

**Florida Polytechnic University**  
**PIGGYBACK AGREEMENT**  
**CISCO SYSTEMS, INC.**

The Piggyback Agreement (“Agreement”) is entered into on the date fully executed below, by and between Cisco Systems, Inc. with a principal place of business at 170 West Tasman Drive, San Jose, CA 95134 (“CONTRACTOR”) and The Florida Polytechnic University Board of Trustees (“UNIVERSITY”), 4700 Research Way, Lakeland, Florida 33805.

**RECITALS**

**WHEREAS**, the Florida Board of Governors’ Regulation 18.001 and UNIVERSITY Regulation 8.001 allow the UNIVERSITY to enter into contracts let by any State of Florida agency or department, the Federal Government, other states, political subdivisions, not-for-profit cooperatives or consortiums, or any independent college or university for the procurement of commodities and contractual services, when it is determined to be cost-effective and in the best interest of the UNIVERSITY, to make purchases under contracts let by such other entities;

**WHEREAS**, THE FLORIDA DEPARTMENT OF MANAGEMENT SERVICES and CISCO SYSTEMS, INC. entered into that certain Participating Addendum No. 43220000-NASPO-19-ACS dated on or about JUNE 9, 2021 (“Participating Addendum”), related to the NASPO Value Point Master Agreement Contract No: AR3227 (“Other Contract”);

**WHEREAS**, UNIVERSITY and Cisco Systems, Inc. desire to enter this Agreement, adopting and incorporating the terms and conditions as outlined in the Other Contract and the Participating Addendum, for Cisco Systems, Inc. to provide Data Communication Products and Services (“Services”).

**NOW THEREFORE**, for and in consideration of the covenants contained herein, the parties agree as follows:

1. **Recitals.** The above recitals are true and correct and incorporated herein by reference.
2. **Term.** This Agreement commences on the date fully executed and continues while the Participating Addendum remains in effect (the “Term”).
3. **Agreement Terms and Conditions.** The parties hereto agree to be bound by all the terms and conditions of the Participating Addendum and Other Contract, unless otherwise modified or specified herein. The Florida Polytechnic University Board of Trustees is considered the " Department" or “Customer” and Cisco Systems,

Inc is considered the "Contractor" as such terms are used in the Participating Addendum and Other Contract. Contractor will provide Services to the University as described in the Participating Addendum, attached and incorporated by reference as Exhibit B, and the Other Contract, attached and incorporated by reference as Exhibit A. In the event of conflict between or among the terms and conditions contained in the documents with regards to the Services, such documents govern in the following order of precedence: (1) this Agreement; (2) the Participating Addendum (Exhibit B); and (3) the Other Contract (Exhibit A).

4. **Fee for Services.** The total cost of this Agreement cannot exceed \$1,000,000.
5. **Confidentiality of Information.** If Contractor is exposed to University's confidential information (such as donor information), Contractor will keep such information confidential in accordance with Section 30 in the Other Contract and will act in accordance with any applicable laws including the Family Educational Rights and Privacy Act (FERPA) and the Gramm-Leach Bliley Act.
6. **Compliance with Public Records Laws.** The University is subject to applicable public records laws as provided by provisions of Florida Statutes Chapter 119, and the University will respond to such public records request without any duty to give the Contractor prior notice. The University may unilaterally terminate this Agreement for Contractor's refusal to allow public access to all public records that were made or received in conjunction with this Agreement. This provision survives termination or expiration of this Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

(863) 874-8412

[ogc@floridapoly.edu](mailto:ogc@floridapoly.edu)

**Florida Polytechnic University at Polk State College**

**Attention: General Counsel**

**3433 Winter Lake Road, Lakeland, FL 33805.**

- A. To the extent that Contractor meets the definition of "contractor" under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Contractor must comply with public records laws, including the following provisions of Section 119.0701, Florida Statutes requiring Contractor to:
  - i. Keep and maintain public records required by University to perform the service.
  - ii. Upon request from the University custodian of public records, provide the public

agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to University.
  - iv. Upon completion of this Agreement, transfer, at no cost, to University all public records in possession of contractor or keep and maintain public records required by University to perform the service.
- B. If Contractor transfers all public records to University upon completion of the contract, Contractor must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
  - C. If Contractor keeps and maintains public records upon completion of this Agreement, Contractor must meet all applicable requirements for retaining public records.
  - D. All records stored electronically must be provided to University, upon request from the University's custodian of public records, in a format that is compatible with the information technology systems of the University.
  - E. A request to inspect or copy public records relating to this Agreement must be made directly to University. If University does not possess the requested records, University must immediately notify Contractor of the request, and Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
  - F. The terms of this section 6 Compliance with Public Record Laws are material terms of this Agreement, and failure to comply may result in termination of this Agreement and/or civil penalties.
7. **Annual Appropriations.** The State of Florida and the University's performance and obligation to pay under this Agreement is subject to and contingent upon sufficient appropriations by the Florida Legislature and other entities' allowance of the University to use such funds. In the event the entities controlling such funding fail to appropriate funds or to allow the University to use such funds, and the University has determined that there are insufficient funds available to cover the University's obligation under this Agreement, the University has the right to terminate this Agreement without damage, penalty, cost or further obligation upon thirty (30) days' notice of termination due to the unavailability of funds. The University will give notice to the Contractor of the non-availability of funds when the University has knowledge thereof. Upon receipt of such notice by the Contractor, the Contractor is entitled to payment only for those services properly performed prior to the date such notice is received.
8. **Sovereign Immunity.** Nothing in this Agreement is to be construed as an indemnification of the Contractor by the University or as a waiver of sovereign immunity beyond that provided in section

768.28, Florida Statutes.

- 9. **Governing Law; Venue.** This Agreement is governed by the laws of the State of Florida and will be construed, performed, and enforced in all respects in accordance with the laws and rules of the State of Florida. Any disputes related to this Agreement will be governed by Florida law, and this Agreement is deemed to have been executed and entered into in the State of Florida. Exclusive venue of any actions arising out of this Agreement will be in the courts in Polk County, Florida.
- 10. **Notice.** Any notices required under this Agreement must be in writing, signed by the party giving such notice, and served on the other party:
  - a. Via hand delivery; or
  - b. Via U.S. Mail, postage prepaid, registered or certified, return receipt requested; or
  - c. Via expedited mail or package service, provided a receipt showing the delivery has been retained; or
  - d. Via email

**To University:**

The Florida Polytechnic University Board of Trustees  
 4700 Research Way  
 Lakeland, Florida 33805  
 Attn: University Procurement  
 Email: procurement@floridapoly.edu  
 With a copy to:  
 Office of the General Counsel  
 ogc@floridapoly.edu

**To Contractor:**

Cisco Systems  
 170 West Tasman Drive, San Jose, CA 95134  
 Attn: Jenn Pate  
 Email:  
 With a copy to:

Notice is effective upon receipt, except if notice is by e-mail, notice is effective upon acknowledgement of receipt by the party to be noticed.

- 11. **Relationship of the Parties.** The Contractor is an independent contractor, and neither the Contractor nor the Contractor's employees, agents, or other representatives are the University's employees or agents. The Contractor may not use the University's name, trademarks, logos, or marks without the University's prior written approval. Each party assumes any and all risk of personal injury and property damage attributable to the willful or negligent acts or omissions of that party and its officers, employees, and agents. The Contractor also assumes such risk with respect to the willful or negligent acts or omissions of

the Contractor's subcontractors or persons otherwise acting or engaged to act at the instance of the Contractor in furtherance of the Contractor fulfilling the Contractor's obligations under this Agreement.

12. **Travel.** Contractor will not charge the University for any travel expenses, meals, and lodging unless otherwise specifically provided for in this Agreement, and upon the University's prior written approval of the expenses. Under such circumstances, Contractor is authorized to incur the agreed to travel expenses which will be payable by the University, but only to the extent permitted in section 112.061, Florida Statutes. Contractor is responsible for any expenses in excess of these prescribed amounts.
13. **Survival.** Any provision of this Agreement providing for performance by either party after termination of this Agreement survives such termination and continue to be effective and enforceable.

[INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

The duly authorized representatives of the parties hereby execute this Piggyback Agreement.

For University:

For Contractor:

Mave  
Signature

Jenn Pate  
Signature

Randy K. Arent  
Name

Jenn Pate  
Name  
**Authorized Signatory**

President  
Title

Title

7.20.2022  
Date

July 18, 2022  
Date

**APPROVED BY LEGAL**

Approved as to form and legality:

Melaine J. Schriof 7.15.2022  
University Attorney

EXHIBIT A  
OTHER CONTRACT – Master Agreement  
(Attached)



# STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Utah Division of Purchasing and the following Contractor:

Cisco Systems, Inc.

Name

170 West Tasman Dr.

Street Address

San Jose

CA

95134

City

State

Zip

Vendor # VC0000118462 Commodity Code #: 920-05 Legal Status of Contractor: For-Profit Corporation

Contact Name: Mimi Nguyen-Farr, Sr Manager Phone Number: (408) 527-2627 Email: mimnguye@cisco.com

2. CONTRACT PORTFOLIO NAME: Data Communications Products and Services.

3. GENERAL PURPOSE OF CONTRACT: Provide Data Communications Products and Services for the Award Categories provided in Attachment B – Scope of Work.

4. PROCUREMENT: This contract is entered into as a result of the procurement process on FY2018, Solicitation# SK18001.

5. CONTRACT PERIOD: Effective Date: Tuesday, October 01, 2019. Termination Date: Monday, September 30, 2024 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal Options: Two (2) one year renewal options.

6. Administrative Fee (if any): Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) of contract sales no later than 60 days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on sales of the Services.

7. Prompt Payment Discount Details (if any): N/A.

8. ATTACHMENT A: NASPO ValuePoint Master Terms and Conditions, including the attached Exhibits  
ATTACHMENT B: Scope of Services Awarded to Contractor  
ATTACHMENT C: Pricing Discounts and Value Added Services  
ATTACHMENT D: [Reserved]

**Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.**

9. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
- b. Utah Procurement Code, Procurement Rules, and Contractor’s response to solicitation # SK18001.

10. Each signatory below represents that he or she has the requisite authority to enter into this contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the “Effective Date” of this Contract shall be the date provided within Section 5 above.

### CONTRACTOR

### DIVISION OF PURCHASING

August 30, 2019

Sep 4, 2019

Contractor's signature

Jenn Pate

Date

Director, Division of Purchasing

Date

Authorized Signatory

Type or Print Name and Title

### APPROVED BY LEGAL





## Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

### 1. Master Agreement Order of Precedence

- a. Any Order placed under this Master Agreement shall consist of the following documents:
  - (1) A Participating Entity's Participating Addendum ("PA");
  - (2) NASPO ValuePoint Master Agreement Terms & Conditions;
  - (3) A Statement of Work, including a Service Level Agreement contained within the Statement of Work;
  - (4) The Solicitation; and
  - (5) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

### 2. Definitions

Unless otherwise provided in this Master Agreement, capitalized terms will have the meanings given to those terms in this section.

**Administrative Data** means data related to Purchasing Entity's employees or representatives used to administer or manage Purchasing Entity's use of the Cloud Software. Administrative Data may include Personal Data and information about contractual commitments, whether collected at the time of the initial registration or thereafter.

**Cloud Software** means a Contractor-hosted software offering as described in the applicable Cloud Offering Description purchased by Purchasing Entity; Purchasing Entity's license to use Cloud Software is set forth in Exhibit 1.

**Contractor** means the person or entity directly delivering Products or performing services under the terms and conditions set forth in this Master Agreement or through its approved Fulfillment Partners.

**Data Breach** means any actual, or reasonably suspected by Contractor's information technology security teams, non-authorized access to or acquisition of computerized Purchasing Entity Data or Personal Data that compromises the security, confidentiality, or integrity of the Non-Public Data or Personal Data, or the ability of Purchasing Entity to access the Purchasing Entity Data or Personal Data.

**Disabling Code** means computer instructions or programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without

manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the Purchasing Entity's software, applications and/or its end users processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

**Embedded Software** means one or more software applications which are installed and reside on a computing device owned by Purchasing Entity; Purchasing Entity's license to use Embedded Software is set forth in Exhibit 1.

**Fulfillment Partner** means a third-party contractor or reseller qualified and authorized by Contractor, and approved by the Participating Entity under a Participating Addendum, who may, to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Services under this Master Agreement and billing Purchasing Entity directly for such Services. Contractor may, upon written notice to the Participating Entity, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Master Agreement or to bind Contractor to any additional terms and conditions.

**Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** means the State centrally administering any resulting Master Agreement(s).

**Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

**NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

**Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products and/or Services as authorized under the Master Agreement and Participating Addenda. For clarification purposes, "Blanket Purchase Order" is excluded from the scope of this Master Agreement. "Blanket Purchase Order" is an order that contains multiple delivery dates scheduled during the term of and/or post the expiration date of the Master Agreement, often negotiated to take advantage of predetermined or to lock-in pricing (i.e. from older Contractor pricelists).

**Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** means a state in the United States of America, or other public sector legal entity (i.e. political subdivisions such as municipalities and counties, and K-12 and higher education institutions) in the United States of America, properly authorized to enter into a Participating Addendum.

**Participating State** means a state, the District of Columbia, or one of the territories of the United States who has the authority to execute a Participating Addendum to this Master Agreement. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposal is not required to participate through execution of a Participating Addendum.

**Personal Data** means data alone or in combination that includes information relating to an individual that identifies the individual by name, identifying number, mark or description can be readily associated with a

particular individual and which is not a public record. Personal Information may include the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or Protected Health Information (PHI) relating to a person.

**Product** means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

**Purchasing Entity** means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

**Purchasing Entity Data** means all information, whether in oral or written (including electronic) form, created by or in any way originating with a Participating Entity or Purchasing Entity provided or transferred to Contractor in the course of using the Services or Cloud Software provided under this Agreement. Purchasing Entity Data includes Administrative Data and does not include Telemetry Data or Statistical Data.

**Services** mean services that are in scope of this Master Agreement and are supplied or created by the Contractor pursuant to this Master Agreement (to include the attached Services Exhibit in Exhibit 2).

**Security Incident** means the actual or reasonably suspected by Contractor's information technology security teams, unauthorized access to Purchasing Entity Data and Personal Data that Contractor believes could reasonably result in the use, disclosure or theft of a Purchasing Entity's Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach.

**Service Level Agreement (SLA)** means a written agreement between both the Purchasing Entity and the Contractor that is subject to the terms and conditions in this Master Agreement and relevant Participating Addendum (unless otherwise expressly agreed in writing between the Purchasing Entity and the Contractor). A Service Level Agreement may be memorialized within a Statement of Work for the Services. SLAs should include: (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) remedies, such as credits, and (5) an explanation of how remedies or credits are calculated and issued. Not every Service provided under this Master Agreement need be covered by a SLA.

**Solicitation** means the documents used by the State of Utah, as the Lead State, to obtain Contractor's Proposal.

**Statement of Work** means a written document agreed between Contractor and Purchasing Entity that defines Services and deliverables to be provided to Purchasing Entity.

**Software** means the binary image of Contractor computer programs (including Upgrades) which could be a downloadable file, delivered on physical media, pre-installed on the on-premise computer system, resident in ROM/Flash (system memory) or cloud-hosted and purchased from Contractor. Software may be either Embedded Software or Cloud Software. Purchasing Entity's license to use Software is set forth in Exhibit 1.

**Statistical Data** means any information/data that Contractor derives from Purchasing Entity Data and/or Telemetry Data, provided that such information/data is aggregated and/or de-identified such that it cannot reasonably be used to identify an individual or entity.

**Telemetry Data** means information generated by instrumentation and logging systems created through the use and operation of Contractor products and services.

## **NASPO ValuePoint Program Provisions**

### **3. Term of the Master Agreement**

- a. The initial term of this Master Agreement is for five (5) years. This Master Agreement may be extended beyond the original contract period for two (2) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.
- b. The Master Agreement may be extended for a reasonable period of time, not to exceed six (6) months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

### **4. Amendments**

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

### **5. Participants and Scope**

- a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.
- b. Use of specific NASPO ValuePoint's Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of each Participating Addendum. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate databases.
- d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts,

counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

- e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Purchasing Entity. Any such language shall be void and of no effect.
- f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- g. **Resale.** "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products when purchased for the Purchasing Entity; sales of hardware Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property. The transfer of licenses to software shall be subject to Contractor's then-current software transfer and relicensing policy.

## 6. Administrative Fees

- a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.
- b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the sum of all sales at Net Purchase Price at the adjusted prices (if any) in Participating Addenda, where "Net Purchase Price" is the Contractor's list price for an approved product or service minus all applicable contract discounts, rebates or value added incentives, and excluding sales, use or other applicable taxes, surcharges or like fees, to the extent applicable to an Order.

## 7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

- a. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at

<http://calculator.naspovaluepoint.org>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than sixty (60) days following the end of the calendar quarter (as specified in the reporting tool).

- b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/Purchasing Entity type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in Attachment H of the Solicitation.
- c. Sales under Contractor's master agreement are intended for commercial, enterprise and government use only. Sales to employees for personal use are prohibited. [RESERVED].
- d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

## **8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master Agreement and Participating Addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- b. Contractor agrees, as Participating Addenda become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider Purchasing Entity's proposed terms and conditions, as deemed important to the Purchasing Entity, for possible inclusion into the Purchasing Entity agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, terminate the Master Agreement pursuant to section 35 or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Termination based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to terminate the Master Agreement pursuant to Section 35 or to terminate for default pursuant to Section 37

## **9. NASPO ValuePoint eMarket Center**

- a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's Purchasing Entities' to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.
- b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide Purchasing Entity's information regarding the Contractor's website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.
- c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the Purchasing Entity to have.
- d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

## **10. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan; nor does the limitation preclude Contractor providing limited information as necessary for Contractor to perform its duties or secure or exercise any rights under the Master Agreement. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

## **11. Price and Rate Guarantee Period**

All pricing must be guaranteed for the first year of the Master Agreement.

Following the guarantee period, any request for price increases must be for an equal guarantee period (1 year), and must be submitted to the Lead State at least thirty (30) calendar days prior to the effective date. The Lead State will review a documented request for an MSRP price list increase only after the Price Guarantee Period. Requests for price increases must include sufficient documentation supporting the request and demonstrating a reasonableness of the adjustment when comparing the current price list to the proposed price list. Documentation may include: the manufacturers national price increase

announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase.

No retroactive price increases will be allowed.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published commercial price list, including renewal options, the Lead State shall be notified immediately. All published commercial price list price reductions shall be effective upon the notification provided to the Lead State.

## **12. Individual Purchasing Entities**

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **Administration of Orders**

### **13. Ordering and Orders**

- a. Lead State desires that the Master Agreement identifier and purchase order numbers be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence. Any such information will be per Contractor's existing free form structure, without customization. The purchase order numbers reflect Contractor's Fulfillment Partner purchase order numbers; however, Contractor will request that its Fulfillment Partners use reasonable efforts to provide the Purchasing Entity's Purchase Order number in the free form notes.
- b. Contractor reserves the right to require that purchases be made through Fulfillment Partners. Where so required by Contractor, Purchasing Entities shall not order Products and/or Services directly from Contractor and shall order same from Fulfillment Partner. Purchasing Entity shall purchase Products and/or Services by issuing a written or electronic Purchase Order, signed or (in the case of electronic transmission) sent by its authorized representative, indicating specific products, quantity, unit price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and any other special instructions.
- c. Any contingencies on Purchasing Entity's Purchase Orders are not binding upon Contractor. The terms and conditions of this Master Agreement and applicable Participating Addendum prevail, regardless of any additional or conflicting terms on the Purchase Order, or other correspondence from Purchasing Entity to Contractor and any additional or conflicting terms are deemed rejected by Contractor unless Contractor has expressly agreed to such terms in writing. Mere acceptance or processing of a Purchase Order or Order containing such terms shall not constitute such express consent.
- d. All Purchase Orders are subject to Contractor's reasonable acceptance (including performing any related credit checks). Contractor shall use commercially reasonable efforts to accept or reject orders in writing within ten (10) days from receipt, or within three (3) business days, if orders are placed electronically.
- e. Purchasing Entity may defer product shipment up to thirty (30) days from the originally scheduled shipping date, provided written notice is received by Contractor at least ten (10) days before the originally scheduled shipping date. Cancelled orders, rescheduled deliveries, or product configuration changes made by Purchasing Entity less than ten (10)



days before the original shipping date are subject to Contractor's acceptance and a charge of fifteen percent (15%) of the total invoice amount relating to the affected Product(s). Contractor reserves the right to reschedule delivery due to configuration changes made within ten (10) days of scheduled shipment. No cancellation shall be accepted by Contractor where products are purchased with implementation services, including but not limited to design, customization, or installation services, except as may be set forth in the agreement or Statement of Work under which the services are to be rendered. Notwithstanding anything to the contrary, if Contractor is delayed in shipping the product for thirty (30) days or more from the original shipping date, the Purchasing Entity may cancel the order without charge.

- f. Services. Purchasing Entity may place Purchase Orders for the various services offered by Contractor. The provision of any such services, if accepted by Contractor, shall be subject to the terms and conditions set forth in this Agreement, including the Services Exhibit attached hereto as Exhibit 2, as well as the then-current terms of service offerings set forth on Contractor's website at <https://www.cisco.com/c/en/us/about/legal/service-descriptions.html>. Contractor reserves the right to subcontract services to a third party organization to provision services for Purchasing Entity.
- g. All stated prices are exclusive of any taxes, fees, and duties or other similar amounts, however designated, and including without limitation value added, sales and withholding taxes which are levied or based upon such prices, charges, or upon this Master Agreement. Purchasing Entity will pay sales and use taxes, if any, imposed on the Products and Services acquired under this Master Agreement, or furnish proof of its tax-exempt status upon request. Contractor will pay all other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. In the event that the Purchasing Entity is exempt from property and sales taxes, it will not be charged same.
- h. Notwithstanding anything contained in the Master Agreement to the contrary, modifications which Contractor deems necessary to comply with specifications, changed safety standards or governmental regulations, to make the product non-infringing with respect to any patent, copyright, or other proprietary interest, or to otherwise improve the product may be made at any time by Contractor without prior notice to or consent of Purchasing Entity or NASPO, and such altered product shall be deemed fully conforming. Contractor shall employ commercially reasonable efforts to announce, including by electronic posting, product discontinuance or changes other than those set forth in the previous sentence in accordance with Contractor's End-of-Life Policy, which is found at the following URL: <http://www.cisco.com/c/en/us/products/eos-eol-policy.html> Purchasing Entity may make a last-time purchase of such products as set forth in such policy.
- i. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors and/or Fulfillment Partners should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- j. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor and/or Fulfillment Partner as applicable is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- k. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- l. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

- m. All Orders pursuant to this Master Agreement, at a minimum, shall include:
  - (1) The services or supplies being delivered;
  - (2) The place and requested time of delivery;
  - (3) A billing address;
  - (4) The name, phone number, and address of the Purchasing Entity representative;
  - (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
  - (6) A ceiling amount of the order for services being ordered; and
  - (7) The Master Agreement identifier.
- n. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- o. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Maintenance agreements may have terms as prescribed in Section 27. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- p. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after or extend after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

#### **14. Shipping and Delivery**

- a. The prices are the delivered price to any Purchasing Entity. All deliveries for hardware Products shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges pre-paid by the Contractor, for the standard shipping time intervals. Expedited shipping and/or a special delivery request that are non-standard delivery beyond docking areas at warehouses or designated delivery drop-offs locations at buildings (i.e. delivery of the Order, including pallets, to a closet, designated rooms, etc.) will result in additional charges to the Purchasing Entity. Title for hardware Products and risk of loss shall pass to the Purchasing Entity upon delivery. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice.
- b. Any damage to a building interior, scratched walls, damage to the freight elevator, etc., negligently caused by Contractor will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.
- c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents.
- d. Scheduled shipping dates will be assigned by Contractor as close as practicable to Purchasing Entity's requested date based on Cisco's then-current lead times for the Products. Contractor will use commercially reasonable efforts to ship all direct orders designated for shipment to U.S. locations within thirty (30) days for hardware Products. The following circumstances may affect lead times: (i) new products purchased within the first three (3) months of release of the product which are subject to Contractor's then current published lead-times, (ii) third-party stand-alone products which are not a component of equipment resold by Contractor, (iii) end-of-life products where the termination of the product has been announced by Contractor, (iv) products which have been line-

stopped due to software discrepancies, reconfiguration, industry-wide product shortages, or alleged infringement claims, or (vi) situations where government rated orders create delays in lead-times. Notwithstanding the foregoing, at any time when Purchasing Entity states "expedite" on an order for a hardware Product or otherwise communicates to Contractor that an order is to be expedited, Contractor shall use all commercially reasonable efforts to ensure the earliest possible delivery of such products.

- e. Contractor will communicate scheduled shipping dates in the order acknowledgement or on www. Cisco.com within three (3) business days after receipt of an electronic order on www.cisco.com, provided, however, that in the event such notification is not received in this time period, Purchasing Entity shall notify Contractor of the non-receipt, and Contractor's sole obligation with respect to such non- receipt shall be to promptly provide the information to the Purchasing Entity after such notification.
- f. If Contractor has reason to believe that the actual shipment date will occur later than the original shipment date acknowledged by Contractor for reasons caused by Contractor, Contractor shall use commercially reasonable efforts to promptly provide additional information to Purchasing Entity including by electronic posting of the expected period of delay and, upon request, of the steps available, if any, to minimize the delay. If the extended delivery date is anticipated to be more than thirty (30) calendar days beyond the originally scheduled delivery date, the parties will work in good faith to resolve any ordering issues.
- g. Purchasing Entity shall assume responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance. This also applies in cases where Purchasing Entity requests delivery of hardware Products to Purchasing Entity's forwarding agent. Purchasing Entity agrees not to use any export licenses owned by Contractor.
- h. Contractor is not liable for damage or penalty for delay in delivery or for failure to give notice of delay.
- i. All sales are final. Except for return remedies set forth in the warranty statements, Contractor only permits the return of unopened hardware Products due to Contractor's shipping or order processing errors, or damage in transit. No other returns are authorized. The return of hardware Product must be in accordance with Contractor's return policy and procedures. Warranty returns will not be subject to any restocking fees.

## **15. Laws and Regulations**

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

## **16. Inspection and Acceptance**

Purchasing Entity 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 Purchasing Entity 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.

## **17. Payment**

Upon and subject to credit approval by Contractor, payment is due 30 days the date of the invoice. Invoices for products ordered without implementation services shall be rendered by Contractor on or after the date of delivery of such products to the Purchasing Entity. Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. If at any time Purchasing Entity is delinquent in the payment of any invoice, or is otherwise

in breach of this Agreement, Cisco may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order, require Purchasing Entity to prepay for further shipments, and/or withhold the provision of Services, until complete payment has been received. Purchasing Entity grants Cisco a security interest in Products purchased under this Agreement to secure payment for such Products. If requested by Cisco, Purchasing Entity agrees to execute financing statements to perfect this security interest. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" to Fulfillment Partners under this contract.

## 18. Warranty

All hardware Products are sold, Software licensed, and Services delivered with Contractor's standard limited warranty as set forth below.

- a. Hardware Products. Contractor warrants that from the date of shipment by Contractor to Purchasing Entity, and continuing for a period of the longer of (a) ninety (90) days or (b) the period set forth in the warranty card accompanying the product or at <https://www.cisco.com/go/warranty>, the hardware Product will be free from defects in material and workmanship, under normal use. This limited warranty extends only to the original user of the product. Purchasing entity's sole and exclusive remedy and the entire liability of Contractor and its suppliers under this limited warranty will be, at Contractor's or its service center's option, (i) shipment of a replacement within the period and according to the replacement process described in the warranty card (if any) or if no warranty card, as described at <https://www.cisco.com/go/warranty>, or (ii) a refund of the purchase price, if the hardware Product is returned to the party supplying it to Purchasing Entity, if different than Contractor, freight and insurance prepaid. Contractor replacement parts, used in the replacement of hardware Products, may be new or equivalent to new. Contractor's obligations hereunder are conditioned upon the return of affected products, in accordance with Contractor's then-current return procedures. This limited warranty does not apply if the hardware Product (i) has been altered, except by Contractor or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (iv) is licensed or provided for beta, evaluation, testing or demonstration purposes.
- b. Embedded Software Products. Contractor warrants that Embedded Software will substantially conform to the applicable documentation of the Embedded Software for the longer of (i) ninety (90) days following the date the Embedded Software is made available to Purchasing Entity for use or (ii) as otherwise set forth at <http://www.cisco.com/go/warranty>. This warranty does not apply if the Embedded Software, the hardware Product supplied by Contractor, or any other equipment upon which the Embedded Software is authorized to be used: (i) has been altered, except by Contractor or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (iv) is licensed for beta, evaluation, testing or demonstration purposes or other circumstances for which there is not payment of a purchase price or license fee; or (v) has not been provided by an authorized reseller of Contractor. Cisco will use commercially reasonable efforts to deliver to Embedded Software free from any viruses, programs, or programming devices designed to modify, delete, damage or disable the Embedded Software or data. At Contractor's option and expense, Contractor shall repair, replace, or cause the refund of the license fees paid for the non-conforming Embedded Software. This remedy is conditioned on Purchasing Entity reporting the non-conformance in writing to Contractor within the warranty period. Purchasing Entity may be required to return the Embedded Software, the Contractor hardware product, and/or Documentation as a condition of this remedy. This is Purchasing Entity's sole and exclusive remedy under this warranty for Embedded Software. Except as set forth herein, Embedded Software are provided "as is". Contractor does not warrant that Embedded Software will operate uninterrupted or error-free or that all errors will be corrected. In addition, Contractor does not warrant that the Embedded Software or any equipment, system or network on which the Embedded Software is used will be free of vulnerability to intrusion or attack.

- c. Cloud Software Products. Unless otherwise provided for in the applicable Cloud Offer Description, Contractor warrants that it will provide the Cloud Software in accordance with the Cloud Offer Description using commercially reasonable skill and care. Upon prompt notification by Purchasing Entity of Contractor's breach of this warranty, to the extent permitted by applicable law, Contractor will, at Contractor's option, (i) repair or replace the Cloud Software or (ii) refund fees paid to Contractor for the period in which the Cloud Software did not materially comply with the Cloud Offer Description. This is Purchasing Entity's sole and exclusive remedy under this warranty for Cloud Software.
- d. Services. Contractor warrants that Services sold under this Agreement pursuant to Exhibit 2 will be performed in a workmanlike manner and, where applicable, will materially comply with the applicable Service Description. Purchasing Entity must promptly notify Contractor of a breach of this warranty. Purchasing Entity's sole and exclusive remedy for any breach of this warranty shall be, at Contractor's option, (i) reperformance of the Services or (ii) termination of the applicable Service, and return of the portion of the fees paid to Contractor by Purchasing Entity for such non-conforming Services
- e. DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 18, CONTRACTOR HEREBY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, OR SYSTEM INTEGRATION, OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD.

#### **19. Title of Product**

Title to hardware Products and risk of loss shall pass to Purchasing Entity upon delivery. To the extent the transfer of title to the hardware Product includes a license to use any Embedded Software in the hardware Product subject to the terms of the End User License Agreement set forth in Exhibit 1. If Purchasing Entity subsequently transfers title of the hardware Product to another entity, transfer of the license to use the Embedded Software shall be subject to Contractor's then-current software transfer and relicensing policy.

#### **20. License of Pre-Existing Intellectual Property**

Contractor grants to Purchasing Entity a license to Software pursuant to the license terms and restrictions set forth in Exhibit 1.

#### **21. No Guarantee of Service Volumes**

The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that it has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters.

#### **22. Purchasing Entity Data**

Purchasing Entity retains full right and title to Purchasing Entity Data provided by it. Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding Purchasing Entity's use of the Service that can be identified to Purchasing Entity may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. The obligation shall extend beyond the term of this Master Agreement in perpetuity.

### **23. System Failure or Damage**

In the event of system failure or damage caused by Contractor or its Services, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

### **24. [RESERVED].**

### **25. Data Privacy**

The Contractor must comply with all applicable laws related to data privacy and security, including IRS Pub 1075. Prior to entering into a Statement of Work with a Purchasing Entity for the processing of such data, at the request of the Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine the data categorization to determine what data the Contractor will hold, store, or process. To the extent applicable and reasonable, the Contractor must document the data categorization in the Statement of Work.

### **26. Transition Assistance**

- a. The Contractor shall reasonably cooperate with other parties in connection with all Services to be delivered under this Master Agreement, including without limitation any successor service provider to whom a Purchasing Entity's Data is transferred in connection with the termination or expiration of this Master Agreement. Only as set forth in a Services SOW under this Agreement, the Contractor shall assist a Purchasing Entity in exporting and extracting a Purchasing Entity's Data, in a format usable without the use of the Services and as agreed by a Purchasing Entity. Any transition services requested by a Purchasing Entity involving additional knowledge transfer and support may be subject to a separate transition Statement of Work.
- b. A Purchasing Entity and the Contractor shall, when reasonable, create a Transition Plan Document identifying the transition services to be provided and including a Statement of Work if applicable.
- c. The Contractor must maintain the confidentiality and security of a Purchasing Entity's Data during the transition services and thereafter as required by the Purchasing Entity.

### **27. Performance and Payment Time Frames that Exceed Contract Duration**

All maintenance or other agreements for services entered into during the duration of an SLA and whose performance and payment time frames extend beyond the duration of this Master Agreement shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, maintenance or other agreements for services may be executed after the Master Agreement has expired.

## **General Provisions**

### **28. Insurance**

- a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- b. Coverage shall be written on an occurrence basis. The limits required shall be as indicated below:
  - (1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of \$1 million per occurrence/\$3 million general aggregate provided that such limit can be satisfied with any combination of primary and umbrella insurance;

- (2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
  - d. Contractor's general liability insurance shall (1) include the Participating States identified in the Request for Proposal as additional insureds for liabilities falling within Contractor's indemnity obligations under this Agreement that are otherwise covered by such insurance, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. If any of the insurance required herein is cancelled or nonrenewed, Contractor shall replace such insurance so that no lapse in coverage occurs, and shall provide a revised certificate of insurance evidencing same.
  - e. Contractor shall furnish to the Lead State copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
  - f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

## **29. Records Administration and Audit**

- a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder. Such access will be (i) with at least ten (10) business days advance written notice, during normal business hours (ii) shall not unduly interrupt or interfere with Contractor's normal business operations, and (iii) in the event that such audit is conducted by a third party, such third party shall, prior to conducting such audit, execute a confidentiality agreement for the benefit of Contractor in a form reasonably satisfactory to Contractor.
- b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of Administrative Fees found as a result of the examination of the Contractor's records.
- c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

### 30. Confidentiality, Non-Disclosure, and Injunctive Relief

- a. Confidentiality. Each party acknowledges that it and its employees or agents may, in the course of dealing under this Master Agreement, be exposed to or acquire information that is confidential to the other party. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by the receiving party or its employees or agents (the "Receiving Party") in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information ("Confidential Information") of the disclosing party ("Disclosing Party"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Receiving Party) publicly known; (2) is furnished by Disclosing Party to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Disclosing Party without the obligation of confidentiality, (5) is disclosed with the written consent of Disclosing Party or; (6) is independently developed by employees, agents or subcontractors of Receiving Party who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure. Each Party shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than subcontractors as necessary to perform the obligations of this Master Agreement) or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Each Party shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Each Party shall use commercially reasonable efforts to assist Disclosing Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Receiving Party shall advise Disclosing Party immediately if Disclosing Party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Receiving Party shall at its expense cooperate with Disclosing Party in seeking injunctive or other equitable relief in the name of Disclosing Party against any such person. Except as directed by Disclosing Party, Receiving Party will not at any time during or for three years after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Disclosing Party's request, Receiving Party shall turn over to Disclosing Party all documents, papers, and other matter in their possession that embody Confidential Information. Notwithstanding the foregoing, Receiving Party may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.
- c. Injunctive Relief. The parties acknowledge that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Disclosing Party that is inadequately compensable in damages. Accordingly, Disclosing Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Receiving Party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Disclosing Party and are reasonable in scope and content.
- d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.
- e. The confidentiality obligations under this section shall also extend to (as included within the definition of Confidential Information) Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/Purchasing Entity, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to



disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to Section 29.

To the extent permitted by law, Receiving Party shall notify the Receiving Party of any entity seeking access to the Confidential Information described in this Section 30. The Receiving Party will be authorized to disclose Confidential Information as may be required by applicable law pursuant to a valid order issued by a court or government agency or relevant regulatory authority (including a stock exchange), provided that the Receiving Party provides: (i) prior written notice to the Disclosing Party of such obligation; and (ii) the opportunity to oppose such disclosure.

### **31. Public Information**

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

### **32. Assignment/Subcontracts**

- a. Contractor shall not assign, sell, transfer, or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State. Contractor may, with prior written consent from Participating States, which consent shall not be unreasonably withheld, enter into subcontracts with third parties as "Fulfillment Partners." Fulfillment Partners are Subcontractors who may provide products and services under this Master Agreement at the price discounts established in this Master Agreement and bill Purchasers directly for such products and services. In addition, Contractor may, without permission, utilize subcontractors to perform Services sold under this Master Agreement and provide Cloud Offers.
- b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

### **33. Changes in Contractor Representation**

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

### **34. Independent Contractor**

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

### **35. Termination**

Unless otherwise stated, this Master Agreement may be terminated by either Lead State or Contractor upon 60 days written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Termination may be in whole or in part. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Termination of the Master Agreement due to Contractor default may be immediate.

### **36. Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

### **37. Defaults and Remedies**

- a. The occurrence of any of the following events by Contractor shall be an event of default under this Master Agreement:
  - (1) Nonperformance of contractual requirements; or
  - (2) A material breach of any term or condition of this Master Agreement; or
  - (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
  - (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
  - (5) Any default specified in another section of this Master Agreement.
- b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of sixty (60) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages.
- c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
  - (1) Exercise any remedy provided by law; and
  - (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
  - (4) Suspend Contractor from being able to respond to future bid solicitations; and
  - (5) Suspend Contractor's performance; and
  - (6) Withhold payment until the default is remedied.
- d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement with respect to its Participating Addendum, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity.

### **38. Waiver of Breach**

Failure of the either party to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver must be in writing. Waiver by a party any default, right or remedy under this Master Agreement or Participating Addendum, or with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any

subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

### **39. Debarment**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

### **40. Indemnification; Limitation of Liability**

- a. General Indemnity - Each party shall defend, indemnify and hold harmless the other party, along with their 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) arising from negligent or willful misconduct act(s), error(s), or omission(s) of the indemnifying party, its employees or subcontractors or volunteers, relating to its performance under the Master Agreement. 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 (including, without limitation, reasonable attorneys' fees) 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 the indemnifying party in writing of the claim, suit, or proceeding for which the indemnifying party is obligated under this Subsection, cooperating with, assisting, and providing information to, the indemnifying party as reasonably required, and granting the indemnifying party the exclusive right to defend or settle such claim, suit, or proceeding; provided that any such settlement or compromise includes a release of the indemnified party from all liability arising out of such claim, suit or proceeding.

- b. Indemnification – Intellectual Property. The Contractor shall defend any claim against NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, or Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims by third parties that Contractor's Products provided under this Agreement, infringes patents, copyrights or trademarks ("Intellectual Property Claim") of another person or entity.
  - (1) The Contractor's obligations under this section shall not extend to the extent any Intellectual Property Claim is based on:
    - (a) compliance with any designs, specifications, requirements, or instructions by any Indemnified Party or a third party on Indemnified Party's behalf; or
    - (b) the modification of the Contractor's Product by anyone other than Contractor; or
    - (c) the amount or duration of use made of Contractor's Product, or services offered by Indemnified Party to external or internal Purchasing Entity, or revenue earned by the Indemnified Party; or
    - (d) the combination of the operation, or use of a Contractor's Product with third party products, software or business processes.
  - (2) The Indemnified Party shall notify the Contractor promptly after receiving notice of an Intellectual Property Claim. If Indemnified Party fails to notify Contractor promptly of the Intellectual Property Claim, and that failure prejudices Contractor's ability to defend, settle or respond to the Intellectual Property Claim, then Contractor's obligation to defend or indemnify Indemnified Party

with respect to that Intellectual Property Claim will be reduced to the extent Contractor has been prejudiced. In addition, such failure to provide prompt notification shall relieve Contractor of any obligation to reimburse for Indemnified Party's attorneys' fees incurred prior to notification. If the Contractor defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request, information and assistance necessary for such defense.

- (3) If an Intellectual Property Claim is made or appears likely, Indemnified Party shall permit Contractor to procure for Indemnified Party the right to continue using Contractor's Product, or to replace or modify the Contractor's Product with one that is at least functionally equivalent. If Contractor determines that none of those alternatives is reasonably available, then Indemnified Party will return and/or cease using Contractor's Product and Contractor will refund to Indemnified Party the remaining net book value of the Contractor's Product calculated according to generally accepted accounting principles.
  - (4) This Section 40(b) is Contractor's entire obligation and Indemnified Party's exclusive remedy regarding any Intellectual Property Claims.
- c. **Limitation of Liability.** Except for Contractor's obligations under Section 40(a) (General Indemnity) and Section 40(b) (Indemnification – Intellectual Property) notwithstanding anything else herein, all liability of Contractor and its suppliers to any Participating Entity (and any Purchasing Entity under the Participating Entity) for claims arising under this Agreement, the applicable Participating Addendum, or otherwise shall be limited to the greater of (i) three million dollars (\$3,000,000.00) or (ii) the money paid to Contractor by the Participating Entity under this Master Agreement in the twelve (12) month period prior to the event or circumstances that first gave rise to such liability. This limitation of liability is cumulative and not per incident.
  - d. **Waiver of Consequential Damages.** In no event shall Contractor or its suppliers be liable for any (i) special, exemplary, incidental, indirect or consequential damages, or loss of or damage to data (except for a loss of Purchaser data caused by Contractor's negligence), (ii) loss of: profits, revenue, business, anticipated savings, use of any product or service, opportunity, goodwill or reputation, or (iii) wasted expenditure (other than any expenditure necessarily incurred to discharge the innocent party's duty or to mitigate its losses)

#### **41. No Waiver of Sovereign Immunity**

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

#### **42. Governing Law and Venue**

- a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

- b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.
- c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

#### **43. Assignment of Antitrust Rights**

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

#### **44. Contract Provisions for Orders Utilizing Federal Funds**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

#### **45. Leasing or Alternative Financing Methods**

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

#### **46. Entire Agreement:**

This Master Agreement, along with any attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum with a Participating Entity. No click-through, or other end user terms and conditions or agreements required by the Contractor ("Additional Terms") provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative "acceptance" of those Additional Terms before access is permitted, except for those terms as referenced in this Master Agreement.

## eMarket Center Appendix

- a. This Appendix applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.
- b. Supplier's Interface with the eMarket Center. There is no cost charged by JAGGAER to the Contractor for loading a hosted catalog or integrating a punchout site.
- c. At a minimum, the Contractor agrees to the following:
  - (1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and JAGGAER to set up an enablement schedule, at which time JAGGAER's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.
  - (2) NASPO ValuePoint and JAGGAER will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. **Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).**
    - (a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to JAGGAER, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data no more than once per 30 days to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.
    - (b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update no more than once per 30 days to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.
- d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per year (see required Price Guarantee Period section 11). The following conditions apply with respect to hosted catalogs:
  - (1) Updated pricing files are required each calendar month of the month and shall go into effect in the eMarket Center on as approved by the Lead State contract administrator.
  - (2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.
- e. Supplier Network Requirements: Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use JAGGAER's Supplier Portal to import the Contractor's catalog and pricing, into the JAGGAER system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More

information about the SQSN can be found at: [www.sciquest.com](http://www.sciquest.com) or call the JAGGAER Supplier Network Services team at 800-233-1121.

- f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:
- (1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and
  - (2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract; and
  - (3) The Catalog must include a Lead State contract identification number; and
  - (4) The Catalog must include detailed product line item descriptions; and
  - (5) The Catalog must include pictures when possible; and
  - (6) The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.
- g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.
- h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.
- i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any supplier's offering from the eMarket Center.
- j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.
- k. Several NASPO ValuePoint Participating Entities currently maintain separate JAGGAER eMarketplaces, these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate JAGGAER catalogs.

## Exhibit 1 – Additional Contractor Terms and Conditions

### END USER LICENSE AGREEMENT

This End User License Agreement (the “Agreement”) governs Your Use of Cisco Software and is between You and Cisco. Please read it carefully. The Agreement includes the applicable Cloud Offer Description(s) located at <https://www.cisco.com/c/en/us/about/legal/cloud-and-software/cloud-terms.html> and SEULA(s) located at <https://www.cisco.com/c/en/us/about/legal/cloud-and-software/software-terms.html> (each, “Supplemental Terms”). Capitalized terms are defined in Section entitled “Definitions” and the order of precedence in the event of conflict is in Section 1 (“Master Agreement Order of Precedence”). Depending on whether the Software is delivered on-premise as Embedded Software or as a Cisco-hosted cloud offering of Cloud Software, certain terms herein may not apply to Your purchase.

**By clicking ‘accept,’ or Using the Software, You agree to the terms of this Agreement. You must have the authority to enter into this Agreement. If You do not have such authority, or if You do not agree with the terms of this Agreement, do not click accept and do not Use the Software. If You determine that You cannot comply with the terms of this Agreement after You have paid for the Software, You may return the Software to the Approved Source, disable or uninstall the Embedded Software and/or cease Your Use of the cloud-hosted Cloud Software and receive a full refund, provided You do so within thirty (30) days of Your initial purchase.**

#### *Section 1. License*

- a. License.** Subject to Your payment of the applicable fees to an Approved Source and compliance with this Agreement, Cisco grants You a limited, non-exclusive license to Use the Software and related Documentation for Your internal business purposes only and in accordance with any Supplemental Terms, Order and/or Entitlement. In the event that Cisco requires You to register as an end user, Your license is valid only if the registration is complete and accurate. The Embedded Software delivered for Use on-premise may contain open source software, and is subject to separate license terms. A list of such open source software and related license agreements can be found at [www.cisco.com/go/opensource](http://www.cisco.com/go/opensource).
- b. Limitations and Restrictions.** Unless expressly authorized by Cisco in writing, You will not and will not allow a third party to:
- i. Sell, resell, transfer, sublicense, or assign Your rights under this Agreement to any other person or entity (except as expressly provided in Section 1.f below);
  - ii. modify, adapt or create derivative works of the Software or Documentation;
  - iii. reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code for the Software, except as authorized by Cisco ;
  - iv. make the functionality of the Software available to third parties in a managed or network provisioned service;
  - v. Use Software that is licensed for a specific device, whether physical or virtual, on another device;
  - vi. remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks on or within the Software;
  - vii. Use the Software on secondhand and/or refurbished Cisco equipment; or
  - viii. Use the Software on third party hardware unless otherwise set forth in the Documentation (or otherwise authorized by Cisco in writing).
- c. Your Use of Cloud-Hosted Software.** You will be responsible for the accuracy, quality and legality of Your Customer Data, the means by which You acquired Your Customer Purchasing Entity Data and Your Use of Your Customer Entity Data with our Software. You will not (i) interfere with other customer access to, or use of, the Software, or with the security of the Software; (ii) facilitate the attack or



disruption of the Software, including a denial of service (DoS) attack, unauthorized access, monitoring or crawling or distribution of malware (including but not limited to viruses, Trojan horses, worms, time bombs, spyware, adware or cancelbots), or (iii) cause an unusual spike or increase in Your use of the Software that Cisco determines fraudulently or negatively impacts the operating capability of the Software. If Your use of the Software requires or permits You to use any Cisco Content, You (and Your agents) may only use such Cisco Content with the Software and with third-party products or services offerings that Cisco has identified as compatible. You will not extract Cisco Content from or use it separate from the Software, nor will you provide Cisco Content to a third party

- d. Third Party Use of Software.** You may allow a third party to Use the Software licensed to You solely (i) on Your behalf, (ii) for Your internal operations, and (iii) in compliance with this Agreement. You agree that You are responsible for any breach of this Agreement by that third party.
- e. Upgrades and Additional Copies.** Notwithstanding anything else in this Agreement, You may not Use Upgrades and additional copies of the Software unless You:
  - i. hold a valid license to the Software, are in compliance with such license, and have paid the applicable fee for the Upgrade; and
  - ii. purchase the Upgrade separately or have a valid support agreement covering the Software, either as part of a subscription or purchased separately; and
  - iii. Use additional copies *solely* for backup purposes limited to archiving for restoration purposes.
- f. Transferability/Assignment.** You may only transfer or assign Your license rights to on-premise Embedded Software to another person or entity in accordance with the current [Cisco Relicensing/Transfer Policy](#). Any transfer or assignment other than in accordance with the Transfer Policy will have no effect. Cisco may transfer or assign any of its rights or delegate any of its obligations under this Agreement in its sole discretion.
- g. Interoperability.** If required by applicable law, Cisco will provide You with the interface information needed to achieve interoperability between the on-premise Embedded Software and another independently created program. Cisco will provide this interface information at Your written request after You pay Cisco's licensing fees (if any). You will keep this information in strict confidence and strictly follow any applicable terms and conditions upon which Cisco makes the information available.
- h. Non-production and Trial Use.**
  - i. We may provide beta versions of the Software for you to evaluate and provide feedback. Beta versions are not generally released and may only be used for limited, temporary purposes ("Beta Software"). The Beta Software may not be used in a production environment. Beta Software is unsupported and may contain bugs, errors, and other issues. You accept Beta Software "AS-IS," without warranty of any kind, and Cisco is not responsible for any problems or issues related to Your use. You understand that the Beta Software may never be generally available and we may discontinue it in our sole discretion at any time for any reason and delete any Customer Data or other data without liability to You. Your Use of the Beta Software is valid for thirty (30) days from the date it is made available to You. You will be invoiced for the list price if You do not return or stop Using it. You may not publish any results of benchmark tests run on the Beta Software without first obtaining written approval from Cisco.
  - ii. We may also give You trial access to generally-available Software. Any trial period will expire in thirty (30) days unless otherwise stated in writing from Cisco. Trials are also provided "AS-IS" without support or any express or implied warranty or indemnity of any kind. At any time during or at the end of the trial, Cisco may terminate the trial and deactivate or delete Your account and any related data, information, and files, and bar any further access to such data, information and files for any reason.

## **Section 2. Fees and Payment**

Fees for the Software are set out in Your purchase terms with Your Approved Source. Fees are non-refundable and payment obligations are non-cancelable, except as provided here, in Your purchase terms, or where prohibited by law.

### **Section 3. Ownership and Your Data**

- a. **What We Own.** Cisco and its licensors retain ownership of all intellectual property rights in and to the Software and its underlying technology and associated Documentation (together, “Materials”), including all improvements, enhancements, modifications, and derivative works. Cisco reserves all rights to the Materials that are not expressly granted under this Agreement or the Supplemental Terms.
- b. **What You Own and What You Do with It.** You retain all right, title and interest in and to Customer Data. You authorize Cisco to use any feedback or ideas You provide in connection with Your Use of the Software for any purpose. You represent that all account information You provide is accurate and will be kept up-to-date and that You will use reasonable means to protect Your account from any unauthorized use or access, and promptly notify Cisco of any such use or access.
- c. **How We Use Your Data.** Cisco will process Customer Data and Personal Data in accordance with this Agreement, Cisco’s [Privacy Statement](#), and the applicable Supplemental Terms. Cisco will maintain administrative, physical and technical safeguards consistent with industry standards and the Documentation, which are designed to provide security, confidentiality and integrity of the Customer Data we process. Certain Data that Cisco collects from the Software, or that You provide or make accessible to Cisco as part of Your use of the Software, is necessary for the essential use and functionality of such Software. Data is also used by Cisco to provide associated services such as technical support and to continually improve the operation, security and functionality of the Software. For those reasons, You may not be able to opt out from some of the Data collection other than by uninstalling, disabling or ceasing use of the Software.
  - i. **Use of Telemetry Data and Statistical Data.** Cisco may process Telemetry Data related to Your use of the Software in order to (i) deliver, enhance, improve, customize, support, and/or analyze the Software and other Cisco offerings, and (ii) derive Statistical Data. Cisco may freely use Telemetry Data that does not identify You or any of Your Authorized Users. Statistical Data is owned by Cisco and may be used for any legitimate interest or purpose, including, without limitation, for purposes of enhancing, developing, marketing, and/or promoting Cisco products and services, including the Software.
  - ii. **International Data Transfers.** Cisco may process and store Customer Data and Personal Data in the United States or outside of the country where it was collected. You are responsible for providing any required notices to Authorized Users and obtaining all required consents from Authorized Users regarding the processing and transfer of their Personal Data by the Software, including international transfers. Cisco will only transfer Personal Data consistent with applicable law. If Cisco processes Personal Data from the EEA or Switzerland on Your behalf, we will do so in a manner consistent with the relevant EU- or Swiss-US Privacy Shield Principles (“Principles”) (see [www.commerce.gov/privacyshield](http://www.commerce.gov/privacyshield)) or successor frameworks. If Cisco transfers Personal Data from an APEC Member Economy on Your behalf, Cisco will process such Personal Data in a manner consistent with the APEC Cross Border Privacy Rules Systems requirements (“CBPRs”) (see [www.cbprs.org](http://www.cbprs.org)) to the extent the requirements are applicable to Cisco’s processing of such data. If Cisco is unable to provide at least the same level of protection as required by the Principles or CBPRs, Cisco will promptly notify You and cease processing.

### **Section 4. Software Support**

We will provide basic technical support for subscription Cloud and Embedded Software, as described in the Supplemental Terms. Higher levels of support for subscription Software, and support for perpetual Software is separately available for purchase.

### **Section 5. Term and Termination**

- a. Your right to Use the Software begins on the date (i) the on-premise Embedded Software is made available for download or installation, or (ii) You receive notice that the cloud hosted Cloud Software is provisioned or available for Your use, and continues until the end of the term specified in the Order or Entitlement, unless otherwise terminated in accordance with this Agreement (“Initial Term”).

If the Software is licensed for use both on-premise and cloud-hosted, Your right to Use begins on the earlier of the date the Software is made available for download or is ready for provisioning.

- b. Software subscriptions will automatically renew for the renewal period selected on the Order (“Renewal Term”) unless (i) either party notifies the other (including via the Approved Source) in writing at least thirty (30) days before the end of the then-current term of its intention not to renew or (ii) You or Your Approved Source elect on the Order at the time of initial purchase not to auto-renew the Software subscriptions. Your Approved Source will notify You reasonably in advance of any Renewal Term if there are fee changes. The new fees will apply for the upcoming Renewal Term unless You or Your Approved Source promptly notify us in writing, before the applicable renewal date, that You do not accept the fee changes. In such event, the Software subscription will terminate at the end of the Initial Term.**
- c.** If a party materially breaches this Agreement and does not cure that breach within thirty (30) days after receipt of written notice of the breach, the non-breaching party may terminate this Agreement for cause. Cisco also has the right to immediately suspend or terminate Your use of the Software if You breach Section 1.c or Section 1.a or 1.b above. Upon termination or expiration of this Agreement, You must cease any further use of the Software and destroy any copies within Your control. Upon any termination by You for Cisco’s material breach of the Agreement, we will refund to You or Your Approved Source any prepaid fees covering the remainder of the Term after the effective date of termination. Upon any termination by Cisco for Your material breach of the Agreement, You will pay Cisco or Your Approved Source any unpaid fees covering the remainder of the Term.
- d.** Cisco reserves the right to end the life (“EOL”) of the Software by providing prior written notice by posting at <http://www.cisco.com/c/en/us/products/index.html>. If You or Your Approved Source prepaid a license fee for Your Use of EOL Cloud Software, Cisco will use commercially reasonable efforts to transition You to a substantially similar Cloud Software. If Cisco does not have a substantially similar Cloud Service, then Cisco will credit You any unused portion of the prepaid fee for such Cloud Service, calculated from the last date the Cloud Service is available. Such credit can be applied towards the future purchase of Cisco products.

### **Section 6. General Provisions**

- a. Audit.** During the license term for the Software and for a period of three (3) years after its expiration or termination, you will take reasonable steps to maintain complete and accurate records of Your use of the Software sufficient to verify compliance with this Agreement. No more than once per twelve (12) month period, You will allow Cisco and its auditors the right to examine such records and any applicable books, systems (including Cisco product(s) or other equipment), and accounts, upon reasonable advanced notice, during Your normal business hours. If the audit discloses underpayment of license fees, You or Your Approved Source will pay such license fees plus the reasonable cost of the audit within thirty (30) days of receipt of written notice.
- b. Survival.** Sections 1.b, 3, 5, 6.a, 6.b, 6.d, 6.g shall survive termination or expiration of this Agreement.
- c. Subcontracting.** We may also subcontract any performance associated with the Software to third parties. Any such subcontract will not relieve Cisco of any of its obligations under this Agreement.  
**US Government End Users.** The Software and Documentation are "commercial items," as defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and Defense Federal Acquisition Regulation Supplement (“DFAR”) 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, Government end users will acquire the Software and Documentation with only those rights set forth in this Agreement. Any license provisions that are inconsistent with federal procurement regulations are not enforceable against the U.S. Government.
- d. Modifications.** As our business evolves, we may change this Agreement or any of its components (except an Order). Changes to the Agreement will only apply to future Orders.

- e. **Compliance with Law.** You will comply with all applicable laws and regulations related to Your receipt and use of the Software. You must ensure You have the right to use all features of the Software in Your jurisdiction. Cisco will comply with all applicable laws in the provision of the Software to You. We may restrict the availability of the Software in any particular location or modify or discontinue features to comply with applicable laws and regulations. Cisco may also share information as necessary to comply with laws and subject to Cisco's policy on law enforcement requests found at <http://www.cisco.com/c/en/us/about/trust-transparency-center/validation/report.html>.
- f. **Integration.** If any portion of this Agreement is not enforceable, it will not affect any other terms. Except as expressly stated in a signed agreement, this Agreement, together with any Supplemental Terms is the complete agreement between the parties with respect to the Software and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral) regarding this subject matter. In the event of any conflict, the order of precedence is: i) Supplemental Terms; ii) this Agreement; then iii) any applicable policies referenced in this Agreement. The parties agree that the English version of the Agreement will govern in the event of a conflict between it and any version translated into another language.

### Definitions

**“Administrative Data”** means data related to Your employees or representatives to administer or manage Your use of the Software. Administrative Data may include Personal Data and information about our contractual commitments, whether collected at the time of the initial registration or thereafter.

**“Approved Source”** means Cisco or a Cisco authorized reseller, distributor or systems integrator, including a Fulfillment Partner under the NASPO ValuePoint Master Agreement Terms and Conditions.

**“Authorized User”** means the individuals authorized by You to access the Software.

**“Cisco” “we,” “our” or “us”** means Cisco Systems, Inc. or its applicable affiliate, the Contractor under the NASPO ValuePoint Master Agreement Terms and Conditions.

**“Cisco Content”** means any Cisco-provided content or data including, but not limited to, geographic and domain information, rules, signatures, threat intelligence or other threat data feeds, suspicious URLs and IP address data feeds.

**“Cloud Software”** means a Cisco-hosted software offering as described in the applicable Cloud Offering Description purchased by You.

**“Confidential Information”** means non-public confidential or proprietary information of the disclosing party that is clearly marked confidential or should be reasonably assumed as confidential given the nature of the information and the circumstances of disclosure.

**“Customer Data”** means Purchasing Entity Data in the NASPO ValuePoint Master Agreement Terms and Conditions.

**“Data”** means Telemetry Data and Statistical Data.

**“Documentation”** means the Cisco user or technical manuals, training materials, specifications, privacy data sheets, or other information applicable to the Software.

**“Entitlement”** means the license detail, including license metric, duration, and quantity provided in a product ID (PID) published on Cisco's price list, claim certificate or right to use notification.

**“Force Majeure Event”** means an event beyond the affected party's reasonable control, including accidents, severe weather events, acts of God, actions of any government agency, epidemic, pandemic, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

**“Cloud Offer Description(s)”** means the additional terms and conditions applicable to the specific cloud-hosted Software licensed under this Agreement (located [here](#)).

**“Order”** means an ordering document (including a web or other electronic form) that specifies the duration, type/product ID (PID) and quantity of Software to be provided and the associated fees.

**“Personal Data”** has the same meaning in the NASPO ValuePoint Master Agreement Terms and Conditions.

**“SEULA”** means the Supplemental End User License Agreement containing additional terms and conditions for the on-premise Software licensed under this Agreement (located here).

**“Software”** means the binary image of Cisco computer programs (including Upgrades) which could be a downloadable file, delivered on physical media, pre-installed on the on-premise computer system, resident in ROM/Flash (system memory) or cloud-hosted purchased from an Approved Source. Software may be either Embedded Software or Cloud Software.

**“Statistical Data”** means any information/data that Cisco derives from Customer Data and/or Telemetry Data, provided that such information/data is aggregated and/or de-identified such that it cannot reasonably be used to identify an individual or entity.

**“Telemetry Data”** means information generated by instrumentation and logging systems created through the use and operation of Cisco products and services.

**“Upgrades”** means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the Software.

**“Use”** or **“Using”** means to download, install, activate, access or otherwise use the Software

**“You”** or **“Your”** means the Purchasing Entity purchasing the Software pursuant to the NASPO ValuePoint Master Agreement Terms and Conditions and applicable Participating Addendum.

## Exhibit 2 -Additional Contractor Terms and Conditions

### Services Exhibit

This Services Exhibit governs all Orders for Services placed under the NASPO Master Agreement Terms and Conditions ("NASPO Master Agreement"). This Services Exhibit consists of the terms set forth in Exhibit 2 (including its attachments) and the Service Description Purchasing Entity may elect to purchase.

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#### 1. DEFINITIONS

Terms not defined in the body of the NASPO Master Agreement are those set out in the Glossary of Terms at the end of this Exhibit 2.

#### 2. SCOPE

This Exhibit describes the terms and conditions for (a) Direct Purchases from Cisco by Customer of Services, and (b) delivery by Cisco of the Services according to the options ordered by Customer or otherwise provided by Cisco to Customer. Cisco will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid, (ii) a valid Software license has been granted and (iii) Customer provides information requested by Cisco such as valid serial numbers, site location, contract number, and Product type.

#### 3. PRICING

For direct purchases from Cisco, and subsequent Equipment List renewals, prices for Services shall be those specified in Cisco's then-current Price List less any applicable contract discount in effect under the NASPO Master Agreement at the time of acceptance of the Purchase Order by Cisco, or (b) those set forth in a written price quotation submitted by Cisco or its Fulfillment Partner, if at or below the stated contract discount. All stated prices are exclusive of taxes, fees, and duties or other amounts in accordance with the NASPO Master Agreement. Any taxes related to Services purchased pursuant to this Agreement shall be paid by Customer or Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible. In the event that Customer is unable to provide valid and applicable serial number(s) for Product and Cisco agrees to provide Services, then Service fees payable by Customer shall be at Cisco's then-current time and materials or non-contract service rates. Subject to the price discount floor established by Cisco under the NASPO Master Agreement, for indirect purchases, Fulfillment Partners are free to determine their resale prices unilaterally.

Customer understands that no employee or representative of Cisco or anyone else has any authority to determine such resale prices, or to limit the Fulfillment Partners' pricing discretion with respect to Services

In the event that Customer is unable to provide valid and applicable serial number(s) for Product and Cisco agrees to provide Services, then Service fees payable by Customer shall be at Cisco's then-current time and materials or non contract service rates.

#### 4. INVOICING

Fees for Services, other than those for which a SOW is required, shall be invoiced in advance of delivery of Services. The timing of invoices for Services provided pursuant to a SOW shall be set forth in the respective SOW.

#### 5. TERM AND TERMINATION

- a. The term of an Equipment List shall commence on the date set forth on such Equipment List, which may be up to sixty (60) days following the date of Purchase Order acceptance. The term of an Equipment List shall be for a period of one year and shall be renewed automatically for

successive one year terms, unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.

- b. The term of each SOW shall be stated in the SOW.
- c. Any Equipment List or SOW may be terminated if Services fees are not paid when due and payment has not been received within thirty (30) days after notice from Cisco of such past due payment, or otherwise in accordance with the termination provisions set out in the Agreement.
- d. Cisco reserves the right to make changes to the scope and content of the Services or part thereof, including terminating the availability of a given Service, at any time upon thirty (30) days' prior notice. Such changes will become effective upon renewal of the affected Equipment Lists and SOWs. If Customer does not agree to a change of scope or content, Customer may terminate any affected Equipment List or SOW by notifying Cisco at least sixty (60) days prior to the expiration of the then current one year term of the Equipment List or SOW. In such case, Cisco shall continue to provide Services until the next expiration date of the affected Equipment List or SOW.
- e. Upon termination of any Equipment List, or SOWs, Customer shall pay Cisco for all work performed under the affected Equipment Lists or SOWs up to the effective date of termination at the agreed-upon prices, fees, and expense reimbursement rates.
- f. Firm Orders for Services under this Services Exhibit placed and accepted prior to expiration of the contract term, (even if involving a multi-year commitment) remain valid in accordance with the contract terms which shall remain binding as to such prior orders only for the term stated therein, and shall not otherwise constitute an extension of the NASPO Master Agreement and this Services Exhibit for any other Services.

## 6. [INTENTIONALLY LEFT BLANK]

## 7. LICENSES

- a. Subject to Customer's compliance with the terms of this Services Exhibit, any applicable AS Service Description or SOW, and the End User License Agreement (**EULA**) set forth in Exhibit 1, Cisco grants to Customer a worldwide, non-exclusive and non-transferable license to use for Customer's internal business use only: (i) Software provided as a result of Services, if any, solely in object code form; (ii) other Deliverables specified in an applicable AS Service Description or SOW, if any, and (iii) Data Collection Tools, if any (collectively and individually, the "**Licensed Materials**"). In addition, Cisco grants to Customer a right to modify and create derivative works of any Scripts provided by Cisco to Customer pursuant to this Services Exhibit, solely for Customer's internal business use. These license grants do not include the right to sublicense; provided that Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials solely on Customer's behalf for Customer's benefit, provided that Customer ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of Cisco's rights in such Licensed Materials as are specified in this Agreement.
- b. Nothing in this Agreement, any AS Service Description or any SOW shall alter or affect the Intellectual Property rights and/or licenses provided with any Cisco Products.
- c. Customer hereby grants to Cisco a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback (as defined below) to use and incorporate Customer Feedback into any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute and create derivative works of such Customer Feedback for any and all purposes whatsoever, and Customer acknowledges and agrees that it will obtain no rights in or to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology as a result of Cisco's use of any such Customer Feedback. For purposes of this Agreement, "**Customer Feedback**" means all oral or written communications regarding improvements or changes to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology that Customer provides to Cisco.

## 8. OWNERSHIP

- a. Each party will retain the exclusive ownership of all its pre-existing Intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to commencement of any Services hereunder, or that are otherwise developed by or for such party outside the scope of this Agreement ("**Pre-Existing Technology**").
- b. Except as otherwise expressly set forth in applicable SOW, Cisco owns and will continue to own all right, title and interest in and to the Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by Cisco (or a third party acting on Cisco's behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing (collectively, "**Cisco Intellectual Property**").
- c. As between Customer and Cisco, Customer shall at all times retain all right, title and interest in and to all of Customer's Pre-Existing Technology and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter, other than Cisco Intellectual Property. Third Party Products shall at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

## 9. SUBCONTRACTING

Cisco reserves the right to subcontract Services to a third-party organization to provide Services to Customer. Any such subcontract shall not relieve Cisco of any of its obligations under this Services Exhibit or the NASPO Master Agreement.



## EXHIBIT 2 -- ATTACHMENT 1

### GLOSSARY OF TERMS

**Additional Services** means installation of new Hardware, system additions, Hardware upgrades, dispatch of a field engineer, or non-mandatory engineering changes.

**Advance Replacement** means shipment of replacement Field-Replaceable Unit (FRU) before receiving failed or defective FRU.

**Advanced Services** means the Services set forth in the AS Service Description(s) found at <http://www.cisco.com/go/servicedescriptions> and/or SOW(s) selected by the Customer. Advanced Services does not include Cisco's core maintenance services, such as Smart Net Total Care or Software Application Services, nor does it apply to the purchase, support or maintenance of any Products.

**Advanced Services Engineer** means the Cisco engineer appointed to be the main point of contact for a Customer purchasing Advanced Services.

**Application Software** means non-resident or standalone Software Products listed on the Price List that include but are not limited to Cisco Systems® Network management Software, security Software, IP telephony Software, Internet appliance Software, Cisco® Intelligent Contact Management Software, IP Contact Center Software, and Cisco Customer Interaction Suite Software.

**AS Service Descriptions** mean the description of the Advanced Services available from Cisco, which are available at <http://www.cisco.com/go/servicedescriptions> and which are incorporated in this Agreement by reference.

**Authorized Channel** means a system integrator, distributor or reseller authorized by Cisco to sell Services.

**Business Days** means the generally accepted days of operation per week within the relevant region where the Services shall be performed, excluding local holidays as observed by Cisco.

**Cisco** means Contractor under the NASPO Master Agreement.

**Customer** means Purchasing Entity under the NASPO Master Agreement.

**Data Collection Tools** means Hardware and/or Software tools that support Cisco's ability to provide troubleshooting on cases, data analysis, and report generation capabilities as part of the Advanced Services.

**Depot Time** or **Local Time** means Central European Time for Services provided in Europe-Middle-East and Africa, Australia's Eastern Standard Time for Services provided in Australia, Japan's Standard Time for Services provided in Japan, and Pacific Standard Time for Services provided in all other locations.

**Deliverable(s)** means, with respect to each AS Service Description and/or SOW, the items to be delivered by Cisco to Customer as set forth in an applicable AS Service Description and/or SOW, including, without limitation, any Software, Reports, Data Collection Tools, and/or Scripts.

**Device Type** means a Cisco supported Hardware Product (for example, Cisco Catalyst® 6509 Switch, GSR 12000 and Cisco 7200 Series Router).

**Direct Purchases** means purchases of Services by Customer directly from Cisco.

**Equipment List** means the list of Hardware and/or Software for which Cisco provides services.

**Event** means notification by Customer of its performance of a planned Network Hardware, Software, or configuration change.

**Feature Set Upgrade** means a separately licensed and priced Software release that contains an enhanced configuration or feature set.

**Field-Replaceable Unit (FRU)** means any component or subassembly of an item or unit of Hardware that reasonably can be replaced at Customer's location. FRUs also may be subject to size and weight limitations.

**Four-hour Response** means:

- (i) For Advance Replacement Service, the four-hour time period commences upon the Cisco problem diagnosis and determination that a FRU is required and ends when the FRU is delivered onsite.
- (ii) For onsite service, the four-hour time period commences upon the Cisco problem diagnosis and determination that remedial onsite service is required and ends when Cisco personnel arrive onsite.

**Indirect Purchases** means purchases of Services by Customer through an Authorized Channel.

**Intellectual Property** means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

**Level 1** means support that is defined as having the necessary technical staff (Cisco or Cisco-authorized reseller) with appropriate skill, perform installations, Remedial Hardware Maintenance, and basic Hardware and Software configuration on Cisco Products.

**Level 2** means support that is defined as having the necessary technical staff with the appropriate skills to perform isolation, replication and diagnosis of internet-based problems on Cisco Product(s). Customer shall not report Software bugs to Cisco prior to attempting to identify the source of such bugs and testing in Customer's Network where appropriate. If the Customer cannot duplicate the bug in Customer's Network, Customer and Cisco shall cooperate in attempting to replicate and resolve related Software bugs in either Customer's or Cisco's test facility as mutually agreed. In all cases Customer will address Software bugs on a best effort basis to replicate same in Customer's Network and document activity to Cisco before seeking further resolution with Cisco's participation.

**Local Time** means local time on Business Days.

**Maintenance Release** means an incremental Software release that provides maintenance fixes and may provide additional Software functions. Cisco designates Maintenance Releases as a change in the digits to the right of the tenths digit or of the hundredths digit of the Software version number [x.x.(x) or x.x.x.(x)].

**Major Release** means a release of Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Software version number [(x).x.x].

**Minor Release** means an incremental release of Software that provides maintenance fixes and additional Software functions. Cisco designates Minor releases as a change in the tenths digit of the Software version number [x.(x).x].

**Network** means a set of interconnected and interworking Cisco supported Hardware and Software that is implemented, operated, and supported by Customer from a single network operations center (NOC).

**Network Infrastructure** means your core transport and aggregation Network technology (for example, metro optical, ATM/Frame Relay, IP core and Cisco security devices including, but not limited to, Firewall, IDS and VPN3000).

**Network Infrastructure Size** means the total value of Products in Customer's Network based on the global list price of the Products that Customer has purchased.

**Remedial Hardware Maintenance** means diagnosis and onsite replacement of Hardware components with FRUs.

**Reports** means reports, recommendations, network configuration diagrams, and related non-Software Deliverables provided by Cisco to Customer pursuant to this Agreement.

**Scripts** means software scripts, macros and batch files provided by Cisco to Customer pursuant to this Agreement.

**Services** means one or more of the services options selected by the Customer in its Purchase Order and described at: <http://www.cisco.com/go/servicedescriptions>

**Services Descriptions** mean the detailed descriptions of the Services purchased by Customer which are incorporated into this Services Exhibit by reference.

**Standard Business Hours** means (i) 8:00 AM to 5:00 PM, Depot time, on Business Days for replacement of failed Products and (ii) 8:00 AM to 5:00 PM, Local Time at location of the respective Cisco TAC, on Business Days for case handling of TAC calls.

**TAC** means the Cisco Technical Assistance Center.

**Technical Support Services** means Services that provide both essential proactive and reactive operation and maintenance support Services identified as Technical Support Services at <http://www.cisco.com/go/servicedescriptions>.

**Technology Application** means specific technologies including, but not limited to, content networking, broadband, and IP telephony that do not operate at the Network Infrastructure level.

**Third Party Products** means third party hardware and/or software, and all upgrades/updates thereto, that are designated by Cisco as required for:

- (i) The operation of Application Software in conformance with Cisco applicable Application Software Documentation; and
- (ii) Cisco support of the Application Software.

**Transactional Advanced Services** means the project related or consultancy Services sold under a Statement of Work.

**Two-hour Response** means:

- (i) For Advance Replacement, the two-hour time period commencing with Cisco's problem diagnosis and determination that a FRU is required and ending when the FRU is delivered onsite.
- (ii) For onsite service, the two-hour time period commencing with our problem diagnosis and determination that remedial onsite service is required and ending when Cisco personnel arrive onsite.

**Update** means Cisco Software Maintenance Releases, Minor Releases and Major Releases containing the same configuration or feature set as originally acquired, unless the Customer has upgraded the applicable Hardware or Software to a configuration or feature set other than what was originally acquired, and the applicable license fee for that upgrade has been paid. Updates do not include Feature Set Upgrades.

## EXHIBIT 2 -- ATTACHMENT 2

### CISCO SEVERITY AND ESCALATION GUIDELINES

Customer shall assign a severity to all problems submitted to Cisco.

**Severity 1** means an existing Network is down or there is a critical impact to Customer's business operation. Customer and Cisco both will commit full-time resources to resolve the situation.

**Severity 2** means operation of an existing Network is severely degraded or significant aspects of Customer's business operation are negatively impacted by unacceptable Network performance. Customer and Cisco both will commit full-time resources during Standard Business Hours to resolve the situation.

**Severity 3** means operational performance of the Network is impaired, although most business operations remain functional. Customer and Cisco both are willing to commit resources during Standard Business Hours to restore service to satisfactory levels.

**Severity 4** means information is required on Application Software capabilities, installation, or configuration. There is little or no impact to Customer's business operation. Customer and Cisco both are willing to provide resources during Standard Business Hours to provide information or assistance as requested.

If you do not believe that adequate progress is being made or that the quality of Cisco service is satisfactory, we encourage you to escalate the problem to the appropriate level of management by asking for the TAC duty manager.

#### Cisco Escalation Guideline

<i>Elapsed Time*</i>	<i>Severity 1</i>	<i>Severity 2</i>	<i>Severity 3</i>	<i>Severity 4</i>
1 hour	Customer Engineering Manager			
4 hours	Technical Support Director	Customer Engineering Manager		
24 hours	Vice President, Customer Advocacy	Technical Support Director		
48 hours	President/CEO	Vice President, Customer Advocacy		
72 hours			Customer Engineering Manager	
96 hours		President/CEO	Technical Support Director	Customer Engineering Manager

\*Severity 1 escalation times are measured in calendar hours—24 hours per day, 7 days per week. Severity 2, 3, and 4 escalation times correspond with Standard Business Hours.

## EXHIBIT 2 -- ATTACHMENT 3

### SERVICES NOT COVERED

Services that are not expressly set forth in the applicable Service Description or Statement of Work document are not covered under such Service Description or Statement of Work, including, without limitation, the following:

1. Services are only provided for generally available Products and Software releases/versions, unless agreed otherwise.
2. Any customization of, or labor to install, Software and Hardware (including installation of Updates).
3. Furnishing of supplies, accessories or the replacement of expendable parts (e.g., cables, blower assemblies, power cords, and rack mounting kits).
4. Electrical or site work external to the Products.
5. Any expenses incurred to visit End User's location, except as required during escalation of problems by Cisco.
6. Service for Hardware that is installed outdoors or that is installed indoors but requires special equipment to perform such Service.
7. Hardware replacement in quantities greater than three (3) FRUs, including those replacements due to pervasive issues documented in an engineering change notice or field alert unless End User has troubleshoot failed Hardware down to the FRU level.
8. Services performed at domestic residences.
9. Support or replacement of Product that is altered, modified, mishandled, destroyed or damaged by one or more of the following: (a) natural causes; (b) environmental failures; (c) your failure to take any required actions; (d) a negligent or willful act or omission by you or use by you other than as specified in the applicable Cisco-supplied documentation; or (e) an act or omission of a third party.
10. Services or software to resolve Software or Hardware problems resulting from third party product or causes beyond Cisco's control or failure to perform your responsibilities set out in this document.
11. Services for non-Cisco Software installed on any Cisco Product.
12. Any Hardware or third party product upgrade required to run new or updated Software.
13. Erasure or other removal of any customer or third party data on Products (or parts thereof) returned, repaired or otherwise handled by Cisco.
14. Additional Services are provided at the then-current time and materials rates.
15. Except as otherwise agreed, Software entitlement, including media, documentation, binary code, source code or access in electronic or other form is not provided. In addition, except as otherwise provided, no right, use or license to our Software is granted and you acknowledge and agree that you obtain no such rights.
16. Application Software is not supported as part of the SMARTnet support services provided by Cisco and is only supported under a separate service description.

The non-entitlement policies posted at <http://www.cisco.com/go/warranty> are hereby incorporated into this Agreement by this reference.

Capitalized terms are defined in the Glossary of Terms, or may be as set forth in the applicable Service Description or Statement of Work.

## Attachment B – Scope of Services Awarded to Contractor

### I. Data Communications Award Categories

The scope for this contract is as provided below. Contractor may offer products (i.e. white box, artificial intelligence, etc.) and services within the Categories it received an award in. Each category also allows for Internet of Things (IoT) products. These products must be an IoT product that can be deployed within, upon, or integrated into a government agency's physical asset to address government line of business needs. Proposals are expected to include IoT products designed to support common government lines of business in specific subcategories i.e. routers, switches, end points, etc. IoT products can only be provided in categories that the vendor is awarded in and can include endpoints that support items in that category.

#### Category 1.1: UNIFIED COMMUNICATIONS (UC).

A set of products that provides a consistent unified user interface and user experience across multiple devices and modes of communications. Unified Communications that is able to provide services such as session management, voice, video, messaging, mobility, and meeting solutions (i.e., web, audio, IM&P, file sharing, white boarding, guest support, etc.). It can provide the foundation for advanced unified communications capabilities of IM and presence-based services and extends telephony features and capabilities to packet telephony network devices such as IP phones, media processing devices, Voice over IP (VoIP) gateways, and multimedia applications. Additional services, such as unified messaging, multimedia conferencing, collaborative contact centers, and interactive multimedia response systems, are made possible through open telephony APIs. General UC solution capabilities should include:

- High Availability for Call Processing
- Hardware Platform High Availability
- Network Connectivity High Availability
- PSTN Access resiliency
- Call Processing Redundancy
- Optional Branch Office Survivability Services

**1.1.1 IP Telephony** — Solutions utilized to provide the delivery of the telephony application (for example, call setup and teardown, and telephony features) over IP, instead of using circuit-switched or other modalities. Capabilities should include:

- Support for analog, digital, and IP endpoints
- Centralized Management
- Enterprise Telephony Features (CFx, Transfer, CID, Shared line appearance, One Number Service, etc.)
- Provide basic hunt group and call queuing capabilities
- Flexibility to configure queue depth and hold time, play unique announcements and Music on Hold (MoH), log in and log out users from a queue and basic queue statistics (from the phone)
- E911 Support
  - National E911 Routing Services (proper PSAP routing when PSTN access is centralized)
  - 911 Device Tracking Services
  - 911 On-Site Notification Services

**1.1.2 Instant messaging/ Presence** — Solutions that allow communication over the Internet Protocol, within the enterprise, and remotely, as well as with guest users that offers quick transmission of text-based messages from sender to receiver. In push mode between two or more people using personal computers, Desktop (Windows/Mac/VDI/Linux), Mobile/Smartphone, Tablet, along with shared clients, instant messaging basically offers real-time direct written language-based online chat. Instant messaging may also provide video calling, file sharing, PC-to-PC voice calling and PC-to-regular-phone calling.

- IM Persistency / Workstream Collab
- File Sharing Services, Desktop Sharing Services

**1.1.3 Unified messaging** — Integration of different electronic messaging and communications media (e-mail, SMS, Fax, voicemail, video messaging, etc.) technologies into a single interface, accessible from a variety of different devices.

- Ability to access and manage voice messages in a variety of ways, using email inbox, Web browser, desktop client, VoIP phone, or mobile phone
- Visual Voicemail Support (Optional)
- ASR / Transcription Services for recorded messages

**1.1.4 Contact Center** — A computer-based system that provides call and contact routing for high-volume telephony transactions, with specialist answering “agent” stations and a sophisticated real-time contact management system. The definition includes all contact center systems that provide inbound contact handling capabilities, outbound call/contact center and automatic contact distribution, combined with a high degree of sophistication in terms of dynamic contact traffic routing management.

#### **1.1.5 Communications End Points and Applications**

- Attendant Consoles (Telephone Station)
- IP Phones (desktop devices and accessories)
- Room Based Conferencing Endpoints (Conf Phones, SparkBoard, JamBoard, Surface Hub)

**1.1.6 UC Network Monitoring** — Provides end-to-end service management for Unified Communications. Capabilities include testing, performance monitoring, configuration management, accounting/billing, analytics (capacity planning), contact center specialized reports (utilization, queue KIs, call abandonment ratios, etc.), and business intelligence reporting.

**1.1.7 Collaboration** — Voice, video, workstream collaboration, and web conferencing; messaging; mobile applications; and enterprise social software. Doesn’t include the audio visual software or hardware.

**1.1.8 Collaborative Video** — A set of immersive video technologies that enable people to feel or appear as if they were present in a location that they are not physically in. Immersive video consists of a multiple codec video system, where each meeting attendee uses an immersive video room to “dial in” and can see/talk to every other member on a screen (or screens) as if they were in the same room and provides call control that enables intelligent video bandwidth management.

**1.1.9 Content Delivery Systems (CDS)** — A large distributed system of servers deployed in multiple data centers connected by the Internet. The purpose of the content delivery system is to serve content to a very large number of end-users (i.e., quarterly all hands meetings/webinar) with high availability and high performance. CDSs serve content over the Internet, including web objects (text, graphics, URLs, and scripts), downloadable objects (media files, software, documents), applications (e-commerce, portals), live streaming media, on-demand streaming media, and social networks.

### **Category 1.2: NETWORKING.**

#### **1.2.1 Network Application Services.**

Application networking solutions and technologies that enable the successful and secure delivery of applications to local, remote, and branch-office users using technology to accelerate, secure, and increase availability of both application traffic and computing resources.

**1.2.1.1 Virtualized Load Balancers** — Virtual devices that act like a reverse proxy to distribute network and/or application traffic across multiple servers to improve the concurrent user capacity and overall reliability of applications. Capabilities should include:

- SSL (Secure Sockets Layer) Off-loading
- Caching capabilities
- Layer 4 Load Balancing
- Layer 7 Load Balancing
- Detailed Reporting
- Supports multiple load balancers in the same system for multiple groups
- Supports TLS1.2

**1.2.1.2 WAN Optimization** — An appliance utilizing a collection of techniques for increasing data-transfer efficiencies across wide-area networks (WAN). Capabilities should include:

- CIFS (Common Internet File System) acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization
- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages)

## **1.2.2 Networking Software.**

Software that runs on a server, or within the Cloud, and enables the server to manage data, users, groups, security, applications, and other networking functions. The network operating system is designed to allow transfer of data among multiple computers in a network, typically a local area network (LAN), a private network or to other networks. Networking software capabilities should include:

- Restartable Process
- High availability options
- Targeted operating systems, i.e. DC, campus, core, wan, etc.
- Operating System Efficiencies
- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages).

**1.2.2.1 Network Management and Automation** — Software products and solutions for network automation, cloud computing, and IT systems management.

**1.2.2.2 Data Center Management and Automation** — Software products and solutions that capture and automate manual tasks across servers, network, applications, and virtualized infrastructure.

**1.2.2.3 Cloud Portal and Automation** — Software products and solutions for cloud management with policy-based controls for provisioning virtual and physical resources.

**1.2.2.4 Branch Office Management and Automation** — Software products and solutions for management of branch offices. Capabilities include remote troubleshooting, device management, and WAN performance monitoring.

## **1.2.3 Network Optimization and Acceleration.**

Devices and tools for increasing data-transfer efficiencies across wide-area networks.



**1.2.3.1 Data Analytics** — Appliance for improving network management by more effectively factoring in issues related to congestion, such as utilization, service consumption and routing. Provides real-time insights into network traffic to determine the value of different portions of that traffic.

**1.2.3.2 Dynamic Load Balancing (Network Traffic Management)** — An appliance that performs a series of checks and calculations to determine which server can best service each client request in order to select the server that can successfully fulfill the client request and do so in the shortest amount of time without overloading either the server or the server farm as a whole.

**1.2.3.3 WAN Acceleration** — Appliance that optimizes bandwidth to improve the end user's experience on a wide area network (WAN). Capabilities should include:

- CIFS acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization

**1.2.3.4 High Availability and Redundancy** — Limits any disruption to network uptime should an appliance face unforeseen performance issues. Transparently redistributes workloads to surviving cluster appliances without impacting communication throughout the cluster.

#### **1.2.4 Optical Networking.**

High capacity networks based on optical technology and components that provide routing, grooming, and restoration at the wavelength level as well as wavelength based services.

**1.2.4.1 Core DWDM (Dense Wavelength Division Multiplexing) Switches** — Switches used in systems designed for long haul and ultra long-haul optical networking applications.

**1.2.4.2 Edge Optical Switches** — Provide entry points into the enterprise or service provider core networks.

**1.2.4.3 Optical Network Management** — Provides capabilities to manage the optical network and allows operators to execute end-to-end circuit creation.

**1.2.4.4 IP over DWDM (IPoDWDM)** — A device utilized to integrate IP Routers and Switches in the OTN (Optical Transport Network).

### **Category 1.3: ROUTERS, SWITCHES, SECURITY, AND NETWORKING STORAGE.**

#### **1.3.1 Routers.**

A device that forwards data packets along networks. A router is connected to at least two networks, commonly two LANs or WANs or a LAN and its ISP's network. Routers are located at gateways, the places where two or more networks connect, and are the critical device that keeps data flowing between networks and keep the networks connected to the Internet.

**1.3.1.1 Branch Routers** — A multiservice router typically used in branch offices or locations with limited numbers of users and supports flexible configurations/feature. For example: security, VoIP, wan acceleration, etc.

**1.3.1.2 Network Edge Routers** — A specialized router residing at the edge or boundary of a network. This router ensures the connectivity of its network with external networks, a wide area network or the Internet. An edge router uses an External Border Gateway Protocol, which is used extensively over the Internet to provide connectivity with remote networks.

**1.3.1.3 Core Routers** - High performance, high speed, low latency routers that enable Enterprises to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV and Video on Demand (VoD), and Software as a Service (SaaS).

**1.3.1.4 Service Aggregation Routers** — Provides multiservice adaptation, aggregation and routing for Ethernet and IP/MPLS networks to enable service providers and enterprise edge networks simultaneously host resource-intensive integrated data, voice and video business and consumer services.

**1.3.1.5 Carrier Ethernet Routers** — High performance routers that enable service providers to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV, Video on Demand (VoD), and Software as a Service (SaaS).

## **1.3.2 Security.**

**1.3.2.1 Data Center and Virtualization Security Products and Appliances** — Products designed to protect high-value data and data center resources with threat defense and policy control.

**1.3.2.2 Intrusion Detection/Protection and Firewall Appliances** — Provide comprehensive inline network firewall security from worms, Trojans, spyware, key loggers, and other malware. This includes Next-Generation Firewalls (NGFW), which offer a wire-speed integrated network platform that performs deep inspection of traffic and blocking of attacks. Intrusion Detection/Protection and Firewall Appliances should provide:

- Non-disruptive in-line bump-in-the-wire configuration
- Standard first-generation firewall capabilities, e.g., network-address translation (NAT), stateful protocol inspection (SPI) and virtual private networking (VPN), etc.
- Application awareness, full stack visibility and granular control
- Capability to incorporate information from outside the firewall, e.g., directory-based policy, blacklists, white lists, etc.
- Upgrade path to include future information feeds and security threats
- SSL decryption to enable identifying undesirable encrypted applications (Optional)

**1.3.2.3 Logging Appliances and Analysis Tools** — Solutions utilized to collect, classify, analyze, and securely store log messages.

**1.3.2.4 Secure Edge and Branch Integrated Security Products** — Network security, VPN, and intrusion prevention for branches and the network edge. Products typically consist of appliances or routers.

**1.3.2.5 Secure Mobility Products** — Delivers secure, scalable access to corporate applications across multiple mobile devices.

**1.3.2.6 Encryption Appliances** — A network security device that applies crypto services at the network transfer layer - above the data link level, but below the application level.

**1.3.2.7 On-premise and Cloud-based services for Network Communications Integrity** — Solutions that provide threat protection, data loss prevention, message level encryption, acceptable use and application control capabilities to secure web and email communications. This could include cloud access security brokers (CASBs) and DNS security.

**1.3.2.8 Secure Access** — Products that provide secure access to the network for any device, including personally owned mobile devices (laptops, tablets, and smart phones). Capabilities should include:

- Management visibility for device access
- Self-service on-boarding

- Centralized policy enforcement
- Differentiated access and services
- Device Management

### **1.3.3 Storage Networking.**

High-speed network of shared storage devices connecting different types of storage devices with data servers.

**1.3.3.1 Director Class SAN (Storage Area Network) Switches and Modules** — A scalable, high-performance, and protocol-independent designed primarily to fulfill the role of core switch in a core-edge Fibre Channel (FC), FCOE or similar SAN topology. A Fibre Channel director is, by current convention, a switch with at least 128 ports. It does not differ from a switch in core FC protocol functionality. Fibre Channel directors provide the most reliable, scalable, high-performance foundation for private cloud storage and highly virtualized environments.

**1.3.3.2 Fabric and Blade Server Switches** — A Fibre Channel switch is a network switch compatible with the Fibre Channel (FC) protocol. It allows the creation of a Fibre Channel fabric, which is currently the core component of most SANs. The fabric is a network of Fibre Channel devices, which allows many-to-many communication, device name lookup, security, and redundancy. FC switches implement zoning; a mechanism that disables unwanted traffic between certain fabric nodes.

**1.3.3.3 Enterprise and Data Center SAN and VSAN (Virtual Storage Area Network) Management** - Management tools to provisions, monitors, troubleshoot, and administers SANs and VSANs.

**1.3.3.4 SAN Optimization** — Tools to help optimize and secure SAN performance (ie. Encryption of data- at-rest, data migration, capacity optimization, data reduction, etc.

### **1.3.4: Switches.**

Layer 2/3 devices that are used to connect segments of a LAN (local area network) or multiple LANs and to filter and forward packets among them.

**1.3.4.1 Campus LAN – Access Switches** — Provides initial connectivity for devices to the network and controls user and workgroup access to internetwork resources. The following are some of the features a campus LAN access switch should support:

1. Security
  - a. SSHv2 (Secure Shell Version 2)
  - b. 802.1X (Port Based Network Access Control)
  - c. Port Security
  - d. DHCP (Dynamic Host Configuration Protocol) Snooping
2. VLANs
3. Fast Ethernet/Gigabit Ethernet
4. PoE (Power over Ethernet)
5. link aggregation
6. 10 Gb support
7. Port mirroring
8. Span Taps
9. Support of IPv6 and IPv4
10. Standards-based rapid spanning tree
11. NetFlow Support (Optional).

**1.3.4.2 Campus LAN – Core Switches** — Campus core switches are generally used for the campus backbone and are responsible for transporting large amounts of traffic both reliably and quickly. Core switches should provide:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Security
  - SSHv2
  - MacSec encryption
  - Role-Based Access Control Lists (ACL)
- Support of IPv6 and IPv4
- 1/10/40/100 Gbps support
- IGP (Interior Gateway Protocol) routing
- EGP (Exterior Gateway Protocol) routing
- VPLS (Virtual Private LAN Service) Support
- VRRP (Virtual Router Redundancy Protocol) Support
- NetFlow Support.

**1.3.4.3 Campus Distribution Switches** — Collect the data from all the access layer switches and forward it to the core layer switches. Traffic that is generated at Layer 2 on a switched network needs to be managed, or segmented into Virtual Local Area Networks (VLANs), Distribution layer switches provides the inter-VLAN routing functions so that one VLAN can communicate with another on the network. Distribution layer switches provides advanced security policies that can be applied to network traffic using Access Control Lists (ACLs).

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Security (SSHv2 and/or 802.1X)
- Support of IPv6 and IPv4
- Jumbo Frames Support
- Dynamic Trunking Protocol (DTP)
- Per-VLAN Rapid Spanning Tree (PVRST+)
- Switch-port auto recovery
- NetFlow Support or equivalent

**1.3.4.4 Data Center Switches** — Data center switches, or Layer 2/3 switches, switch all packets in the data center by switching or routing good ones to their final destinations, and discard unwanted traffic using Access Control Lists (ACLs) a minimum of 10 Gigabit speeds. High availability and modularity differentiates a typical Layer 2/3 switch from a data center switch. Capabilities should include:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Ultra-low latency through wire-speed ports with nanosecond port-to-port latency and hardware-based Inter-Switch Link (ISL) trunking
- Load Balancing across Trunk group able to use packet based load balancing scheme
- Bridging of Fibre Channel SANs and Ethernet fabrics
- Jumbo Frame Support

- Plug and Play Fabric formation that allows a new switch that joins the fabric to automatically become a member
- Ability to remotely disable and enable individual ports
- Support NetFlow or equivalent

**1.3.4.5 Software Defined Networks (SDN)** — An application in SDN that manages flow control to enable intelligent networking.

**1.3.4.6 Software Defined Networks (SDN) - Virtualized Switches and Routers** — Technology utilized to support software manipulation of hardware for specific use cases.

**1.3.4.7 Software Defined Networks (SDN) — Controllers** - is an application in software-defined networking (SDN) that manages flow control to enable intelligent networking. SDN controllers are based on protocols, such as OpenFlow, that allow servers to tell switches where to send packets. The SDN controller lies between network devices at one end and applications at the other end. Any communications between applications and devices have to go through the controller. The controller uses multiple routing protocols including OpenFlow to configure network devices and choose the optimal network path for application traffic.

**1.3.4.8 Carrier Aggregation Switches** — Carrier aggregation switches route traffic in addition to bridging (transmitted) Layer 2/Ethernet traffic. Carrier aggregation switches' major characteristics are:

- Designed for Metro Ethernet networks
- Designed for video and other high bandwidth applications
- Supports a variety of interface types, especially those commonly used by Service Providers

Capabilities should include:

- Redundant Processors
- Redundant Power
- IPv4 and IPv6 unicast and multicast
- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- MPLS (Multiprotocol Label Switching)
- BGP (Border Gateway Protocol)
- Software router virtualization and/or multiple routing tables
- Policy based routing
- Layer 2 functionality
  - Per VLAN Spanning Tree
  - Rapid Spanning Tree
  - VLAN IDs up to 4096
  - Layer 2 Class of Service (IEEE 802.1p)
  - Link Aggregation Control Protocol (LACP)
  - QinQ (IEEE 802.1ad)

**1.3.4.9 Carrier Ethernet Access Switches** — A carrier Ethernet access switch can connect directly to the customer or be utilized as a network interface on the service side to provide layer 2 services.

- Hot-swappable and field-replaceable integrated power supply and fan tray
- AC or DC power supply with minimum DC input ranging from 18V to 32 VDC and 36V to 72 VDC
- Ethernet and console port for manageability

- SD flash card slot for additional external storage
- Stratum 3 network clock
- Line-rate performance with a minimum of 62-million packets per second (MPPS) forwarding rate
- Support for dying gasp on loss of power
- Support for a variety of small form factor pluggable transceiver (SFP and SFP+) with support for Device Object Model (DOM)
- Timing services for a converged access network to support mobile solutions, including Radio Access Network (RAN) applications
- Support for Synchronous Ethernet (SyncE) services
- Supports Hierarchical Quality of Service (H-QoS) to provide granular traffic-shaping policies
- Supports Resilient Ethernet Protocol REP/G.8032 for rapid layer-two convergence

#### **Category 1.4: WIRELESS.**

Provides connectivity to wireless devices within a limited geographic area. System capabilities should include:

- Redundancy and automatic failover
- IPv6 compatibility
- NTP Support

**1.4.1 Access Points** — A wireless Access Point (AP) is a device that allows wireless devices to connect to a wired network using Wi-Fi, or related standards. Capabilities should include:

- 802.11a/b/g/n
- 802.11n
- 802.11ac
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)
- UL2043 plenum rated for safe mounting in a variety of indoor environments
- Support AES-CCMP (128-bit)
- Provides real-time wireless intrusion monitoring and detection

**1.4.2 Outdoor Wireless Access Points** — Outdoor APs are rugged, with a metal cover and a DIN rail or other type of mount. During operations they can tolerate a wide temperature range, high humidity and exposure to water, dust, and oil. Capabilities should include:

- Flexible Deployment Options
- Provides real-time wireless intrusion monitoring and detection
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)

**1.4.3 Wireless LAN Controllers** — An onsite or offsite solution utilized to manage Light-weight access points in large quantities by the network administrator or network operations center. The WLAN controller automatically handles the configuration of wireless access-points. Capabilities should include:

- Ability to monitor and mitigate RF interference/self-heal
- Support seamless roaming from AP to AP without requiring re-authentication
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic
- System encrypts all management layer traffic and passes it through a secure tunnel

- Policy management of users and devices provides ability to de-authorize or deny devices without denying the credentials of the user, nor disrupting other AP traffic
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic

**1.4.4 Wireless LAN Network Services and Management** — Enables network administrators to quickly plan, configure and deploy a wireless network, as well as provide additional WLAN services. Some examples include wireless security, asset tracking, and location services. Capabilities should include:

- Provide for redundancy and automatic failover
- Historical trend and real time performance reporting is supported
- Management access to wireless network components is secured
- SNMPv3 enabled
- RFC 1213 compliant
- Automatically discover wireless network components
- Capability to alert for outages and utilization threshold exceptions
- Capability to support Apple's Bonjour Protocol / mDNS
- QoS / Application identification capability

**1.4.5 Cloud-based services for Access Points** — Cloud-based management of campus-wide WiFi deployments and distributed multi-site networks. Capabilities include:

- Zero-touch access point provisioning
- Network-wide visibility and control
- RF optimization,
- Firmware updates

**1.4.6 Mobile Device Management (MDM)** — MDM technology utilized to allow employees to bring personally owned mobile devices (laptops, tablets, and smart phones) to their workplace, and use those devices to access privileged government information and applications in a secure manner. Capabilities should include:

- Ability to apply corporate policy to new devices accessing the network resources, whether wired or wireless
- Provide user and devices authentication to the network
- Provide secure remote access capability
- Support 802.1x
- Network optimization for performance, scalability, and user experience

### **Category 1.5: FACILITY MANAGEMENT, MONITORING, AND CONTROL.**

Technology utilized in the management, monitoring and control of facilities. Technologies include:

- a. Access control systems
- b. Detection/Identification systems, such as surveillance systems, closed circuit television cameras, or IP camera networks and the associated monitoring systems.
- c. Response systems such as alert systems, desktop monitoring systems, radios, and digital signage.
- d. Building and energy controls

## II. Value Added Services

For each Award Category above, the following valued services should also be available for procurement at the time of product purchase or anytime afterwards. This provided list of value added services is not intended to be exhaustive, and may be updated pursuant to the terms of the resulting Master Agreement

**2.1 Maintenance Services** — Capability to provide technical support, software maintenance, flexible hardware coverage, and smart, proactive device diagnostics for hardware.

### **2.2 Professional Services**

- a. Deployment Services
  - i. Survey/ Design Services — Includes, but not limited to, discovery, design, architecture review/validation, and readiness assessment.
  - ii. Implementation Services — Includes, but not limited to, basic installation and configuration or end-to-end integration and deployment.
  - iii. Optimization — Includes, but not limited to, assessing operational environment readiness, identify ways to increase efficiencies throughout the network, and optimize Customer's infrastructure, applications and service management.
- b. Remote Management Services — Includes, but not limited to, continuous monitoring, incident management, problem management, change management, and utilization and performance reporting that may be on a subscription basis.
- c. Consulting/Advisory Services — Includes, but not limited to, assessing the availability, reliability, security and performance of Customer's existing solutions.
- d. Data Communications Architectural Design Services — Developing architectural strategies and roadmaps for transforming Customer's existing network architecture and operations management.
- e. Statement of Work (SOW) Services — Customer-specific tasks to be accomplished and/or services to be delivered based on Customer's business and technical requirements.
- f. Testing Services — Includes, but not limited to, testing the availability, reliability, security and performance of Customer's existing solutions

**2.3 Fulfillment Partner's Services** — Provided by Contractor's Fulfillment Partners.

- a. Subject to Contractor's approval and the certifications held by its Fulfillment Partner, many Fulfillment Partners can also offer and provide some or all of the Services as listed above at competitive pricing, along with local presence and support. Contractor, as the prime, has sole discretion to determine what Services as listed above may be provided by the Fulfillment Partners. As the primary Contractor (OEM), Contractor is ultimately responsible for the service and performance of its Fulfillment Partners. Customers may have the option to purchase the Services to be directly delivered by Contractor (OEM) or its certified Fulfillment Partners.

**2.4 Training** — Learning offerings for IT professionals on networking technologies, including but not limited to designing, implementing, operating, configuring, and troubleshooting network systems pertaining to items provided under the master agreement.



**Attachment C - Pricing Discounts & Value Added Services**

Contractor

Cisco Systems, Inc.

**Section 1: Pricing**

**Notes**

1. % discounts are based on minimum discounts off Contractor's commercially published pricelists versus fixed pricing. Nonetheless, Orders will be fixed-price or fixed-rate and not cost reimbursable contracts. Contractor has the ability to update and refresh its respective price catalog, as long as the agreed-upon discounts are fixed.
2. Minimum guaranteed contract discounts do not preclude Contractor and/or its Fulfillment Partners from providing deeper or additional, incremental discounts at their sole discretion.
3. Purchasing Entities shall benefit from any promotional pricing offered by Contractor to similar customers. Promotional pricing shall not be cause for a permanent price change.
4. Contractor's price catalog shall only include offers that are in contract scope and within the awarded categories. Quotes to eligible Purchasing Entities shall be based on the then-current approved price catalog as posted on the NASPO ValuePoint's website as well as the Contractor's mandatory contract webpage.

**Section 2: Minimum Discount % off List**

<b>Category 1.1 Unified Communications (UC)</b>	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%
<b>Category 1.2 Networking</b>	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%
<b>Category 1.3 Routers, Switches, Security, and Networking Storage</b>	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%
<b>Category 1.4 Wireless</b>	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%
<b>Category 1.5 Facility Management, Monitoring, and Control</b>	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%

**Section 3: Value Added Services**

		Hourly Rates					
		Weekday		Weekend		State Holiday	
Title	Job Description	Onsite	Remote	Onsite	Remote	Onsite	Remote
Maintenance Services	Non-Packaged (i.e. not SMART Total Care); Not-To-Exceed (NTE) Rates	\$600.00	\$525.00	\$600.00	\$525.00	\$600.00	\$525.00
Professional Services	i.e. Cisco Advanced Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Deployment Services	i.e. Cisco Implementation Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Consulting Advisory Services	i.e. Cisco Advisory Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Architectural Design Services	i.e. Cisco Advanced Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Statement of Work Services	i.e. Cisco Advanced Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Partner Services	Basic Install & Config Only (i.e. rack & stack, cabling, etc.), IoT, NTE	\$600.00	\$525.00	\$600.00	\$525.00	\$600.00	\$525.00
Training Deployment Services	i.e. Software Adoption, Cisco Training Services, NTE	\$600.00	\$525.00	\$600.00	\$525.00	\$600.00	\$525.00

EXHIBIT B- Participating Addendum

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

Led by the State of Utah

Master Agreement #: AR3227

Contractor: **Cisco Systems, Inc. (Contractor)**Participating Entity: **State of Florida, Department of Management Services (Department)**Agreement No. **43220000-NASPO-19-ACS**

1. **Scope:** This addendum covers the NASPO ValuePoint Master Agreement for Data Communications Products and Services led by the State of Utah (Lead State) for use by Agencies, as defined in section 287.012, Florida Statutes, and authorized by section 287.042(16), Florida Statutes. For purposes of this Participating Addendum, the Department and Cisco Systems, Inc. are collectively referred to herein as the "Parties."
2. **Alternate Contract Source Agreement (ACS):** ACS refers to this Participating Addendum, Exhibit A: Additional Special Contract Conditions, Exhibit B: Special Contract Conditions, and the Master Agreement and all attachments.
3. **Order of Precedence:** All terms and conditions contained in the ACS are incorporated as if fully set forth herein and shall remain in full force and effect throughout the term of the ACS unless modified in writing by the parties.

This Participating Addendum and Exhibit A: Additional Special Contract Conditions may only be modified or amended upon mutual written agreement by the Parties. If amendments are made to the Master Agreement, the Contractor shall: 1) notify the Department of such amendments; and 2) provided the Department is amenable to incorporating the amendments into the ACS, enter into a written amendment with the Department reflecting the addition of such amendments.

In the event of conflict, the following order of priority governs:

- a) This Participating Addendum and all Amendments, with the latest issued having priority;
- b) Exhibit A: Additional Special Contract Conditions;
- c) Exhibit B: Special Contract Conditions;
- d) Attachment A: NASPO ValuePoint Master Agreement Terms & Conditions;
- e) Attachment B: Scope Awarded to Contractor
- f) Attachment C: Pricing Discounts and Value-Added Services
- g) An Order issued against the ACS;
- h) Attachment A: NASPO ValuePoint Master Agreement Terms & Conditions, Exhibits 1 and 2;
- i) The Solicitation, SK18001 (Request for Proposals), Data Communications Products and Services;
- j) The Contractor's response to the Solicitation, as revised (if permitted) and accepted

NASPO ValuePoint

**PARTICIPATING ADDENDUM**



**DATA COMMUNICATION PRODUCTS & SERVICES (2019-2026)**

Led by the State of **Utah**  
by the Lead State.

**4. Term of the Participating Addendum:**

- a) **Initial Term:** The initial term of the ACS will become effective on the last date the document is signed by all Parties, whichever is later, and shall be effective through September 30, 2024, unless terminated earlier, in accordance with Exhibit A: Additional Special Contract Conditions or Exhibit B: Special Contract Conditions.
- b) **Renewal:** Upon agreement of the Parties, the Department and the Contractor may renew the ACS in accordance with section 287.057(13), Florida Statutes, and Rule 60A-1.048, Florida Administrative Code. Renewals must be in writing and are subject to the same term, conditions, and modifications set forth in the ACS. The Contractor and the Department may negotiate renewal term pricing, which shall not exceed the pricing provided during the initial term as set forth in the Master Agreement.

**5. Product and Service Offering:** The Contractor is authorized to provide the Products and Services set forth in Attachment C of the Master Price Agreement AR3227 as follows:

- Category 1.1: Unified Communications
- Category 1.2: Networking
- Category 1.3: Routers, Switches, Security, and Storage Networking
- Category 1.4: Wireless
- Category 1.5: Facility Management, Monitoring, and Control

Value Added Services are permitted under this PA to the extent they are within the scope of the Master Agreement, and do not overlap with services offered through a state term contract, agency customers are obligated to use the state term contract(s) to purchase the service(s).

**6. Master Price Agreement Number:** All purchase orders issued by agencies within the jurisdiction of this Participating Addendum shall include the NASPO ValuePoint Master Agreement number: AR3227 and Participating Addendum/ACS number: 43220000-NASPO-19-ACS.

NASPO ValuePoint  
**PARTICIPATING ADDENDUM**



**DATA COMMUNICATION PRODUCTS & SERVICES (2019-2026)**

Led by the State of Utah

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

**Contractor**

<b>Name:</b>	<b>Gigi Feril</b>
<b>Address:</b>	<b>170 West Tasman Dr. San Jose CA 95134</b>
<b>Telephone:</b>	<b>(408) 424-0712</b>
<b>Email:</b>	<b>nvp-help@cisco.com</b>

**State of Florida**

<b>Name:</b>	<b>Christia Nunnery</b>
<b>Address:</b>	<b>4050 Esplanade Way, Tallahassee Florida 32399</b>
<b>Telephone:</b>	<b>850-488-8367</b>
<b>Email:</b>	<b>Christia.nunnery@dms.myflorida.com</b>

8. **Participating State or Entity Terms and Conditions**

Participating State or Entity must check one of the boxes below. These modifications or additions apply only to actions and relationships within the State of Florida. A Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to its contractual relationship with the Contractor under the Terms and Conditions of the State of Utah NASPO ValuePoint Master Agreement.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions:

Exhibit A – Additional Special Contract Conditions

Exhibit B – Special Contract Conditions

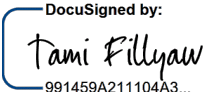
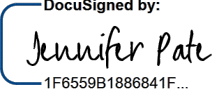
NASPO ValuePoint  
**PARTICIPATING ADDENDUM**



**DATA COMMUNICATION PRODUCTS & SERVICES (2019-2026)**

Led by the State of Utah

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

Participating State: <b>State of Florida</b>	Contractor: <b>Cisco Systems, Inc.</b>
By: <small>DocuSigned by:</small>  <small>991459A211104A3...</small>	By: <small>DocuSigned by:</small>  <small>1F6559B1886841F...</small>
Name: Tami Fillyaw	Name: Jennifer Pate
Title: Chief of Staff	Title: Authorized Signatory
Date: 6/9/2021   9:37 PM EDT	Date: 6/8/2021   1:23 PM PDT



**ADDITIONAL SPECIAL CONTRACT CONDITIONS**  
**Exhibit A**

The following changes are modifying or supplementing the Master Agreement and ACS terms and conditions. These modifications or additions apply only to actions and relationships within the ACS.

Upon execution of the ACS, Customers may purchase products and services under contract using the State of Florida Alternate Contract Source Number 43220000-NASPO-19-ACS.

- A. Vendor Registration: In order to complete any transaction between an Individual Customer and the Contractor, the Contractor must be registered in [MyFloridaMarketPlace](#).
- B. Purchases: In order to procure products and services hereunder, Customers shall issue purchase orders or use a purchasing card which shall reference Florida Alternate Contract Source Number 43220000-NASPO-19-ACS. Customers are responsible for reviewing the terms and conditions of this ACS, including all Exhibits.
- C. Additional Customer Terms: If any additional ordinance, rule, or other local governmental authority requires additional contract language before a Customer can make a purchase under this ACS, the Customer is responsible for entering a separate agreement with the Contractor and capturing that additional contract language therein.
- D. The State of Florida's performance and obligation to pay under this ACS is contingent upon an annual appropriation by the Legislature. The vendor shall comply with section 11.062, Florida Statutes and section 216.347, Florida Statutes, prohibiting use of funds to lobby the Legislature, Judicial, or state agencies.
- E. Product and Service Offerings: The Contractor is authorized to provide Products and Services as referenced in Section 5 of the Participating Addendum (PA). Any Product or Service offerings not listed are not approved.
- F. Employment Eligibility Verification: The language of subsection 13.2 of the Special Contract Conditions regarding E-Verify shall apply to resellers as well as other subcontractors.

- G. Price List/Preferred Price: The Contractor's price list will be the same as the NASPO ValuePoint price list, and the Department will post a link on the Department's website to the price list posted on the NASPO ValuePoint website. Contractors are encouraged to provide special pricing and/or tiered discount rates applicable to State of Florida Customers wherever possible.
- H. Orders: Any Order placed by a Customer for a Product and/or Service available under the Master Agreement shall be deemed to be a sale under and governed by the terms and conditions of the ACS. A Customer may request more stringent terms than provided in this PA. To the extent the Customer and the Contractor agree on additional terms, the terms will be documented on the Customer Order, signed by both parties, and integrated into the ACS order of precedence as reflected on the PA.
- I. Electronic Invoicing: The Contractor or Fulfillment Partner(s) may supply electronic invoices in lieu of paper-based invoices for those transactions processed through MFMP. Electronic invoices may be submitted to the agency through one of the mechanisms as listed below:
  - a. EDI (Electronic Data Interchange)  
This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog goods and services.
  - b. PO Flip via AN  
The online process allows Contractors or Fulfillment Partner(s) to submit invoices via the AN for catalog and non-catalog goods and services. Contractors or Fulfillment Partner(s) have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor or Fulfillment Partner(s) warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a state contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor or Fulfillment Partner(s) warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within the system the Contractor's or Fulfillment Partner(s) trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor or Fulfillment Partner(s) under the contract.

The Contractor or Fulfillment Partner(s) will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed.

- J. Product Installation & Invoicing: Contractor or Fulfillment Partner(s) will provide timely billing and Customer will notify Contractor or Fulfillment Partner(s), in writing, of any billing concern.



- K. Contract Reporting: The Contractor shall report information on orders received from Customers associated with the ACS.

The Contractor shall submit reports in accordance with the following schedule:

Report	Period Covered	Due Dates
MFMP Transaction Report	Calendar month	20 calendar days after close of the period
Contract Quarterly Sales Report	State's Fiscal Quarter	30 calendar days after close of the period

No favorable action will be considered for any contractor who has outstanding Contract Quarterly Sales Reports, MFMP Transaction Fee Reports, or any other documentation, to include fees / monies that is required under the ACS.

- a. Contract Quarterly Sales Report: The Contractor agrees to submit a Quarterly Sales Report to the Department's Contract Manager within 30 calendar days after the close of each State Fiscal quarter.

Quarterly reporting timeframes coincide with the State Fiscal Year as follows:

Quarter 1 - (July-September) – due October 30th.

Quarter 2 - (October-December) – due January 30th.

Quarter 3 - (January-March) – due April 30th.

Quarter 4 - (April-June) – due July 30th.

Quarterly reporting requirements begin the date of ACS execution. Reports must be submitted in MS Excel format and can be retrieved by accessing the FL DMS Quarterly Sales Report Form. The report will include all sales (invoiced) from Customers received (associated with this ACS) during the period. Initiation and submission of the Quarterly Report is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit two consecutive quarterly sales reports, this ACS may be terminated for convenience or the Department may choose to not renew the ACS.

In addition, the Department may require additional sales information such as copies of purchase orders, or ad hoc sales reports. The Contractor shall submit these specific ad hoc requests within the specified amount of time as requested by the Department.

- b. MFMP Transaction Fee Report: The Contractor is required to submit monthly Transaction Fee Reports in the Department's electronic format. Reports are due 20 calendar days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendor on the MFMP

website: MFMP Transaction Fee and Reporting. Assistance is also available with the Transaction Fee Reporting System from the MFMP Customer Service Desk by email at [feeprocessing@myfloridamarketplace.com](mailto:feeprocessing@myfloridamarketplace.com) or telephone 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. Eastern Time.

- L. Ad hoc Reports: The Department reserves the right to require additional reports or information pertaining to this ACS and any resulting purchase orders or contracts with customers. The Contractor must submit a report or information within five (5) business days after receipt of a Department request, unless otherwise approved by the Department.
- M. Financial Consequences: The following financial consequences will be assessed for nonperformance of the Quarterly Sales Report and Monthly Transaction Fee Report requirements. The State reserves the right to withhold payment or implement other appropriate remedies, such as contract termination or nonrenewal. These consequences for non-performance are not to be considered penalties.

Performance Metrics	Description	Performance Target	Frequency	Financial Consequence for Non-Performance (Per Day Late)
Quarterly Sales Report Submission	Quarterly Sales Report are due on or before the 30 <sup>th</sup> calendar day after close of a quarter.	100%	Quarterly	\$250
Monthly Transaction Fee Report	Transaction Fee Report are due on or before the 20 <sup>th</sup> calendar day after close of the period.	100%	Monthly	\$100

The financial consequences will be paid via check or money order and made out to the Department of Management Services in US Dollars within 30 calendar days after the required report submission date. These consequences are individually assessed for failures over each target period beginning with the first full month or quarter of the contract performance and every quarter thereafter.

- N. Business Review Meetings: The Department reserves the right to schedule business review meetings as frequently as necessary. The Participating State will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Participating State/Entity for review and acceptance. The Contractor shall address the agenda items and any of the Participating State's additional concerns at the meeting. At minimum, the parties shall meet to discuss:
- a. Program compliance
  - b. Program trending review
  - c. Savings report: Hard dollar and soft dollar
  - d. Spend report
  - e. Subcontractor and contingent staff performance
  - f. Recommendations for improved compliance and performance

Failure to comply with this section may result in the Contractor being found in default and PA termination.

- O. Resellers/Partners: The Contractor may use resellers/partners which includes, but is not limited to, Fulfillment Partner(s), in order to provide equipment and services. All such resellers/partners shall be the direct responsibility of the Contractor. The Contractor is responsible for all liability, terms, and conditions within the ACS and the Customer Order, including work performed by a reseller/partner. The Contractor's resellers/partners' participation will be in accordance with the terms and conditions set forth in the ACS and the Customer Order. The Contractor agrees for all such resellers/partners providing commodities and performing services in furtherance of the Contract, the Contractor agrees to include a requirement in all reseller/partner agreements to adhere to all Contract terms. If a reseller/partner is authorized to conduct business on behalf of the Contractor and the reseller/partner is to receive compensation from the Contractor for its services, then any dispute between the Contractor and the reseller/partner shall be resolved between the Contractor and the reseller/partner. The State of Florida is not a party to any agreement entered into between the Contractor and its resellers/partners.

The Contractor shall be responsible to report all contract sales (and pay any associated MFMP transaction fees), including those of any such resellers/partners and shall ensure that all such resellers/partners meet the following requirements:

- Have an active registration with the Florida Department of State, Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org))
- Registered in the MFMP Vendor Information Portal (<https://vendor.myfloridamarketplace.com>)
- Not be on the State of Florida's Convicted, Suspended, or Discriminatory lists [http://www.dms.myflorida.com/business\\_operations/State\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](http://www.dms.myflorida.com/business_operations/State_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)
- Have a copy of e-Verify Status on file
- Have a current W-9 filed with the Florida Department of Financial Services (<https://flvendor.myfloridacfo.com>)

- P. All licenses obtained under this ACS shall be transferable to the extent necessary for any Customer reorganization under section 20.06, Florida Statutes.

- Q. The following modifications are made to Exhibit B, Special Contract Conditions:

- i. Exhibit B, Special Contract Conditions Section 6.4.2, Rejected Commodities, is hereby deleted and replaced in its entirety with the following:

**6.4.2 Rejected Commodities.**

When a Customer rejects a commodity, Contractor will remove the commodity from the premises within thirty (30) calendar days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of such commodities. Contractor will

reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

- ii. Exhibit B, Special Contract Conditions Section 7.2, General Liability Insurance, is hereby deleted and replaced in its entirety with the following:

7.2 General Liability Insurance

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal and advertising injury, and completed operations with limits of \$2,000,000 per occurrence and \$4,000,000 annual aggregate. This insurance must provide coverage for claims that arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include the State of Florida as an additional insured for the entire length of the resulting contract for liabilities that fall within Contractor's indemnity obligations under this Contract and that are covered by such insurance.

- iii. Exhibit B, Special Contract Conditions Section 7.3, Florida Authorized Insurers, is hereby deleted and replaced in its entirety with the following:

7.3 Florida Authorized Insurers

All insurance shall be with insurers authorized and eligible to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all required coverage is in place and showing the Department to be an additional insured as required by Section 7.2 above.

- iv. Exhibit B, Special Contract Conditions Section 7.5, Indemnification, is hereby deleted and replaced in its entirety with the following:

7.5 Indemnification

7.5.1 General Indemnity

Contractor shall defend, indemnify and hold harmless the Customer and the State of Florida, its corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all fines, claims, assessments, suits, judgments, losses, liabilities, damages, and expenses (including, without limitation, consequential, special, indirect, and punitive damages, including, court costs and attorney's fees, as any such damages are determined by a court of law or are set forth and agreed upon in a settlement agreement), 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 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 Customer'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 Contractor hereunder, the damages and expenses (including, without limitation, reasonable attorney's fees) shall be allocated or reallocated, as the case may be, between the Contractor and the Customer in such proportion as jointly determined by

the Contractor and the Customer. Such determination of proportionality shall appropriately reflect 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 based upon the Customer and Contractor's joint agreement determining the proportion of damages and expenses to be reallocated.

The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. The foregoing indemnification obligations are conditioned upon the Customer promptly notifying the Contractor in writing of the claim, suit or proceeding for which the Contractor is obligated under this Section, cooperating with, assisting and providing information to, the Contractor as reasonably required, and granting the Contractor the right to defend or settle such claim, suit or proceeding.

#### 7.5.2 Intellectual Property Indemnification

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, (including, without limitation, consequential, special, indirect, and punitive damages including court costs and attorney's fees, as any such damages are determined by a court of law or are set forth and agreed upon in a settlement agreement), arising from or related to an Intellectual Property Rights Claim ("IPR Claim") that any product or service supplied under this Agreement violates or infringes Third Party Intellectual Property Rights ("IPR"). Contractor's obligations to defend the IPR Claim and indemnify the Customer and the State of Florida, are conditional upon:

- Customer notifying Contractor promptly in writing of the IPR Claim or threat thereof;
- Customer giving Contractor authority to defend and settle the IPR Claim and any subsequent appeal; and
- Customer giving Contractor all information and assistance reasonably requested by Contractor in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.

Third Party IPR as used within this section means a United States copyright existing as at the Effective Date or a United States patent issued as at the Effective Date.

If an IPR Claim has been made, or in Contractor's opinion is likely to be made, Contractor agrees, at Contractor's option and expense, either to: (a) procure for Customer the right to continue using the Product; or (b) replace or modify the Product so that there is no longer an infringement. In the event Contractor, using all available resources and best efforts, is unable to resolve the IPR claim and/or implement one of these two options, Contractor shall provide the Department and Customers with 10 business days advance written notice of Contractor's need to terminate both the Contractor's and Customer's respective rights and obligations under the Customer's agreement with regard to the product or service. Customer will promptly return the product to Contractor and or discontinue use of the service. Contractor will refund to Customer a prorated portion of the amount paid for the products or services for the remainder of the unexpired usage term.

Notwithstanding the foregoing, Contractor has no obligation or liability for any IPR Claim arising from a Customer performing any of the following:

- Combining, operating, or using a product or service supplied under this Agreement with any product, device, or software not supplied by Contractor which results in an IPR Claim issued for the Contractor provided product or service;
- Altering or modifying any product or service supplied under this Agreement which results in an IPR Claim issued for that product or service;
- Requiring Contractor comply with Customer's designs, specifications, requests, or instructions which results in an IPR Claim issued for that product or service; or
- Continuing to use the product or service as is after Contractor has notified Customer in writing of the requirement to implement modifications or changes capable of being made by the Customer in or to the product or service to avoid such an IPR Claim and failing to utilize the replacement product or service offered by Contractor; or
- Revenue generating activities or earnings made by Customer from services that it provides to external or internal customers that makes use of the product or services where such revenue generating activities results in the IPR claim issued for that product or service.

This Section states the entire obligation of Contractor and its suppliers, and the exclusive remedy of Customer, with respect to any infringement or alleged infringement of any intellectual property rights or proprietary rights. The Customer and the Department, however, shall maintain all other rights and remedies available under this Contract and under state or federal law as may be applicable to an infringement or alleged infringement of any intellectual property or proprietary rights.

The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties.

- v. Exhibit B, Special Contract Conditions Subsection 8.4.1, Ownership, is hereby deleted and replaced in its entirety with the following:

#### 8.4.1 Ownership.

The parties do not anticipate that any intellectual property will be developed as a result of this Contract. However, except as otherwise expressly set forth in an applicable Statement of Work ("SOW") and unless specifically addressed otherwise in the Contract, the State of Florida shall retain all intellectual property rights to its data and property. Cisco and its licensors retain ownership in all intellectual property rights in and to the Cisco Content Software, Cloud Service and all underlying technology and associated documentation related thereto.

- vi. Exhibit B, Special Contract Conditions Section 9, Data Security, is hereby deleted and replaced in its entirety with the following:

#### 9 Data Security

The Contractor will implement measures designed to maintain the security of Customer data received from the Customer or its users ("State of Florida Data") including, but not limited to, following 'clean desk' practices and ensuring that State of Florida Data is not left unattended at public workspaces and ensuring State of Florida Data is stored and secured when not in use. Contractor and its subcontractors cannot guarantee that all of its products and services will be performed inside the United States, and cannot guarantee that State of Florida Data will only be accessed within the United States. Contractor will continuously provide the Department and Customers with the most accurate and current information about which of services and products available under

this Contract cannot be performed inside the United States and/or may require State of Florida Data to be sent, transmitted, or accessed outside of the United States. When Contractor provides cloud computing, as defined in Rule 60GG-4.002(4)(b), F.A.C., Contractor agrees to cooperate with the Customer and perform all actions necessary to assist with all tasks in furtherance of the Customer's efforts to comply with the obligations under Rule 60GG-4, F.A.C., as applicable.

In the event of a Security Breach involving State of Florida Data attributable to the Customer or its users, the Contractor shall give notice to the Customer at the address provided by the Customer and the Department within forty-eight (48) hours of the Security Breach. A Security Breach, for purposes of this section, will refer to a confirmed event that compromises the confidentiality, integrity, or availability of State of Florida data ("Security Breach"). Once a Security Breach has been contained, the Contractor must provide the Department with a post-incident report documenting all relevant containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party, approved by both Parties (such approval shall not be unreasonably withheld), to audit Contractor's findings and produce an independent report. The Contractor shall cooperate in good faith with the third party audit, which shall take place on the specific start date agreed to by the Parties, occur during normal working hours, and be performed in accordance with the Contractor's facility access procedures where facility access is required. Release statements shall not be required for the Department or its designee to conduct such audits. The scope, duration, and location of the audit will be jointly determined by the Parties based upon the Security Breach being audited, and such approval shall not be unreasonably withheld. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information applicable to Contractor or the services provided under this Contract. The Contractor will make available to Customers and the Department information about which of its offers are HIPAA compliant, and the Customer will provide Contractor with notice that protected health information may be shared with Contractor.

Except for any liability which cannot be limited or excluded under mandatory applicable law, Cisco shall be liable for any and all claims, losses, liabilities, damages, and expenses arising out of or in connection with a claim, suit or proceeding brought by a third party based upon a Security Breach (whether for breach of contract, misrepresentations, negligence, strict liability, other torts or otherwise). Such liability shall not exceed \$1,000,000.00 (one million dollars) in U.S. dollars per Event and \$10,000,000.00 (ten million dollars) in the aggregate for all claims arising under this Agreement. For purposes of determining the liability due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) will be treated as a single Event ("Event").

- vii. Exhibit B, Special Contract Conditions Section 11.3.2, Liquidated Damages, is hereby deleted in its entirety.
- viii. Exhibit B, Special Contract Conditions subsection 13.1, Background Check, is hereby deleted and replaced in its entirety with the following:

#### 13.1 Background Check.

The Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, agents, representatives, and subcontractors operating under its direction with Access to State

of Florida Data. The Contractor agrees such screening will be done before an individual is provided Access to state of Florida data. The cost of the background check will be borne by the Contractor. The Department or Customer may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest.

Access as referenced in this subsection shall mean review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.

- ix. Exhibit B, Special Contract Conditions subsection 13.2, E-Verify, is hereby deleted and replaced in its entirety with the following:

13.2 Employment Eligibility Verification.

The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Department's Contract Manager within five (5) days of Contract execution.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one (1) year after the date of such termination. The Department reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.09(1), F.S.



# SPECIAL CONTRACT CONDITIONS JULY 1, 2019 VERSION

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**In accordance with Rule 60A-1.002(7), F.A.C., Form PUR 1000 is included herein by reference but is superseded in its entirety by these Special Contract Conditions.**

## **SECTION 1. DEFINITION.**

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes (F.S.), and Rule Chapter 60A-1, Florida Administrative Code (F.A.C.):

### **1.1 Customer.**

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

## **SECTION 2. CONTRACT TERM AND TERMINATION.**

### **2.1 Initial Term.**

The initial term will begin on the date set forth in the Contract documents or on the date the Contract is signed by all Parties, whichever is later.

### **2.2 Renewal.**

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(13), F.S.

### **2.3 Suspension of Work and Termination.**

#### **2.3.1 Suspension of Work.**

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide the Contractor written notice outlining the particulars of the suspension. After receiving a suspension notice, the Contractor must comply with the notice and will cease the performance of the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation. The Contractor will not resume performance of the Contract or purchase order until so authorized by the Department.

#### **2.3.2 Termination for Convenience.**

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

#### **2.3.3 Termination for Cause.**

If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may:

- (a) immediately terminate the Contract;
- (b) notify the Contractor of the noncompliance or default, require correction, and specify the date by which the correction must be completed before the Contract is terminated; or
- (c) take other action deemed appropriate by the Department.

### **SECTION 3. PAYMENT AND FEES.**

#### **3.1 Pricing.**

The Contractor will not exceed the pricing set forth in the Contract documents.

#### **3.2 Price Decreases.**

The following price decrease terms will apply to the Contract:

**3.2.1 Quantity Discounts.** Contractor may offer additional discounts for one-time delivery of large single orders;

**3.2.2 Preferred Pricing.** The Contractor guarantees that the pricing indicated in this Contract is a maximum price. Additionally, Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those that are similar in size, scope, and terms. In compliance with section 216.0113, F.S., Contractor must annually submit an affidavit from the Contractor's authorized representative attesting that the Contract complies with this clause.

**3.2.3 Sales Promotions.** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The Contractor must submit documentation identifying the proposed: (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

#### **3.3 Payment Invoicing.**

The Contractor will be paid upon submission of invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain sufficient detail for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

#### **3.4 Purchase Order.**

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract and, if applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. Purchase orders issued pursuant to the Contract must be received by the Contractor no later than the close of business on the last day of the Contract's term. The Contractor is required to accept timely purchase orders specifying delivery schedules that extend beyond the Contract term even when such extended delivery will occur after expiration of the Contract. Purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the Contract shall survive the termination or expiration of the Contract and apply to the Contractor's performance. The duration of purchase orders for recurring deliverables shall not exceed the expiration of the Contract by more than twelve months. Any purchase order terms and conditions conflicting with these Special Contract Conditions shall not become a part of the Contract.

#### **3.5 Travel.**

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing and may be reimbursed only in accordance with section 112.061, F.S.

### 3.6 Annual Appropriation.

Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

### 3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), F.S. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

### 3.8 Taxes.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer or Department unless authorized by Florida law.

### 3.9 Return of Funds.

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

## **SECTION 4. CONTRACT MANAGEMENT.**

### 4.1 Composition and Priority.

The Contractor agrees to provide commodities or contractual services to the Customer as specified in the Contract. Additionally, the terms of the Contract supersede the terms of all prior agreements between the Parties on this subject matter.

### 4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager in a manner identified by the Department.

### 4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be identified in a separate writing to the Contractor upon Contract signing in the following format:

Department's Contract Manager Name

Department's Name  
Department's Physical Address  
Department's Telephone #  
Department's Email Address

If the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

#### 4.4 Contractor's Contract Manager.

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department upon Contract signing in the following format:

Contractor's Contract Manager Name  
Contractor's Name  
Contractor's Physical Address  
Contractor's Telephone #  
Contractor's Email Address

If the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

#### 4.5 Diversity.

##### 4.5.1 Office of Supplier Diversity.

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at [osdinfo@dms.myflorida.com](mailto:osdinfo@dms.myflorida.com).

##### 4.5.2 Diversity Reporting.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each agency purchasing under the Contract.

#### 4.6 RESPECT.

Subject to the agency determination provided for in section 413.036, F.S., the following statement applies:

**IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES;**

AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INSOFAR AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about RESPECT and the commodities or contractual services it offers is available at <https://www.respectofflorida.org>.

#### 4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <https://www.pride-enterprises.org>.

### **SECTION 5. COMPLIANCE WITH LAWS.**

#### 5.1 Conduct of Business.

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference.

#### 5.2 Dispute Resolution, Governing Law, and Venue.

Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives all privileges and rights relating to venue it may have under Chapter 47, F.S., and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to, those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

#### 5.3 Department of State Registration.

Consistent with Title XXXVI, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

#### 5.4 Suspended, Convicted, and Discriminatory Vendor Lists.

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, or Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the Suspended Vendor List, Convicted Vendor List, or Discriminatory Vendor List during the term of the Contract.

#### 5.5 Scrutinized Companies - Termination by the Department.

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

#### 5.6 Cooperation with Inspector General and Records Retention.

Pursuant to section 20.055(5), F.S., the Contractor understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for the longer of five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor agrees to impose the same obligations to cooperate with the Inspector General and retain records on any subcontractors used to provide goods or services under the Contract.

### **SECTION 6. MISCELLANEOUS.**

#### 6.1 Subcontractors.

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that the Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The

Contractor may contact the OSD at [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com) for information on certified small business enterprises available for subcontracting opportunities.

#### 6.2 Assignment.

The Contractor will not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

#### 6.3 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are independent contractors and not employees or agents of the State of Florida and are not entitled to State of Florida benefits. The Department and Customer will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all its subcontracts under the Contract.

#### 6.4 Inspection and Acceptance of Commodities.

##### 6.4.1 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: record any evidence of visible damage on all copies of the delivering carrier's bill of lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's bill of lading and damage inspection report.

##### 6.4.2 Rejected Commodities.

When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

#### 6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

#### 6.6 Ombudsman.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.



**6.7 Time is of the Essence.**

Time is of the essence regarding every obligation of the Contractor under the Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

**6.8 Waiver.**

The delay or failure by the Department or the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

**6.9 Modification and Severability.**

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

**6.10 Cooperative Purchasing.**

Pursuant to their own governing laws, and subject to the agreement of the Contractor, governmental entities that are not Customers may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Such purchases are independent of the Contract between the Department and the Contractor, and the Department is not a party to these transactions. Agencies seeking to make purchases under this Contract are required to follow the requirements of Rule 60A-1.045(5), F.A.C.

**SECTION 7. LIABILITY AND INSURANCE.**

**7.1 Workers' Compensation Insurance.**

The Contractor shall maintain workers' compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all subcontractors to similarly provide workers' compensation insurance for all of the latter's employees. In the event work is being performed by the Contractor under the Contract and any class of employees performing the work is not protected under Workers' Compensation statutes, the Contractor must provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of employees not otherwise protected.

**7.2 General Liability Insurance.**

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal and advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include the State of Florida as an additional insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

**7.3 Florida Authorized Insurers.**

All insurance shall be with insurers authorized and eligible to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

#### 7.4 Performance Bond.

Unless otherwise prohibited by law, the Department may require the Contractor to furnish, without additional cost to the Department, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Department shall determine the type and amount of security.

#### 7.5 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right or out of any acts, actions, breaches, neglect, or omissions of the Contractor, its employees, agents, subcontractors, assignees, or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Customer. The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

#### 7.6 Limitation of Liability.

Unless otherwise specifically enumerated in the Contract or in the purchase order, neither the Department nor the Customer shall be liable for special, indirect, punitive, or consequential damages, including lost data or records (unless the Contract or purchase order requires the Contractor to back-up data or records), even if the Department or Customer has been advised that such damages are possible. Neither the Department nor the Customer shall be liable for lost profits, lost revenue, or lost institutional operating savings. The Department or Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

### **SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY.**

#### 8.1 Public Records.

##### 8.1.1 Termination of Contract.

The Department may terminate the Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, F. S., made or received by the Contractor in conjunction with the Contract.

#### 8.1.2 Statutory Notice.

Pursuant to section 119.0701(2)(a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS, AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.**

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

#### 8.2 Protection of Trade Secrets or Otherwise Confidential Information.

8.2.1 Contractor Designation of Trade Secrets or Otherwise Confidential Information. If the Contractor considers any portion of materials to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be

responsible for responding to and resolving all claims for access to Contract-related materials it has designated trade secret or otherwise confidential.

#### 8.2.2 Public Records Requests.

If the Department receives a public records request for materials designated by the Contractor as trade secret or otherwise confidential under Florida or federal law, the Contractor will be responsible for taking the appropriate legal action in response to the request. If the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential, the Department will provide the materials to the requester.

#### 8.2.3 Indemnification Related to Confidentiality of Materials.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of materials as trade secret or otherwise confidential.

#### 8.3 Document Management.

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers, and documents that were made in relation to this Contract. The Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at the Department of State's Records Management website.

#### 8.4 Intellectual Property.

##### 8.4.1 Ownership.

Unless specifically addressed otherwise in the Contract, the State of Florida shall be the owner of all intellectual property rights to all property created or developed in connection with the Contract.

##### 8.4.2 Patentable Inventions or Discoveries.

Any inventions or discoveries developed in the course, or as a result, of services in connection with the Contract that are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made through performance of the Contract, and such inventions or discoveries will be referred to the Florida Department of State for a determination on whether patent protection will be sought. The State of Florida will be the sole owner of all patents resulting from any invention or discovery made through performance of the Contract.

##### 8.4.3 Copyrightable Works.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed through performance of the Contract are owned solely by the State of Florida.

### **SECTION 9. DATA SECURITY.**

The Contractor will maintain the security of State of Florida data including, but not limited to, maintaining a secure area around any displayed visible data and ensuring data is stored and secured when not in use. The Contractor and subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside the United States due to Contractor's action or inaction. In the event of a security breach involving State of Florida data, the Contractor shall give notice to the Customer and the Department within one business day. "Security breach" for purposes of this section will refer to a confirmed event that compromises the confidentiality, integrity, or availability of data. Once a data breach has been contained, the Contractor must provide the Department with a post-incident report documenting all containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party to audit Contractor's findings and produce an independent report, and the Contractor will fully cooperate with the third party. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

## **SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.**

### 10.1 Gratuities.

The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer's or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

### 10.2 Lobbying.

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not to be used for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to section 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract after the Contract is executed and during the Contract term.

### 10.3 Communications.

#### 10.3.1 Contractor Communication or Disclosure.

The Contractor shall not make any public statements, press releases, publicity releases, or other similar communications concerning the Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Contract, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

#### 10.3.2 Use of Customer Statements.

The Contractor shall not use any statement attributable to the Customer or its employees for the Contractor's promotions, press releases, publicity releases, marketing, corporate communications, or other similar communications, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

## **SECTION 11. CONTRACT MONITORING.**

### **11.1 Performance Standards.**

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

### **11.2 Performance Deficiencies and Financial Consequences of Non-Performance.**

#### **11.2.1 Proposal of Corrective Action Plan.**

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department or Customer determines that there is a performance deficiency that requires correction by the Contractor, then the Department or Customer will notify the Contractor. The correction must be made within a time-frame specified by the Department or Customer. The Contractor must provide the Department or Customer with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department or Customer.

#### **11.2.2 Retainage for Unacceptable Corrective Action Plan or Plan Failure.**

If the corrective action plan is unacceptable to the Department or Customer, or implementation of the plan fails to remedy the performance deficiencies, the Department or Customer will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department or Customer for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited to compensate the Department or Customer for the performance deficiencies.

### **11.3 Performance Delay.**

#### **11.3.1 Notification.**

The Contractor will promptly notify the Department or Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

#### **11.3.2 Liquidated Damages.**

The Contractor acknowledges that delayed performance will damage the Department/Customer, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

### **11.4 Force Majeure, Notice of Delay, and No Damages for Delay.**

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay, and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that created or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers and the Department with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

## **SECTION 12. CONTRACT AUDITS.**

### **12.1 Performance or Compliance Audits.**

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners, or agents of the Contractor, pertaining to the Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners, or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The Inspector General, in accordance with section 5.6, the State of Florida's Chief Financial Officer, the Office of the Auditor General also have authority to perform audits and inspections.

## 12.2 Payment Audit.

Records of costs incurred under terms of the Contract will be maintained in accordance with section 8.3 of these Special Contract Conditions. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, the State of Florida's Chief Financial Officer, or the Office of the Auditor General.

## **SECTION 13. BACKGROUND SCREENING AND SECURITY.**

### 13.1 Background Check.

The Department or Customer may require the Contractor to conduct background checks of its employees, agents, representatives, and subcontractors as directed by the Department or Customer. The cost of the background checks will be borne by the Contractor. The Department or Customer may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. Upon the request of the Department or Customer, the Contractor will re-screen any of its employees, agents, representatives, and subcontractors during the term of the Contract.

### 13.2 E-Verify.

The Contractor must use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

### 13.3 Disqualifying Offenses.

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related crimes;
- (b) Information technology crimes;



- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

#### 13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the commodities or contractual services provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

#### **SECTION 14. WARRANTY OF CONTRACTOR'S ABILITY TO PERFORM.**

The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.