

**WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
for Data Communications Products and Services
Between
The State of South Dakota and Extreme Networks, Inc.**

This Participating Addendum will add the State of South Dakota as a Participating State to purchase from the WSCA Price Agreement, Number AR1471, with Extreme Networks, Inc.

1. Scope: This addendum covers Data Communications Products and Services within the scope of the WSCA Master Agreement for State Agencies and Political Subdivisions.

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.

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.

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

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.

2. Changes:

Attachment A, Addendum 1, Paragraph 3: Public Information

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-2, Section A, Item 9, Patents, Copyrights, Etc.

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-2, Section A, Item 9, Patents, Copyrights, Etc. – "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 Extreme Networks, Inc. used in combination, operation or use of a Product supplied under this Agreement.

Attachment B-2, Section C, Item 17 – 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 Attachment B-2, Section C, Item 17 "Hold Harmless", by deleting the entire paragraph and replacing with the following:

"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."

The paragraph in Attachment B-2, Section C, Item 17 titled "Limitation of Liability" remains unchanged.

Attachment B-1, Paragraph 19 – Governing Laws Participating Addendum

The parties clarify that venue for any claim, dispute or action with regard to disputes arising out of or relating to this Participating Addendum shall be Circuit Court Sixth Judicial Circuit Hughes County.

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. 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

4. Contract Number: The contract number for the Participating State is _____.

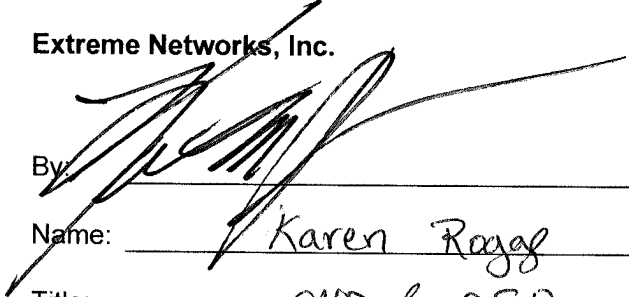
This participating addendum and the WSCA Master Price Agreement, Number AR1471 , (administered by the State of Utah) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether 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 Contract, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Contract 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 Contract and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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

South Dakota Office of Procurement Management

By: 
Name: Jeff T. Holden
Title: Director
Date: October 29, 2008

Extreme Networks, Inc.

By: 
Name: Karen Royce
Title: SVP & CFO
Date: 11/07/08

