

**PARTICIPATING ADDENDUM**  
**NASPO VALUEPOINT COOPERATIVE PURCHASING PROGRAM**  
**Computer Equipment**  
**Administered by the State of Minnesota (hereinafter "Lead State")**

**MASTER AGREEMENT**

**Master Agreement No: MNWNC-105**  
(hereinafter "MN NASPO VP Master Agreement" or "Master Agreement")  
**Cisco Systems, Inc.**  
(hereinafter "Contractor", "Contract Vendor" or "Cisco")  
And  
the State of North Dakota  
(hereinafter "Participating State/Entity/Customer")  
ND State Contact #022-MNWNC-105PA

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**1. Scope:**

This addendum ("Participating Addendum") allows for purchase from the Computer Equipment including Peripherals and Related Services, under a cooperative purchasing program, led by the State of Minnesota, along with a multi-state sourcing team for use by the Participating State's entities, governmental boards and commissions, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, nonprofit entities established on behalf of public entities, tribal agencies, and the International Peace Garden.

The Master Agreement, as now or hereafter amended, is incorporated into this Participating Addendum as if set forth at length. Capitalized terms not defined in this Participating Addendum shall have the meaning set forth in the Master Agreement.

The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor. The Products and Services available under this Participating Addendum include all Products and Services in scope for the Master Agreement, with the exception of the following change for the configuration limits:

- a) Server and Storage category is increased to \$750,000.
- b) Printers and Scanners in all categories are increased to \$30,000.
- c) The following copiers cannot be sold unless the Participating State and Participating Entity (applies to State Agencies only) has received prior contract exemption approval:
  - i. Convenience Black and White Copiers with Speed in Impressions per Minute (IPM) 90 or greater
  - ii. Convenience Hybrid Copiers with Speed in Impressions per Minute (IPM) 50 or greater
  - iii. Any Production Black and White Copiers
  - iv. Any Wide Format Copiers
  - v. Any Color Production Copiers

**2. Participation:** Use of specific NASPO ValuePoint cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) are authorized pursuant to N.D.C.C. § 54-44.4-13. Issues of interpretation and eligibility for participation shall be

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determined by the State Procurement Office.

3A. Term: This Participating Addendum will be effective upon the date of last signature below, and continue co-terminous with the Master Agreement through March 31, 2017, unless extended, renewed or terminated earlier.

3. Order of Precedence:

1. A Participating Entity's Participating Addendum ("PA"); A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota NASPO ValuePoint Master Agreement
2. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)
3. The Solicitation including all Addendums; and
4. Contract Vendor's response to the Solicitation

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. Contract Vendor 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 the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Participating State Modifications or Additions to Master Agreement:

- a. **Prepayment.** STATE will not make any advance payments before service by CONTRACTOR under this Participating Addendum, except for subscription services, such as SMARTnet maintenance.
- b. **Payment of Taxes by State.** STATE is not responsible for and will not pay local, state, or federal taxes for purchases of both products and services. STATE sales tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by CONTRACTOR.

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- c. Applicable Law and Venue.** This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be brought and solely litigated in the District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.
- d. Appointment of Attorney to represent State.** CONTRACTOR agrees that any attorney appointed to represent the STATE must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08.
- e. Compliance with Public Record Law.** CONTRACTOR understands that, except for disclosures prohibited in the Master Agreement or this Participating Addendum, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Participating Addendum, except for records that are confidential as defined under the Master Agreement or under this Participating Addendum, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to reasonably comply with STATE's instructions on how to respond to the request.
- f. Spoliation – Notice of Potential Claims.** CONTRACTOR shall, to the extent of its knowledge, promptly notify STATE of potential claims that arise or result from this Participating Addendum, to the extent the State is the subject of, or becomes a party to, the applicable claim ("Potential Claim"). CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a Potential Claim, while maintaining public safety.
- g. Alternative Dispute Resolution – Jury Trial.** STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in

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judicial proceedings. STATE does not waive any right to a jury trial.

- h. Limitation of Liability** – Section C.18 of Exhibit A to the Master Agreement is hereby deleted in its entirety and replaced with the following: "As allowed by N.D.C.C. § 32-12.2-15 and State's consultation with the OMB Risk Management Division and the office of the State Attorney General, except for those obligations under Section 17, Indemnification Section 19, Intellectual Property Indemnification, and any claims for direct damages for personal injury or tangible property damage, to the extent proximately caused by Contract Vendor's negligence, notwithstanding anything else herein, all liability of Contract Vendor and its Fulfillment Partners to any Purchasing Entity for claims arising under this Participating Addendum shall be limited to the money paid to Cisco by Participating Entity under this Participating Addendum during the twelve (12) month period prior to the event that first gave rise to such liability. This limitation of liability is cumulative and not per incident."
- i. State Audit.** All records, regardless of physical form, under standard accounting practices and procedures of CONTRACTOR related to payments made under this Participating Addendum are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Participating Addendum and be able to provide them subject to the terms and notice periods set forth in Section B.26 of Exhibit B to the Master Agreement.
- j. Takeback and Other Environmental Programs.** Takeback and/or recycling of products by agencies covered by this Addendum are subject to approval of OMB State Surplus Property pursuant to N.D.C.C. § 54-44.4-05.5.

**ADDITIONAL MODIFICATIONS TO MASTER AGREEMENT**

- 1. Insurance.** Section B.17 (Insurance) of Exhibit A of the MN NASPO VP Master Agreement shall be modified to delete the fourth paragraph (beginning "Prior to commencement of the work") and replace with the following:

"Prior to commencement of the work, Contractor shall provide to the Participating Entity a written endorsement to the Contractor's general liability insurance policy that (i) names the Participating Entity as an additional insured,

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but only to the extent of liabilities falling within Contractor's indemnity obligations pursuant to the terms of this MN NASPO VP Master Agreement, and (ii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory. Should any of the required insurance be cancelled or non-renewed, Contractor shall replace such insurance and provide to Participating Entity a certificate of insurance evidencing the replacement insurance, within ten (10) business days after receipt of such cancellation or modification."

2. **General Indemnity.** Section C.17 (Indemnification) of Exhibit A is modified to include the following additional language:

"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. If the Participating Entity's laws require approval of a third party to defend Participating Entity, Participating Entity will seek such approval and if approval is not received, Contractor is not required to defend that Participating Entity."

3. **Delivery.** Section B.10 (Delivery) of Exhibit A of the MN NASPO VP Master Agreement shall be replaced with the following:

**Orders and Delivery.**

"a. Any contingencies on Purchaser's Purchase Orders are not binding upon Contractor. The terms and conditions of this MN NASPO VP Master Agreement and applicable Participating Addendum prevail, regardless of any additional or conflicting terms on the Purchase Order, contingencies or other correspondence from Purchaser 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, Order, or Order Document containing such terms shall not constitute such express consent. Contractor shall use commercially reasonable efforts to accept or reject orders in

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writing within ten (10) days from receipt or within three (3) business days if orders are placed electronically.

b. After receipt and acceptance by Contractor of Purchasing Entity's Order(s), Contractor will use commercially reasonable efforts to ship all direct orders designated for shipment to U.S. locations within thirty (30) days for all products. Please note that 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.

c. 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 pursuant to the order escalation process.

d. If Purchasing Entity requests delivery of products to Purchasing Entity's forwarding agent or other representative, Purchasing Entity assumes responsibility for compliance with applicable export laws and regulations.

e. Contractor is not liable for damage or penalty for delay in delivery or for failure to give notice of delay. Contractor shall not have any liability in connection with product shipment other than as set forth in this Section of the Participating Addendum.

f. All sales are final. Except as provided in Contractor's Limited Warranty, Contractor only permits the return of un-opened products due to Contractor's

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shipping or order processing error, or damage in transit. No other returns are authorized under this Master Agreement. Warranty returns will not be subject to any restocking charges."

4. Section B. 24 (Payment) of Exhibit A to the MN NASPO VP Master Agreement is hereby deleted in its entirety and replaced with the following:

"Upon and subject to credit approval by Contractor, payment is due net thirty (30) days from invoice date. Invoices for products ordered without implementation services shall be rendered by Fulfillment Partner on or after the date of delivery of such products to the Purchaser. If, at any time, Purchaser is delinquent in payment, or is otherwise in breach of this contract, Contractor may, without prejudice to other rights, withhold shipment (including partial shipments) of any order or require Purchaser to prepay for further shipments. Any sum not paid by Purchaser when due shall bear interest until paid at a rate of 1 percent per month (12 percent per annum) or the maximum legal rate, whichever is less. Purchaser grants Contractor a security interest in products purchased under this contract to secure payment for those products purchased which security interest shall expire upon full payment in accordance with the terms. If requested by Contractor, Purchaser agrees to execute financing statements to perfect this security interest. Payments may be made via a State or political subdivision "Purchasing Card" to Fulfillment Partners under this contract. "

5. E-Rate. Products and Services under this Participating Addendum may be E-Rate eligible. Orders for E-Rate eligible products and Services will be processed by Fulfillment Partners under such partner's Service Provider Identification Number ("SPIN").
6. Rights Upon Termination or Expiration. Notwithstanding the rights and obligations of each party as set forth in the MN NASPO VP Master Agreement upon Termination or Expiration of the MN NASPO VP Master Agreement or this Participating Addendum, the following provisions shall be added to this Participating Addendum:

"Upon termination or expiration of the MN NASPO VP Master Agreement or this Participating Addendum, (a) Contractor reserves the right to cease all further delivery of product or Services, and (b) all outstanding invoices become due and

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payable within thirty (30) days of termination. If Contractor agrees to complete delivery of any further products or services due against any existing accepted Purchase Orders, then Participating Entity shall pay for such products or services in accordance with the payment terms set forth in such accepted Orders.

Except for a termination of the MN NASPO VP Master Agreement or this Participating Addendum resulting from Participating Entity's breach of Contractor's proprietary rights and software licensing (including Export, Re-Export, Transfer and Use Controls set forth in Cisco's End User License Agreement incorporated in the Master Agreement) or Confidential Information, upon termination or expiration of this contract, Participating Entity may continue to use products provided to it by Contractor prior to the date of termination or expiration provided (1) payment has been made in full for such products, and (2) license rights allow for such continued use. Participating Entity shall remain obligated to comply in perpetuity with the provisions of Contractor's Software License terms, and Confidential Information."

7. Defaults and Remedies. Subsection B.9.b of Exhibit A of the Master Agreement is replaced and superseded by the following language:

"If either party to a Participating Addendum (including the Lead State when acting in its sovereign capacity under this Master Agreement) materially breaches any of the provisions of a Participating Addendum, the non-breaching party may terminate the Participating Addendum as follows: (a) immediately upon providing written notice to the breaching party if the breach is not capable of being cured, and (b) thirty (30) calendar days after providing written notice to the breaching party if the breaching party fails to cure such breach within such thirty (30) calendar day period. Notwithstanding the foregoing, a Participating Addendum may be terminated immediately by Contractor for cause in the event of Purchaser's breach of the provisions relating to Software License or Confidential Information. The above cure periods shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party."

8. Employee Purchase Program. Employees of Participating Entities are not eligible to purchase products or Services under this Participating Addendum.



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9. **Partner Utilization:** Contractor reserves the right to require that purchases be made through Fulfillment Partners under this PA. "Fulfillment Partner" (also referred to as "Reseller" or "Authorized Reseller") means a third-party subcontractor qualified and authorized by Contractor and approved by the Participating State under a Participating Addendum who may, to the extent authorized by Contractor, fulfill any of the requirements of the Participating Addendum including but not limited to providing Products and Services hereunder and billing Purchasing Entities directly for such products and Services. Contractor may, upon written notice to the Participating State, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Participating Addendum or to bind Contractor to any additional terms and conditions. Only Resellers approved by this Participating State may be deployed. The Participating State will define the process to add and remove partners and may define the partner's role in its Participating Addendum. The Authorized Resellers' participation will be in accordance with the terms and conditions set forth in the aforementioned MN NASPO VP Master Agreement. Authorized Resellers will be posted on Contractor's webpage for this Participating Addendum.

Where use of a Fulfillment Partner is required by Contractor, Purchasers shall not order Products or Services directly from Contractor and shall order same from Fulfillment Partner. Purchaser shall purchase products 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.

10. **Deferred and Cancelled Orders.** Purchaser 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 Purchaser 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

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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 Participating Entity may cancel the order without charge.

11. **Services.** Purchaser 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 Master Services Agreement attached hereto as Exhibit 1, as well as the then-current terms of service offerings set forth on Contractor's website at <http://www.cisco.com/legal/services.html>. Contractor reserves the right to subcontract services to a third party maintenance organization to provision services for Purchaser. Services purchased under this Participating Addendum must be directly related to equipment purchased under this Participating Addendum.
12. **Taxes.** 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 the MN NASPO VP Master Agreement and Participating Addendum. Purchaser will pay sales and use taxes, if any, imposed on the Products and Services acquired under the Master Agreement and Participating Addendum, 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 Purchaser is exempt from property and sales taxes, it will not be charged same.
13. **Modifications to the Products.** 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 Purchaser or WSCA, 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:

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<http://www.cisco.com/c/en/us/products/eos-eol-policy.html>. Purchaser may make a last-time purchase of such products as set forth in such policy.

14. **Leasing.** Except for State agencies, leasing is available for purchases under this Participating Addendum, subject to financing terms and conditions executed by Purchasing Entity and Cisco Capital, or its designated and/or their selected finance partner.
15. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Mimi Nguyen-Farr
Address	170 W. Tasman Drive, San Jose, CA 95134
Telephone	650-228-8748
Fax	
E-mail	mimnguye@cisco.com

Participating Entity

Name	Tricia Opp
Address	North Dakota State Procurement Office, 600 East Boulevard Avenue, Dept 012, Bismarck, ND 58505-0310
Telephone	701-328-1721
Fax	701-328-1615
E-mail	topp@nd.gov

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

Participating State:	Contractor: Cisco Systems, Inc.
By: <i>Tricia OBP</i>	By: <i>John Christoph</i>
Name: <i>Tricia OBP</i>	Name: John Christoph
Title: <i>Procurement Officer</i>	Title: Director, Finance
Date: <i>Jan 14, 2016</i>	Date: January 13, 2016

**APPROVED BY LEGAL**

For questions on executing a participating addendum, please contact:  
 NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to  
[PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in  
 appropriate data bases]

## **Exhibit 1 — Additional Vendor Terms and Conditions**

### **Master Services Agreement**

This Master Services Agreement governs all Orders for Services placed under the MN NASPO VP Master Agreement Terms and Conditions

This Master Services Agreement consists of (i) the Master Services Agreement Terms and Conditions (including the Exhibits), (ii) incorporated Sections from the MN NASPO VP Master Agreement Terms and Conditions and (iii) the Services Descriptions of the Services at cisco.com that the Participating Entity may elect to purchase, which are incorporated in this Master Services Agreement by this reference.

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#### **Master Services Agreement - Terms and Conditions**

1. **Definitions** are those set out in the Exhibit A, Glossary of Terms at the end of the Agreement.
2. **Scope.** This Agreement describes the terms and conditions for Purchases by Customer of Services. 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. **Orders.** Terms of this Section are covered in the MN NASPO VP Master Agreement Terms and Conditions.
4. **Pricing.** For Direct Purchases, and subsequent Equipment List renewals, prices for Services shall be (a) those specified in Cisco's then-current Price List less any applicable contract discount in effect under the MN NASPO VP 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. 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 WSCA 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.
5. **Payment.** Terms of this Section are covered in the MN NASPO VP Master Agreement.
6. **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.
7. **Term and Termination.**
  - (a) The term of any service order shall commence on the Effective Date of the Order and shall continue for a period up to one (1) year.

- (b) The term of any 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 by Cisco. The term of an Equipment List shall commence on the date set forth on such Purchase Order and continue for a period of up to one (1) year
- (c) Service orders and Equipment Lists shall be valid through their specific term and performance as specified, and all terms and conditions under this Participating Addendum shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the contract. Renewal for service orders or Equipment Lists -shall be upon mutual agreement in writing and signed by both parties, and may be renewed, in whole or in part, for an additional period of up to one (1) year. Renewals shall not be completed if this Participating Addendum expires prior to the effective date of the renewal.
- (d) The term of each SOW shall be stated in the SOW.

This Master Service Agreement may be terminated in accordance on the same terms as set forth in the MN NASPO VP Master Agreement. Any Equipment List or SOW may be terminated immediately by either party upon written notice.

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, Cisco may withhold the provision of Services until all undisputed amounts past due are paid in full, and/or terminate immediately this Agreement, any Equipment List, and SOW.

- (e) 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 ninety (90) 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 (1) 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.
- (f) Each Equipment List and SOW hereunder shall terminate immediately upon termination of the Agreement.
- (g) Upon termination of the Agreement, any Equipment List, or SOWs, Customer shall pay Cisco for all work performed and accepted by Customer under the affected Equipment Lists or SOWs up to the effective date of termination at the agreed-upon prices, fees, and expense reimbursement rates.
- (h) Firm orders for services under this Master Services Agreement 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 Master Services Agreement.

Additional terms governing Term and Termination are covered in the MN NASPO VP Master Agreement.

- 8. Confidentiality.** Terms of this Section are covered in the MN NASPO VP Terms and Conditions.
- 9. Warranty.** All services provided hereunder shall be performed in a workmanlike manner in accordance with industry standards expected of a company providing

professional services in the networking industry. Except as specified in this section, Cisco hereby disclaims and customer waives 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, non-infringement, title, satisfactory quality, accuracy, (b) arising from any course of dealing, course of performance, or usage in the industry. To the extent an implied warranty cannot be disclaimed, such warranty is limited in duration to the applicable express warranty period. Customer's sole and exclusive remedy for breach of warranty shall be, at Cisco's option, re-performance of the services; or termination of this agreement or the applicable equipment list or SOW and return of the portion of the service fees paid to Cisco by customer for such non-conforming services.

- 10. Limitation of Liability and Consequential Damages Waiver.** Terms of this Section are covered in the MN NASPO VP Master Agreement.
- 11. License.** Terms of this Section are covered in the MN NASPO VP Master Agreement.
- 12. Ownership.** Cisco shall at all times retain all right, title, and interest in and to all pre-existing Intellectual Property owned by Cisco as of the Effective Date and all Intellectual Property in and to the Services, Cisco Products, Deliverables, and Data Collection Tools or other Intellectual Property provided or developed by Cisco or a third party on Cisco's behalf thereafter. Customer shall at all times retain all right, title, and interest in and to all pre-existing Intellectual Property owned by Customer as of the Effective Date and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter without the benefit of any of Cisco's Intellectual Property. Third Party Products shall at all times be owned by the applicable third party.
- 13. Force Majeure.** Terms of this Section are covered in the MN NASPO VP Master Agreement .
- 14. Applicable law and Jurisdiction.** Terms of this Section are covered in the MN NASPO VP Master Agreement.
- 15. Export Control.** Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of Cisco Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses. Information regarding compliance with U.S. use, export, re-export, and transfer laws may be found at: [http://www.cisco.com/wwl/export/compliance\\_provision.html](http://www.cisco.com/wwl/export/compliance_provision.html).
- 16. Assignment.** Terms of this Section are covered in the MN NASPO VP Master Agreement.
- 17. Subcontracting.** Cisco reserves the right to subcontract Services to a third party organization including Fulfillment Partners or Servicing Subcontractors (as defined in the MN NASPO VP Master Agreement) to provide Services to Customer; provided that invoicing and/or payments will only be handled by and through Cisco and its authorized Fulfillment Partners. Any such subcontract shall not relieve Cisco of any of its obligations under this Master Services Agreement.

If Contractor or its Fulfillment Partners are using servicing subcontractors for the performance of local marketing, maintenance, and/or technical support services in accordance with the terms and conditions of this Contract, servicing subcontractors may not directly accept purchase orders or payments for products or services from Purchasers under the terms and conditions of the contract. Only Contractor or Fulfillment Partners authorized by Cisco may directly accept purchase orders, invoice, or receive payments for products or services under the terms and conditions of the contract. The

authorized Purchaser has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

- 18. Inventory Review.** From time-to-time Cisco may perform an inventory review of Customer's installed base and review serial numbers and other records (upon reasonable advance notice) to validate entitlement. If unauthorized Services are being provided, Cisco will be entitled to charge to Customer the amounts which should have been paid. Cisco requires that Customer take all necessary action (for example, disabling passwords) to ensure that any former employees and contractors do not access or use the Service.
- 19. Notices.** Notwithstanding anything contained in the Agreement to the contrary, all notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile or electronic mail (in the case of Cisco to Agreement-notice@cisco.com), (provided that the original document is placed in air mail/air courier or delivered personally, within seven (7) days of the facsimile electronic notice); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or six [6] days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the cover sheet of this Agreement or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph. Notwithstanding the above, notices regarding general changes in pricing, policies, or programs may also be by posting on Cisco.com or by email or fax.
- 20. Entire Agreement.** This Master Services Agreement, in addition to the general provisions of the WSCA Master Agreement pertinent to Services, is the complete agreement between the parties concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties, except as agreed between the parties. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein. This Agreement may only be modified by a written document executed by the parties hereto.
- 21. No Waiver.** The waiver by either party of any right provided under this Master Services Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Master Services Agreement.
- 22.** In the event that one or more terms of this Master Services Agreement becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such term shall be null and void and shall be deemed deleted from this Master Services Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of this Master Services Agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this Agreement by written notice with immediate effect to the other.
- 23. Attorneys' Fees.** In any suit or proceeding relating to this Master Services Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, incurred in connection with the suit or proceeding, including costs, fees, and expenses upon appeal, if awarded by a court, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Master Services



Agreement, and shall survive expiration or termination and shall not be merged into any such judgment unless the judgment expressly precludes survivability.

- 24. No Agency.** This Master Services Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of this Master Services Agreement. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
- 25. Counterparts.** This Master Services Agreement may be executed in two counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "Counterpart Image") shall be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. In the event that a party delivers a Counterpart Image in place of an originally-executed counterpart, such party shall retain the originally-executed counterpart in its files for at least the duration of the Term hereof.
- 26. Headings.** Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.
- 27. Survival.** Sections 5 (Payment), 7 (Term and Termination), 8 (Confidentiality), 9 (Warranty), 10 (Limitation of Liability and Consequential Damages Waiver), 11 (License), 12 (Ownership), 13 (Force Majeure), 14 (Applicable Law and Jurisdiction), 15 (Export Control), 18 (Inventory Review), 19 (Notices), 20 (Entire Agreement), 21 (No Waiver), 22 (Severability), 23 (Attorneys' Fees), 24 (No Agency), 27 (Survival), and the Glossary of Terms shall survive the termination or expiration of this Agreement."

## **Exhibit A Glossary of Terms**

In addition to the Definitions set forth in the MN NASPO VP Master Agreement, the following definitions shall apply to this Master Services Agreement:

**Additional Services** means installation of new Hardware, system additions, Hardware upgrades, dispatch of a field engineer, or non-mandatory engineering changes otherwise within the scope of the Master Services Agreement.

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

**Advanced Services** means the proactive Services within the scope of the Master Services Agreement, and as set forth in the AS Service Description(s) found at <http://www.cisco.com/go/servicedescriptions> throughout the term of the agreement and/or SOW(s) selected by the Customer. Advanced Services does not include Cisco's core maintenance services, such as SMARTnet 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 and within the scope of the Master Services Agreement, 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.

**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.com (<http://www.cisco.com>) is the Cisco website for its suite of online services and information.

**Confidential Information** means proprietary and confidential Information received by Cisco or Customer in connection with the Agreement and their relationship. Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, Software source documents, data, Customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party, as well as, in the case of Cisco, any information posted on Cisco.com.

**Customer** as defined in the Master Services Agreement means the entity purchasing Services for its own internal use either directly or through a Fulfilment Partner.

**Data Collection Tools** means Hardware or Software tools that support Cisco's ability to provide troubleshooting on critical cases, data analysis, and report-generation capabilities.

**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** means, with respect to each SOW, the items specified as deliverables in the SOW.

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

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

**Documentation** is user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials, and other information relating to Products or Services offered by Cisco, whether distributed in print, electronic, CD-ROM, or video format.

**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.

**Hardware** means tangible Cisco equipment, devices, or components made available to Customers.

**Indirect Purchases** means purchases of Services by Customer through a Fulfilment Partner.

**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.

**Price List** means the price list for services applicable in the country where the Services are ordered or delivered.

**Product** means both Cisco Hardware and/or Software which are generally available.

**Purchase Order or P.O.** means a written or electronic order from Customer to Cisco for the Services to be provided by Cisco under this Agreement.

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

**RMA** means Return Material Authorization.

**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 in the MSA by reference.

**Software** means the software programs licensed to Customer by Cisco along with copies, Updates, or Upgrades to those software programs.

**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.

**Statement of Work (SOW)** means the documents agreed upon by the parties that define Services and deliverables to be provided.

**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 thereto, that are designated by Cisco as required for:

- (i) The operation of Application Software in conformance with Cisco applicable Application Software Documentation.
- (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.