(s), or omission(s) of Contractor, its employees or subcontractors or volunteers, relating to its performance under this Participating Addendum. In the event that the indemnified party's or a third party's negligent or willful misconduct acts, errors or omissions contributed to cause the injury or damage for which a claim of indemnity is being asserted against the Contractor, the damages and expenses shall be allocated or reallocated, as the case may be, between the indemnified party, the Contractor, 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 Contractor shall be proportionately reduced.

The foregoing indemnification obligations are conditioned upon the indemnified party promptly notifying 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 indemnifying party as reasonably required. The parties agree that the State shall give the Contractor control of the defense and any settlement negotiations subject to the approval of, and in consultation with, the Wyoming Attorney General, which approval shall not be unreasonably withheld, so long as there are no admissions of liability on behalf of the State or any Purchasing Entity.

**K. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Participating Addendum, and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Participating Addendum, the Contractor shall be free from control or direction over the details of the performance of services under this Participating Addendum. The Contractor shall assume sole responsibility for any

debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Participating Addendum, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Participating Addendum. Nothing in this Participating Addendum shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming, or to incur any obligation of any kind on behalf of the State of Wyoming. The Contractor agrees that no health or hospitalization benefits, workers' compensation or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Participating Addendum.

**L. Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Participating Addendum, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Participating Addendum. If the Contractor breaches or violates this warranty, the State may, at its discretion, terminate this Participating Addendum without liability to the State, or deduct from the contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**M. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), and the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of sex, color, race, religion, national origin or disability in connection with the performance of this Participating Addendum.

**N. Sale or Transfer.** If the State learns of any sale, transfer, merger, or consolidation of the assets of Contractor and determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Participating Addendum, then the State may, at its discretion, terminate or renegotiate the Participating Addendum.

**O. Patent or Copyright Protection.** Intellectual Property Indemnity shall be as outlined in the NASPO ValuePoint Master Agreement AR3227 Attachment A Section 40(b). The parties hereto agree that "Indemnified Part's" in Section 40(b)(1)(a) is amended to read "Indemnified Party's". The parties hereto further agree that Contractor's control over the defense and settlement of an Intellectual Property Claim against the State of Wyoming, as set forth in Section 40(b)(2), shall be in consultation with the Wyoming Attorney General.

**P. Prior Approval.** This Participating Addendum shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall

not draw warrants for payment, until this Participating Addendum has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information, and approved by the Governor of the State of Wyoming if required by Wyo. Stat. § 9-2-1016(b)(iv).

**Q. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify the State as the sponsoring State and shall not be released without prior written approval from the State.

**R. Severability.** Should any portion of this Participating Addendum be judicially determined to be illegal or unenforceable, the remainder of the Participating Addendum shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

**S. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming expressly reserves sovereign immunity by entering into this Participating Addendum and specifically retains all immunities and defenses available to it as a sovereign. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Contractor, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Participating Addendum, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Participating Addendum shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

**T. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

**U. Termination of Addendum.** This Participating Addendum may be terminated, without cause, by the State upon thirty (30) days written notice. This Participating Addendum may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms of this Participating Addendum except for those beneficiary rights allowable under this Participating Addendum.

Termination of the Participating Addendum does not terminate any orders accepted before such termination.

**V. Third-Party Beneficiary Rights.** Except for those third-party beneficiary rights allowable under this Participating Addendum, the parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Participating Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in this Participating Addendum shall operate only between the parties to this Participating Addendum, and shall inure solely to the benefit of the parties to this Participating Addendum. The provisions of this Participating Addendum are intended only to assist the parties in determining and performing their obligations under this Participating Addendum.

**W. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Participating Addendum.

**X. Waiver.** The waiver of any breach of any term or condition in this Participating Addendum shall not be deemed a waiver of any prior or subsequent breach.

**Y. Counterparts.** This Participating Addendum may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Participating Addendum. Delivery by the Participating Addendum of an originally signed counterpart of this Participating Addendum by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the State.

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