

Amendment Number 3
to
Contract Number DIR-TSO-4167
between
State of Texas, acting by and through the Department of Information
Resources
and
Cisco Systems, Inc.

This Amendment Number 3 to Contract Number **DIR-TSO-4167** ("**Contract**") is between the Department of Information Resources ("**DIR**") and Cisco Systems, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. Contract, Section 2. Term of Contract is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for ninety (90) calendar days through October 1, 2023, or until terminated pursuant to the termination clauses contained in the Contract. There are no additional renewal options remaining for the Contract.

2. Contract, Section 4. Pricing is hereby deleted and replaced in its entirety with the following:

4. Pricing

4.1 Pricing Index

Pricing to Customers shall be as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee (as defined below).

4.2 Customer Discount

- a) The minimum Customer discount for all products and services will be the percentage off List Price (as defined below) or MSRP (as defined below), as applicable, as specified in Appendix C, Pricing Index. Vendor shall not establish a List Price or MSRP for a particular solicitation. For purposes of this Section, "List Price" is the price for a product or service published in Vendor's price catalog (or similar

document) before any discounts or price allowances are applied. For purposes of this Section, "MSRP," or manufacturer's suggested retail price, is the price list published by the manufacturer or publisher of a product and available to and recognized by the trade.

- b) Customers purchasing products or services under this Contract may negotiate additional discounts with Vendor. Vendor and Customer shall provide the details of such additional discounts to DIR upon request.
- c) If products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract, or (ii) to any other customer under the same terms and conditions provided for the State for the same products and services under this contract, then the price of such products and services under this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor for a quantity of one (1), but does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days of providing a lower price as described in this Section, and this Contract shall be amended within ten (10) days to reflect such lower price.

4.3 Changes to Prices

- a) Subject to the requirements of this section, Vendor may change the price of any product or service upon changes to the List Price or MSRP, as applicable. Discount levels shall not be subject to such changes, and will remain consistent with the discount levels specified in this Contract.
- b) Vendor may revise its pricing by publishing a revised pricing list, subject to review and approval by DIR. If DIR, in its sole discretion, finds that the price of a product or service has been increased unreasonably, DIR may request that Vendor reduce the pricing for the product or service to the level published before such revision. Upon such request, Vendor shall either reduce the pricing as requested, or shall remove the product or service from the pricing list for this Contract. Failure to do so will constitute an act of default by Vendor.

4.4 Shipping and Handling

Prices to Customers shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees may be charged to Customers for standard shipping and handling. If a Customer requests expedited or special delivery, Customer will be responsible for any additional charges for expedited or special delivery.

3. Contract, Section 9. Internet Access to Contract and Pricing Information is hereby inserted immediately after Section 8 as follows:

9. Internet Access to Contract and Pricing Information

In addition to the requirements listed in Appendix A, Section 7.2, Internet Access to Contract and Pricing Information, Vendor shall include the following with its webpage:

- a) A current price list or mechanism to obtain specific contract pricing;
- b) MSRP/list price or DIR Customer price;
- c) Discount percentage (%) off MSRP or List Price;
- d) Warranty policies; and
- e) Return policies.

4. Contract, Section 10. Use of Order Fulfillers is hereby inserted immediately after Section 9 as follows:

10. Use of Order Fulfillers

10.1 Authorization to Use Order Fulfillers

Subject to the conditions in this Section, DIR agrees to permit Vendor to utilize designated order fulfillers to provide products, services, and support resources to Customers under this Contract ("Order Fulfillers").

10.2 Designation of Order Fulfillers

- a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under this Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. DIR and Vendor will agree on the number of Order Fulfillers that are Historically Underutilized Businesses as defined by the CPA.
- b) In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.
- c) DIR reserves the right to require Vendor to rescind any Order Fulfiller participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- d) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of this Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of this Contract.
- e) Vendor may qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the criteria.
- f) Vendor shall not prohibit any Order Fulfiller from participating in other procurement opportunities offered through DIR.

10.3 Changes in Order Fulfiller

Vendor may add or remove Order Fulfillers throughout the term of this Contract upon written authorization by DIR. Prior to adding or removing Order Fulfillers, Vendor must make a good faith effort to revise its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically

Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfillers information listed above.

10.4 Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall be in accordance with Section 4.

5. Appendix A. Standard Terms and Conditions for Product and Related Services Contracts dated 09/29/2017, is hereby replaced in its entirety with the attached **Appendix A. Standard Terms and Conditions** dated December 2021 (**per Amendment 3**), except where previous authorized exceptions to Appendix A were allowed and documented as part of the Contract, and all Amendments thereto. In such cases, the previously authorized exceptions shall be applied to the portions of the new Appendix A which are comparable to those in the earlier Appendix A for which they were written, and this without regard for the numbering or lettering associated with any of the documents. Applied in such manner, the exceptions shall remain in full force and effect until such time the Contract expires or is terminated.

6. In addition to the above-referenced authorized exceptions to Appendix A noted in Contract, Section 8, additional **Authorized Exceptions to Appendix A, Standard Terms and Conditions** dated December 2021 are as follows:

A. Section 3. Definitions, Subsection 3.8, Invoice, is hereby restated in its entirety as follows:

Refers to a Customer approved instrument submitted by Vendor or Order Fulfiller for payment of services.

B. Section 3. Definitions, Subsection 3.11 Statement of Work (SOW)

Means a document entered into between Customer and Vendor or Order Fulfiller describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor or Order Fulfiller is to provide Customer, issued pursuant to the Contract.

C. Section 4, General Provisions, Subsection 4.2, Modification of Contract Terms and/or Amendments, B., is hereby restated in its entirety as follows:

B. DIR may amend the Contract upon thirty (30) calendar days written notice to Vendor without the need for Vendor written consent: i) as necessary to satisfy a regulatory requirement imposed upon DIR by a governing body with the appropriate authority, or ii) or by mutual agreement as necessary to satisfy a procedural change due to DIR system upgrades or additions.

D. Section 4, General Provisions, Subsection 4.9, Data Location, is hereby restated in its entirety as follows:

Regardless of any other provision of the Contract or its incorporated or referenced documents, data provided by or on behalf of State of Texas Customers shall remain, and be stored, processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States. A State of Texas Customer can specifically agree to otherwise. For all Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. NOTE: CUSTOMERS SHOULD CONSIDER WHETHER THEY REQUIRE CONTIGUOUS US-ONLY DATA LOCATION AND HANDLING AND MAKE SUCCESSFUL RESPONDENT AWARE OF THEIR REQUIREMENTS.

E. Section 6, Terms and Conditions Applicable to State Agency Purchases Only, is hereby restated in its entirety as follows:

A. Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency and Institution of Higher Education Customers must procure EIR that complies with the Accessibility Standards defined in the Texas Administrative Codes 1 TAC 206, 1 TAC 213, and in the Worldwide Web Consortium WCAG 2.0 AA technical standard as applicable, and when such products or services are available in the commercial marketplace or when such products are developed in response to procurement solicitations. Successful Respondent complies with Section 255 of the Telecommunications Act of 1996 and the Twenty-First Century

Communications and Video Accessibility Act ("CVAA") of 2010, as applicable.

- i) Upon request, and prior to a DIR Customer purchase, Successful Respondent must provide accurate Accessibility Conformance Reports (ACRs) created using the applicable sections of the Voluntary Product Accessibility Template® (VPAT®) Revised Section 508 Edition (Version 2.3 or higher) or links to ACRs located on manufacturer websites for Commercial Off the Shelf (COTS) products, including Software as a Service (SaaS), for each product or product family (as applicable) included in the submitted pricelist. Instructions on how to complete this document are included in the template itself. ACRs based on earlier versions of the VPAT® template will be accepted if such completed ACRs already exist, and there have been no changes to the product/service since the time of the original document completion.
- ii) If Successful Respondent claims that a proposed product or family of products is exempt from accessibility requirements, it must specify the product(s) as such in "Notes" located in the product information section of the VPAT v.2.3 or higher, or as an additional note in the product information section of older VPAT versions of the form, specifying each exempt product or product family with a supporting statement(s) for this position.
- iii) Upon request, and prior to a DIR customer purchase for IT development services, Successful Respondent must provide a completed, current, accurate, Vendor Accessibility Development Services Information Request (VADSIR) form for non-COTS offerings (such as IT related development services, services that include user accessed, online components, etc.) which documents Successful Respondent's capability or ability to produce accessible electronic and information resources.
- iv) Additionally, Successful Respondent must ensure that EIR Accessibility criteria are integrated into key phases of the project development lifecycle including but not limited to planning, design, development, functional testing, user acceptance testing, maintenance; and report accessibility status at key project checkpoints as defined by DIR customers.
- v) Upon request, and prior to a Customer purchase for COTS products, or IT development services, Successful Respondent

- vi) must provide a completed, current, accurate, Policy Driven Adoption for Accessibility (PDAA) for Vendor Self-Assessment. Also upon request, Successful Respondent must provide additional documentation that supports the information contained in the aforementioned completed forms. Examples may include but are not limited to: executed accessibility test plans and results, corrective actions plans, description of accessibility test tools, platforms, and methods, and prior work.

F. Section 8, Purchase Orders, Invoices, and Payments, Subsection 8.1 Purchase Orders, is hereby restated in its entirety as follows:

All Customer Purchase Orders will be placed directly with Vendor or Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller.

G. Section 10, Successful Respondent Responsibilities, Subsection 10.11, Background and/or Criminal History Investigation, is hereby restated in its entirety as follows:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

H. Section 10, Vendor Responsibilities, Subsection 10.12, Limitation of Liability, is hereby restated in its entirety as follows:

For any claims or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility

of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

I. Section 13, Warranty, is hereby deleted in its entirety.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment 3, then Amendment Number 2, then Amendment Number 1, and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 7/03/2023.

Cisco Systems, Inc.

Authorized By: Signature on File _____

Name: Jennifer Pate _____

Title: Authorized Signatory _____

Date: 6/29/2023 _____

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File _____

Name: Hershel Becker _____

Title: Chief Procurement Officer _____

Date: 6/30/2023 _____

Office of General Counsel: _____