



AGENDA STAFF REPORT

ASR Control 20-000917

MEETING DATE: 12/08/20
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 2
SUBMITTING AGENCY/DEPARTMENT: John Wayne Airport (Approved)
DEPARTMENT CONTACT PERSON(S): Barry A. Rondinella (949) 252-5183
 Scott Hagen (949) 252-5241

SUBJECT: Approve Procurement of Network Equipment Refresh

CEO CONCUR
Concur

COUNTY COUNSEL REVIEW
Approved Agreement to Form

CLERK OF THE BOARD
Discussion
3 Votes Board Majority

Budgeted: Yes

Current Year Cost: \$181,955

Annual Cost:
 FY 2021-22 \$413,044
 FY 2022-23 \$413,044
 FY 2023-24 \$413,044

Staffing Impact: No

of Positions:

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: Airport Operating Fund 280:100% **County Audit in last 3 years:** No

Prior Board Action: 10/20/2020 #7

RECOMMENDED ACTION(S):

1. Find that the project is categorically exempt from CEQA, Class 1 (Existing Facilities) pursuant to CEQA Guidelines, Section 15301.
2. Authorize the County Procurement Officer or authorized Deputy to execute a contract and installment payment agreement to procure equipment to refresh John Wayne Airport's network infrastructure through reseller ePlus Technology, Inc. on the County-approved National Association of State Procurement Officials ValuePoint Cooperative Agreement in an amount not to exceed \$1,421,087, effective upon Board of Supervisors approval for a term of three years.

SUMMARY:

Approval of this procurement will enable John Wayne Airport to refresh end-of-life hardware supporting John Wayne Airport's new network infrastructure.

BACKGROUND INFORMATION:

In 2019, John Wayne Airport (JWA) contracted with Cisco partner Data Dimensions to create an architecture to transition JWA's traditionally deployed network infrastructure to a new network

infrastructure. This design uses the latest industry standards and technology to address increasing network traffic volume, eliminate network congestion issues and provide system redundancy. The total scope of the effort to replace the existing JWA production network was divided into two major phases utilizing work orders through the Orange County Information Technology Agreement for Managed Services Network, Voice and Security with Science Applications International Corporation. Phase one services were executed on May 13, 2020, to discover network components/architecture details, develop an implementation plan, validate the infrastructure readiness and identify deficiencies. On October 20, 2020, the Board of Supervisors (Board) authorized phase two services to support JWA's network implementation, including migrating users and services to the new network.

The hardware procurement will enable JWA to refresh aging equipment in support of the new network infrastructure. JWA will plan and budget for annual refresh cycles in the future, based on an approximate five-year life expectancy for the majority of the equipment.

This purchase will be made using the National Association of State Procurement Officials ValuePoint Master Agreement (NASPO Contract) that will provide the County with the best price possible. The NASPO Contract contains non-standard Indemnification and Limitation of Liability language that limits the contractor's liability for damages to the purchase price of the assets, but JWA considers the non-standard terms to be low risk as the equipment and software to be purchased are standard off-the-shelf products with no customization. If the equipment malfunctions, the County has redundancies in place to continue normal business with minimal down time. The malfunctioned equipment will be covered and replaced under the manufacturer's warranty and the County's extended warranty plan.

The purchase will be made over three years with the hardware financed at zero percent interest through an Installment Payment Agreement (IPA). The IPA has been reviewed and approved by Risk Management and the County Executive Office/Office of Public Finance. In addition, the associated IPA includes non-standard indemnification language asking the County to indemnify against any claims, losses and costs related to the equipment. County Executive Office-Risk Management considers the non-standard indemnification language low risk because the County will insure the assets against any risk of loss. A Risk Assessment Form is attached to this Agenda Staff Report as Attachment C.

The contract does not currently include subcontractors or pass through to other providers. See Attachment B for the Contract Summary Form.

Compliance with CEQA: The proposed project is Categorically Exempt (Class 1) from the provisions of CEQA pursuant to Section 15301, because the project consists of repairing or maintaining existing facilities involving negligible or no expansion of the existing use.

FINANCIAL IMPACT:

Appropriations for this purchase are included in the FY 2020-21 Budget for Airport Operating Fund 280 and will be included in the budgeting process for future years. The equipment will be financed at zero percent interest through FY 2023-24.

The contract contains language allowing the County to terminate the contract without penalty for cause or after 30 days' written notice without cause.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Contract with ePlus Technology, Inc. (MA-280-21010706)

Attachment B - Contract Summary Form

Attachment C - Risk Assessment Form

SUBORDINATE CONTRACT

MA-280-21010706

FOR

**CISCO ENTERPRISE NETWORK EQUIPMENT FOR JWA
NETWORK REDESIGN**

BETWEEN

COUNTY OF ORANGE, JOHN WAYNE AIRPORT

AND

EPLUS TECHNOLOGY, INC.

**JOHN WAYNE AIRPORT
ORANGE COUNTY**





County of Orange, John Wayne Airport

Contract MA-280-21010706

Cisco Enterprise Network Equipment for JWA Network Redesign

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County of Orange, John Wayne Airport

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Cisco Enterprise Network Equipment for JWA Network Redesign

**SUBORDINATE CONTRACT MA-280-21010706
FOR**

CISCO ENTERPRISE NETWORK EQUIPMENT FOR JWA NETWORK REDESIGN

This Contract MA-280-21010706 for Cisco Enterprise Network Equipment (“Contract”), is made and entered into as of the date fully executed by and between the County of Orange (“County”), a political subdivision of the State of California, acting through its department John Wayne Airport (“County” or “JWA”), and ePlus Technology, Inc., (“Contractor”), with a place of business at 13595 Dulles Technology Dr., Herndon, VA 20171. County and Contractor may be referred to individually as “Party” or collectively as “Parties.”

ATTACHMENTS

- Attachment A: Scope of Work
- Attachment B: Compensation and Payment
- Attachment C: California Participating Addendum No. 7-14-70-04
- Attachment D: State of Utah WSCA-NASPO Master Agreement Number AR233 with Cisco Systems, Inc.
- Exhibit I: Installment Payment Agreement No. CAM268-8
- Exhibit II: ePlus Quotation No. 22567847

RECITALS

WHEREAS, on June 1, 2014, State of Utah and Cisco Systems Inc., entered into NASPO ValuePoint Contract No. AR233, hereinafter referred to as “WSCA-NASPO Contract”, for Cisco Data Communication Equipment Services with Cisco Systems, Inc., effective for the period of June 1, 2014 through May 31, 2021; and

WHEREAS, the State of California has entered into a Participating Addendum No. 7-14-70-04 with the Cisco Systems, Inc. (California Participating Addendum”); and

WHEREAS, Contractor is an Authorized Reseller or Fulfillment Partner for Cisco Systems, Inc.; and

WHEREAS, County and Contractor desire to enter into Contract for Cisco Enterprise Network Equipment for JWA Network Redesign to be provided as further set forth herein by this reference; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

I. Definitions:

- A. **“Business Day” or “Business Hours”** means Monday through Friday 8:00 a.m. to 5:00 p.m. U.S. Pacific time, excluding California and federal public holidays in the United States.
- B. **“Deliverable(s)”** means tangible and intangible information, material, equipment and/or assets that must be provided by Contractor to County under the terms of this Contract, including any other items as set forth in Attachment A, Scope of Work.

II. County General Terms and Conditions:

A. Governing Law and Venue: This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.



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B. Entire Contract: This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Subject to the provisions of Attachment C – California Participating Addendum No. 7-14-70-04, and its amendments; Attachment D – State of Utah WSCA-NASPO Master Agreement Number AR233 with Cisco Systems, Inc., and its amendments; and Exhibit I – Installment Payment Agreement No. CAM268- 8, electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. Delivery: Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor’s expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Notwithstanding the foregoing or anything to the contrary herein, (a) County acknowledges that the only the Deliverables or work being performed by Contractor hereunder is for the procurement of Cisco Enterprise Network Equipment and reselling such Cisco Enterprise Network Equipment to County, and (b) all applicable termination provisions relating to the Cisco Enterprise Network Equipment are specified in Attachment C – California Participating Addendum No. 7-14-70-04, and its amendments; Attachment D – State of Utah WSCA-NASPO Master Agreement Number AR233 with Cisco Systems, Inc., and its amendments; and Exhibit I – Installment Payment Agreement No. CAM268-8. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance/Payment: Unless otherwise agreed to in writing by County, 1) acceptance shall be deemed complete upon Contractor’s resale of the Deliverables specified herein to County and 2) payment shall be made in accordance with the requirements in Attachment B – Compensation and Payment.

G. Warranty: Contractor expressly warrants that the goods covered by this Contract are free of liens or encumbrances. Except for the express warranties made herein, all other applicable warranties are between Cisco Systems, Inc. (“Cisco”) and County, as specified in Attachment C –California Participating Addendum No. 7-14-70-04, and its amendments, and Attachment D – State of Utah WSCA-NASPO Master Agreement Number AR233 with Cisco Systems, Inc., and its amendments. Acceptance of this order shall constitute an agreement upon Contractor’s part to indemnify, defend and hold County and its indemnities as identified in paragraph “Z” below, and as more fully described in paragraph “Z,” harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any



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applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CONTRACTOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS SOLD OR SERVICES PROVIDED BY THIRD PARTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER DOES NOT AFFECT THE TERMS OF ANY WARRANTY PROVIDED BY CISCO.

H. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees. Notwithstanding the foregoing, any applicable warranty of non-infringement or any indemnification claims related to the Cisco Enterprise Network Equipment are detailed in Attachment C – California Participating Addendum No. 7-14-70-04, and its amendments, and Attachment D – State of Utah WSCA-NASPO Master Agreement Number AR233 with Cisco Systems, Inc., and its amendments. Contractor has no control over the manufacturing of the Deliverables being resold to County herein, therefore it cannot and does not indemnify County for claims that the Deliverables infringe on or misappropriates any patent, copyright, trademark, trade secret, or any other proprietary right.

I. Assignment: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. Non-Discrimination: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. Termination: In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified in Attachment C – California Participating Addendum No. 7-14-70-04, and its amendments; Attachment D – State of Utah WSCA-NASPO Master Agreement Number AR233 with Cisco Systems, Inc., and its amendments; and Exhibit I – Installment Payment Agreement No. CAM268-8. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether



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express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. Independent Contractor: Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. Performance Warranty: Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors. For purposes of clarity, the parties agree that Cisco shall not be deemed a subcontractor hereunder.

O. Insurance Requirements: Contractor will need to comply with the following insurance requirements if making the deliveries to the County of Orange. No insurance is required if a common carrier makes deliveries to the County of Orange.

Prior to the provision of services under this contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor, and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and



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- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.
If the Contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage**Minimum Limits**

Commercial General Liability

\$1,000,000 per occurrence
\$2,000,000 aggregateAutomobile Liability including coverage
for owned, non-owned and hired vehicles\$1,000,000 per occurrence
\$10,000,000 only if commercial
ramp access is needed

Workers' Compensation

Statutory

Employers' Liability Insurance

\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage, which will state **As Required by Written Contract**.
- 2) A primary non-contributing endorsement using ISO Form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers,**



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employees and agents, or provide blanket coverage, which will state *As Required by Written Contract*.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which the County may suspend or terminate this contract.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply



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to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. Force Majeure: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. Confidentiality: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. Compliance with Laws: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. Freight: Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.

V. Severability: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

X. Interpretation: This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal



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or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. Audits/Inspections: Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection and such date will be mutually agreed upon.

The County reserves the right to audit and verify the Contractor's records before final payment is made. Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's Contract coordinator.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

III. Additional Terms and Conditions:

1. **Scope of Work:** This Contract and its Attachments specifies the contractual terms and conditions by which the County will procure Cisco Enterprise Network Equipment from Contractor. The details



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of the Deliverables to be provided by Contractor are further outlined in Attachment A entitled, "Scope of Work", attached hereto and incorporated herein by this reference.

2. Term of Contract: The term of this Contract shall be effective upon full execution of all required signatures and continue until all Deliverables have been provided by Contractor, unless otherwise terminated by County pursuant to the termination provisions of this Contract. Should the California Participating Addendum or WSCA-NASPO Contract (including for the purposes of this paragraph any renewal or successive WSCA-NASPO Contract or California Participating Addendum) expire or terminate before the expiration or termination of this Contract's initial or renewal terms, this Contract will remain in effect for the then-current term set forth in the Contract or renewal amendment (as applicable) that was executed before the WSCA-NASPO Contract or California Participating Addendum expired or terminated regardless of whether delivery of the Deliverables is completed after the WSCA-NASPO Contract or California Participating Addendum expired or terminated.

3. Compensation and Payment: Contractor agrees to accept the compensation in the manner specified, as set forth in Attachment B entitled, "Compensation and Payment", as full remuneration for (a) providing all services and furnishing all staffing, materials and Deliverables required under this Contract, (b) any reasonable unforeseen difficulties which may arise or to be encountered in the performance of the services until acceptance, (c) risks connected with the services, and (d) performance by Contractor of all its duties and obligations required herein as they now exist or may hereafter be amended. County has no obligation to pay any sum in excess of the total Contract amount specified herein unless authorized by written amendment. Any terms and conditions in Contractor's invoice shall be deemed to be solely for the convenience of Contractor and no such term or condition shall be binding upon the Parties.

Except for the payment of its fees, neither Contractor nor Contractor's agents, employees, or subcontractors, are entitled to any damages from County, nor is any Party entitled to be reimbursed by County, for damages, charges, or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the services, whether or not caused by County.

4. Not to Exceed Limit: Subject to Attachment B, the total amount of this Contract shall not exceed \$1,421,086.31, the County shall have no obligation to pay any sum in excess of this amount unless authorized by written amendment signed by both Parties, and which may require approval by the Orange County Board of Supervisors.

5. Order of Precedence: In the event of any inconsistency between the articles, attachments, or provisions which constitute this Contract, the following descending order of precedence shall apply:

- a. The terms and conditions in the body of this Contract MA-280-21010706;
- b. Attachment A – Scope of Work;
- c. Attachment B – Compensation and Payment;
- d. Attachment C – California Participating Addendum No. 7-14-70-04 and its amendments;
- e. Attachment D – State of Utah WSCA-NASPO Master Agreement Number AR233 with Cisco Systems, Inc., and its amendments;
- f. Exhibit I – Installment Payment Agreement No. CAM268-8; and
- g. Exhibit II – ePlus Quotation No. 22567847

6. Non-Appropriation Clause: This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the remainder of the Contract will be terminated in whole without penalty to the County.

7. Ownership of Documents: County has permanent ownership of all directly connected and derivative materials produced under this Contract by Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole



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property of County and may be used by County as it may require without additional costs to County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by Contractor without the express written consent of County.

8. Data – Title to: All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.

9. Materials Subject to Disclosure: This Contract including its Attachments and Deliverables, as defined by this Contract, may be subject to disclosure pursuant to court order or applicable law, including but not limited to Section 6250 et seq. of the California Public Records Act.

10. Counterparts: This Contract may be executed in multiple counterparts, each of which when executed and delivered shall be deemed an original, but all of which together shall constitute one and the same agreement. This Contract shall be deemed executed and binding upon the Parties when at least one counterpart bears the signature of each Party's authorized signatory or signatories.

11. Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

County: JWA/Information Systems
Attention: Jessica Miller, Project Manager
3160 Airway Avenue
Costa Mesa, CA 92626
Phone: 949-252-5294
Email: jmiller@ocair.com

JWA/Procurement
Attention: Maria Albelo, DPA
3160 Airway Avenue
Costa Mesa, CA 92626
Phone: 949-252-5175
Email: malbelo@ocair.com

Contractor: ePlus Technology, Inc.
Attention: John Karle
13595 Dulles Technology Dr.
Herndon, VA 20171-3413
Phone: 949-988-6852
Email: JKarle@EPLUS.com



County of Orange, John Wayne Airport

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Signature Page

IN WITNESS WHEREOF, Parties hereto have executed this Contract on the dates shown below their respective signatures below.

ePlus Technology Inc.*

<small>DocuSigned by:</small> 	Don McLaughlin	VP Contracts & Assistant Secretary	11/11/2020
<small>Signature</small>	<small>Name</small>	<small>Title</small>	<small>Date</small>
<small>DocuSigned by:</small> 	Steven Mencarini	SVP	11/11/2020
<small>Signature</small>	<small>Name</small>	<small>Title</small>	<small>Date</small>

**If Contractor is a corporation, signatures of two specific corporate officers are required as further set forth:*

The first signature must be one of the following: a) Chairman of the Board; b) President; or c) any Vice President.

The second signature must be one of the following: a) Secretary; b) Chief Financial Officer; c) any Assistant Secretary; or d) any Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County Authorized Signature

Deputy Purchasing Agent

<small>Signature</small>	<small>Name</small>	<small>Title</small>	<small>Date</small>
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APPROVED AS TO FORM:

County Counsel

By

Deputy

Date 11-13-2020



County of Orange, John Wayne Airport

Contract MA-280-21010706

Cisco Enterprise Network Equipment for JWA Network Redesign

**ATTACHMENT A
SCOPE OF WORK**

I. Overview

The County is seeking to procure replacement equipment to refresh the airports network infrastructure, including switches, routers and firewalls.

II. Contractor Responsibilities

Contractor shall provide the following goods identified in Exhibit II – ePlus Quotation No. 22567847

(Remainder of Page Intentionally Left Blank)



County of Orange, John Wayne Airport

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ATTACHMENT B COMPENSATION/PAYMENT

- 1. Compensation:** This is a fixed price Contract between County and Contractor for Cisco Enterprise Network Equipment. Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and Deliverables identified in Attachment A, Scope of Work, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The total amount of this Contract shall not exceed **\$1,421,086.31**. County shall have no obligation to pay any sum in excess of this amount unless authorized by written amendment signed by both Parties, and which may require approval by the Orange County Board of Supervisors. Contractor shall bill County for goods provided and Services rendered as outlined below.

- A. Payment Schedule for Cisco Enterprise Network Equipment identified in Exhibit II – ePlus Quotation #22567847:

Payment Number	Payment Due Date	Payment Amount
#1	Net 30 Upon Date of Acceptance	\$100,000.00
#2	Due on July 15, 2021	\$413,043.82
#3	Due on July 15, 2022	\$413,043.82
#4	Due on July 15, 2023	\$413,043.82
Subtotal:		\$1,339,131.46
Sales Tax:		\$81,954.85
Total Payments:		\$1,421,086.31

- B. Payment for sales tax on hardware is payable upon date of acceptance and will be individually invoiced in the amount of \$81,954.85

2. Payment Terms:

- A. Invoices for goods are to be submitted in advance upon Date of Acceptance by County and in accordance with Exhibit I –Installment Payment Agreement No. CAM268-8.
- B. Invoices for sales tax are to be submitted in advance upon Date of Acceptance by County and in accordance with Exhibit I –Installment Payment Agreement No. CAM268-8.

Billing shall cover goods and services not previously invoiced. Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods and services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any goods or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

- 3. Payment-Invoicing Instructions:** Each invoice must be on Contractor's letterhead and have a unique number and shall include the following information:



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1. Contractor's name and address
2. Contractor's remittance address
3. County Subordinate Agreement #MA-280-21010706
4. Delivery/service address
5. Contractor's Federal I.D. Number
6. Date of order/Service date(s)
7. Product/service description, quantity, and prices
8. Total invoice amount

Invoices and support documentation are to be forwarded to **(not both)**:

John Wayne Airport
Attention: Accounts Payable
3160 Airway Avenue
Costa Mesa, CA 92626

Or

Email to:
AccountsPayable@ocair.com



County of Orange, John Wayne Airport

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ATTACHMENT C
California Participating Addendum No. 7-14-70-04

(See Separate Attachment)



County of Orange, John Wayne Airport

Contract MA-280-21010706

Cisco Enterprise Network Equipment for JWA Network Redesign

ATTACHMENT D

State of Utah WSCA-NASPO Master Agreement Number AR233 with Cisco Systems, Inc.

(See Separate Attachment)



County of Orange, John Wayne Airport

Contract MA-280-21010706

Cisco Enterprise Network Equipment for JWA Network Redesign

EXHIBIT I

Installment Payment Agreement No. CAM268-8

(See Separate Attachment)



County of Orange, John Wayne Airport

Contract MA-280-21010706

Cisco Enterprise Network Equipment for JWA Network Redesign

EXHIBIT II

ePlus Quotation No. 22567847

(See Separate Attachment)

STATE OF CALIFORNIA
PARTICIPATING ADDENDUM NO. 7-14-70-04

Data Communications Products and Services
Utah WSCA-NASPO Master Price Agreement No. AR233
Cisco Systems, Inc.

This Participating Addendum Number 7-14-70-04 is entered into between the State of California, Department of General Services (hereafter referred to as "State" or "DGS") and Cisco Systems, Inc. (hereafter referred to as "Contractor") under the lead State of Utah WSCA-NASPO Cooperative Purchasing Organization (WSCA-NASPO) Master Price Agreement Number AR233.

1. Scope

- A. This Participating Addendum covers the purchase of Data Communications Products and Services under the Utah WSCA-NASPO Master Price Agreement Number AR233. The WSCA-NASPO Master Price Agreement is hereby incorporated by reference and shall apply to the purchase of goods and services made under this Participating Addendum.
- B. This Participating Addendum is available for use by all State Departments and California political subdivisions/local governments. A political subdivision/local government is defined as any city, county, city and county, district, or other local governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges empowered to expend public funds.
- C. Each political subdivision/local government is to make its own determination whether this Participating Addendum and the WSCA-NASPO Master Price Agreement are consistent with its procurement policies and regulations.

2. Term

- A. The term of this Participating Addendum shall begin upon signature approval by the State and will end May 31, 2019, or upon termination by the State, whichever occurs first.
- B. Lead State amendments to extend the Master Price Agreement term date are not automatically incorporated into this Participating Addendum. Extension(s) to the term of this Participating Addendum will be through a written amendment upon mutual agreement between the State and the Contractor.

3. Mandatory Statewide Contracts

Product and service categories that are available on mandatory California statewide contracts for information technology (IT) hardware cannot be purchased from this Participating Addendum by State Departments without an exemption. State Departments are responsible for obtaining an exemption from DGS prior to issuing a purchase order.

This restriction is not applicable to political subdivisions/local governments.

4. Terms and Conditions

Terms and conditions listed below are hereby incorporated by reference and made a part of this Participating Addendum as if attached herein and shall apply to the purchase of goods or services made under this Participating Addendum. These include:

- A. Exhibit A: General Provisions – Information Technology, GSPD401IT, effective 11/27/2013, as modified per attached Exhibit A, and on an order by order basis in a Statement of Work for those sections approved by DGS.
- B. Exhibit B: American Recovery and Reinvestment Act (ARRA) Supplemental Terms and Conditions, revised 08/10/09. The supplemental terms and conditions for contracts using ARRA funds apply to the ordering agency. If or when Contractor, as a vendor, is notified by ordering agency that a specific purchase or purchases are being made with ARRA funds, Contractor agrees to comply with the data element and reporting requirements that are legally required of providers of goods and related services. Contractor as it relates to purchases under this Participating Addendum is not a subcontractor or sub grantee, but simply a provider of goods and related services.

5. Order of Precedence

In the event of any inconsistency between the articles, attachments, or provisions which constitute this agreement, the following descending order of precedence shall apply:

- A. California Participating Addendum Number 7-14-70-04 (including Exhibits A and B).
- B. Utah WSCA-NASPO Master Price Agreement Number AR233

6. Available Products and Services

This Participating Addendum includes the following product and service categories:

- A. 5.2.1 – Data Center Application Services
- B. 5.2.2 – Networking Software
- C. 5.2.3 – Network Optimization and Acceleration
- D. 5.2.4 – Optical Networking
- E. 5.2.5 - Routers
- F. 5.2.6 - Security
- G. 5.2.7 – Storage Networking
- H. 5.2.8 – Switches
- I. 5.2.9 – Wireless
- J. 5.3.0 – Unified Communications*

* Non-exempt State Agencies are mandated by policy to utilize the CALNET 3 Statewide Contract(s) to obtain "Required" telecommunications and network services unless otherwise authorized by the Department of Technology.

7. Disallowed Products and Services

A. Cloud Computing

Cloud computing elements are not allowed under this Participating Addendum. However if State of California terms and conditions are developed for Software as a Service, Infrastructure as a Service, or Platform as a Service, the State reserves the right to amend this Participating Addendum to include such provisions and related goods and services.

B. These restrictions do not apply to political subdivisions/local governments.

8. Price List

A. Contractor shall submit a Product and Service Schedule (PSS) identifying all products and services offered under this Participating Addendum for the State's approval.

B. The PSS shall include the following:

- 1) Manufacturer Part Number or Item Number
- 2) List Price
- 3) Minimum Discount off List Price
- 4) Contract Price

C. Contractor shall maintain a website dedicated to this Participating Addendum which contains the State-approved PSS.

D. Contractor shall submit a written notice of price increases/decreases and a revised PSS for the State's approval prior to updating the Contractor's dedicated website for this Participating Addendum.

E. State-approved PSS will be posted on the State's eProcurement website.

9. Equipment Additions/Deletions

A. Contractor may add or delete equipment introduced or removed from the market by the manufacturer under the following conditions:

- 1) Equipment is within existing awarded categories under the WSCA-NASPO Master Price Agreement;
- 2) Contractor has obtained prior approval from the Utah WSCA-NASPO Contract Administrator; and
- 3) Contractor receives written approval from the California State Contract Administrator.

B. Contractor shall submit a written notice of equipment additions/deletions and a revised PSS for the State's approval prior to updating the Contractor's dedicated website for this Participating Addendum.

C. Contractor shall not add new categories or groups of equipment or services under this Participating Addendum that were not originally included in the WSCA-NASPO Master Price Agreement.

10. Servicing Subcontractors

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the Contractor. Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor.
- B. As the prime contractor, contractor is responsible for reports and fees required by the terms and conditions of the WSCA/NASPO Master Price Agreement and State Participating Addendum.
- C. Subject to the approval of the State, subcontractors may be added on a quarterly basis during the term of the contract. Contractors shall notify the State of any deleted subcontractors or changes to current subcontractors contact information at any time during the contract term.
- D. Contractor shall submit a subcontractor list identifying the company name, address, contact name, phone number and email of authorized subcontractors to the State's Contract Administrator for the State's approval prior to updating its California specific contract website.
- E. State-approved Servicing Subcontractor will be posted on the State's eProcurement website.

11. Ordering Agency Responsibilities

- A. State department and political subdivision/local government use of this Participating Addendum is optional.
- B. A User Instructions guide will be prepared and administered by the State Contract Administrator.
- C. Ordering agencies must follow the Contractor Selection and Request for Offer (RFO) process outlined within the User Instructions guide prior to executing orders against this Participating Addendum.

12. Contractor Responsibilities

Contractor must respond to the ordering agency's RFO to be eligible to receive a Purchase Order under this Participating Addendum.

13. Invoicing

Participating Addendum No. 7-14-70-04

The State Participating Addendum Number and Ordering Agency Purchase Order Number shall appear on each purchase order and invoice for all purchases placed under this Participating Addendum.

14. Usage Reporting

- A. Contractor shall submit usage reports on a monthly basis to the State Contract Administrator for all California entity purchases using the report template attached hereto as Attachment A.
- B. The report is due even when there is no activity.
- C. The report shall be an Excel spreadsheet transmitted electronically to the DGS mailbox at PDWSCA@dgs.ca.gov.
- D. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected reports within five business days of the date of written notification from the State.
- E. Tax must not be included in the report, even if it is on the purchase order.
- F. Reports are due each month as follows:

Reporting Period and Due Date			
Jan -- Due Feb 15		May -- Due Jun 15	Sep -- Due Oct 15
Feb -- Due Mar 15		Jun -- Due Jul 15	Oct -- Due Nov 15
Mar -- Due Apr 15		Jul -- Due Aug 15	Nov -- Due Dec 15
Apr -- Due May 15		Aug -- Due Sep 15	Dec -- Due Jan 15

- G. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of this contract.
- H. Amendments for term extensions may be approved only if all due reports have been submitted to the State.

15. Administrative Fee

- A. Contractor shall submit a check, payable to the State of California, remitted to the WSCA Payment Processing Unit for the calculated amount equal to one percent (0.01) of the sales for the quarterly period.
- B. Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.
- C. Administrative fee checks shall be submitted to:

State of California
Department of General Services, Procurement Division
Attention: WSCA Payment Processing
707 3rd Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

- D. The administrative fee shall not be included as an adjustment to Contractor's WSCA-NASPO Master Price Agreement pricing.
- E. The administrative fee shall not be invoiced or charged to the ordering agency.
- F. Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a purchasing entity.
- G. Administrative fee checks are due for each quarter as follows:

Reporting Period	Due Date
JUL 1 to SEP 30	OCT 31
OCT 1 to DEC 31	JAN 31
JAN 1 to MAR 31	APR 30
APR 1 to JUN 30	JUL 31

- H. Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of this contract.

16. Contract Management

- A. The primary Contractor Contract Manager for this Participating Addendum shall be as follows:

Contractor: Cisco Systems, Inc.
Name: Mimi Farr
Phone: (408) 527-2627
E-Mail: mimnguye@cisco.com

Address: 170 West Tasman Drive
San Jose, CA 95134

- B. Should Contractor Contract Manager information change, the Contractor will provide written notice with the updated information to the State Contract Administrator no later than ten business days after the change.
- C. The State Contract Administrator for this Participating Addendum shall be as follows:

Name: Bonnie Bahnsen
Phone: (916) 375-4383
Fax: (916) 375-4663
E-Mail: Bonnie.Bahnsen@dgs.ca.gov
Address: State of California
Department of General Services
Procurement Division
707 Third Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

- D. Should State Contract Administrator information change, the State will provide written notice with the updated information to the Contractor Contract Manager no later than ten business days after the change.

17. Termination of Agreement

The State may terminate this Participating Addendum at any time upon 30 days prior written notice to the Contractor. Upon termination or other expiration of this Participating Addendum, each party will assist the other party in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

18. Amendment

No amendment or variation of the terms of this Participating Addendum shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Participating Addendum is binding on any of the parties.

19. Agreement

- A. This Participating Addendum and the Master Price Agreement together with its exhibits and/or amendments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Price Agreement, together with its exhibits and/or amendments, shall not be added to or incorporated into this Participating Addendum or the Master Price Agreement and its exhibits and/or amendments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Price Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.

- B. By signing below Contractor agrees to offer the same products/and or services as on the Utah WSCA-NASPO Master Price Agreement Number AR233, at prices equal to or lower than the prices on that contract.
- C. IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

STATE OF CALIFORNIA

By: JCW for JB
Name: Jim Butler
Title: Deputy Director
Date: 9/23/14

Cisco Systems, Inc.

By: [Signature]
Name: Phil Lozano
Title: Director, Finance
Date: SEP 17 2014

APPROVED BY LEGAL

GSPD-401IT

(REVISED AND EFFECTIVE 11/27/2013)
EXHIBIT A**GENERAL PROVISIONS – INFORMATION TECHNOLOGY**

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.
- a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
 - b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
 - c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer that is not connected by the Contractor.
 - d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - e) **"Buyer"** means the State's authorized contracting official.
 - f) **"Commercial Hardware"** means Hardware developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - g) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - h) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - i) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
 - j) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - k) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
 - l) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
 - m) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
 - n) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
 - o) **"Documentation"** means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
 - p) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any).
 - q) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
 - r) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
 - s) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
 - t) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
 - u) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
 - v) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
 - w) **"Machine"** means an individual unit of a Data Processing System or Subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
 - x) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
 - y) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
 - z) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
 - aa) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
 - bb) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.

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- cc) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- dd) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- ll) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- nn) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
2. **CONTRACT FORMATION:**
- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this Contract falls within the scope of Government Code Section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought to

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its attention, regarding accessibility of its products or services.

8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

9. **ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, the State will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder.

10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

11. ~~ORDER OF PRECEDENCE: In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:~~

- a) ~~These General Provisions – Information Technology (in the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);~~
- b) ~~Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 243, etc., and any amendments thereto;~~
- c) ~~Statement of Work, including any specifications incorporated by reference herein;~~
- d) ~~Cost worksheets; and~~
- e) ~~All other attachments incorporated in the Contract by reference.~~

12. **PACKING AND SHIPMENT:**

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) show the number of the container and the total number of containers in the shipment; and
 - ii) the number of the container in which the packing sheet has been enclosed.

- b) All shipments by the Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) The Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, the Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

14. **DELIVERY:** The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at the Contractor's expense or utilize any other rights available to the State at law or in equity.

15. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. The Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

16. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:

- a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of the Contractor's quality assurance System or other similar business practices related to performance of the Contract.

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- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
- f) Unless otherwise specified in the Statement of Work, title to Equipment shall remain with the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.

17. SAMPLES:

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at the Contractor's expense.

18. WARRANTY:

- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right.

Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.

- c) Unless otherwise specified in the Statement of Work:
 - (i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by the Contractor, or (C) misuse by the State.
 - (iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and the Contractor's sole obligation will be limited to:
 - (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on the Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19. SAFETY AND ACCIDENT PREVENTION: In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

20. INSURANCE: The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under the Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificates(s) is insufficient for this purpose. When performing work on state owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.

21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

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- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
- b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
- c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO THE CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- (i) Stop work as specified in the Notice of Termination.
 - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - (iii) Terminate all subcontracts to the extent they relate to the work terminated.
 - (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
- d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
- e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
- (i) The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
 - (ii) The total of:
 - A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto,

- but excluding any cost attributable to Deliverables or services paid or to be paid;
- B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
- C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23. TERMINATION FOR DEFAULT:

- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
- i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii) Perform any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under sub-section a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
- (i) completed Deliverables,
 - (ii) partially completed Deliverables, and,
 - (iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

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- f) If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."
- 24. FORCE MAJEURE:** Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:
- Acts of God or of the public enemy, and
 - Acts of the federal or State government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.
- 25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
 - In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
 - In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
 - The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefore.
- 26. LIMITATION OF LIABILITY:**
- Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that the Contractor will have a separate limitation of liability for each purchase order.
 - The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations" (ii) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that the Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that the Contractor's liability for such damages arises out of subsection b)(i), b)(ii), or b)(iv) above.
- 27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
 - The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.
- 28. INDEMNIFICATION:** The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:
- The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number, release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

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30. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
31. **TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
32. **NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.
33. **CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
34. **CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.
35. **NEWS RELEASES:** Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
36. **DOCUMENTATION:**
- The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
 - If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on the Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.
37. **RIGHTS IN WORK PRODUCT:**
- All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including the Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be the Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
 - Software and other materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with the Contractor's or its affiliates' ownership of Pre-Existing Materials.
 - The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
 - The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
 - This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.
38. **SOFTWARE LICENSE:** Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").
- The State may use the Software Products in the conduct of its own business, and any division thereof
 - The license granted above authorizes the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.

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- c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
- d) Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.

39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

- a) The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for the State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

40. RIGHT TO COPY OR MODIFY:

- a) Any Software Product provided by the Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below, provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any time without prior written consent of the Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.
- b) The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of the Contract.

41. **FUTURE RELEASES:** Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State's option at a price no greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.

42. ENCRYPTION/CPU ID AUTHORIZATION CODES:

- a) When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the

Contractor will provide all codes to the State with delivery of the Software.

- b) In case of an inoperative CPU, the Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.
- c) When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, the Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.

43. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section will be conditional upon the following:

- (i) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - (ii) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such

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infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid the Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - (i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
 - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
 - (iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or
 - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

44. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the contracting Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the contracting Department Director or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the Department of General Services, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting Department Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.

- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 days after receipt of the Contractor's appeal for a final decision, it shall be deemed a final decision adverse to the Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in subsection a above. The Department Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention. The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- e) The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

45. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

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- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
- 46. EXAMINATION AND AUDIT:** The Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation directly pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.
- 47. FOLLOW-ON CONTRACTS:**
- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - development or design of test requirements;
 - evaluation of test data;
 - direction of or evaluation of another Contractor;
 - provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
- to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.
- 48. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
- 49. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 50. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
- 52. ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall

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- be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- the assignee has not been injured thereby, or
 - the assignee declines to file a court action for the cause of action.
- 53. DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - the dangers of drug abuse in the workplace;
 - the person's or organization's policy of maintaining a drug-free workplace;
 - any available counseling, rehabilitation and employee assistance programs; and,
 - penalties that may be imposed upon employees for drug abuse violations.
 - Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - will receive a copy of the company's drug-free policy statement; and,
 - will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 54. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
- 55. SWEATFREE CODE OF CONDUCT:**
- Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b) The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).
- 56. RECYCLED CONTENT REQUIREMENTS:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material (as defined in the Public Contract Code (PCC) Section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12155(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).
- 57. CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:
- The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 58. AMERICANS WITH DISABILITIES ACT:** The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- 59. ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
- 60. USE TAX COLLECTION:** In accordance with PCC Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
- 61. EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.
- 62. DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code Section 10295.3.

GSPD-401IT

(REVISED AND EFFECTIVE 11/27/2013)

GENERAL PROVISIONS – INFORMATION TECHNOLOGY**63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**

- a) If for this Contract the Contractor made a commitment to achieve small business participation, then the Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b) If for this Contract the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

- 64. LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).).

**SUPPLEMENTAL TERMS AND CONDITIONS FOR
CONTRACTS USING ARRA FUNDS
EXHIBIT B**

1. **ARRA FUNDED PROJECT:** Funding for this contract has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.
2. **ENFORCEABILITY:** Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.
3. **PROHIBITION ON USE OF ARRA FUNDS:** Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.
4. **REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:** Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.
5. **WAGE RATE REQUIREMENTS:** In accordance with ARRA, Section 1606, the Contractor assures that it and its subrecipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.
6. **INSPECTION OF RECORDS:** In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.
7. **WHISTLEBLOWER PROTECTION:**
Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.
8. **FALSE CLAIMS ACT:** Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
9. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:
 - a. The total amount of ARRA funds received by Contractor during the Reporting Period;
 - b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
 - c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:

08/10/09

**SUPPLEMENTAL TERMS AND CONDITIONS FOR
CONTRACTS USING ARRA FUNDS
EXHIBIT B**

- (i.) The name of the project or activity;
- (ii.) A description of the project or activity;
- (iii.) An evaluation of the completion status of the project or activity; and
- (iv.) An estimate of the number of jobs created and /or retained by the project or activity;

d. For any contracts equal to or greater than \$25,000:

- (i.) The name of the entity receiving the contract;
- (ii.) The amount of the contract;
- (iii.) The transaction type;
- (iv.) The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
- (v.) The Program source;
- (vi.) An award title descriptive of the purpose of each funding action;
- (vii.) The location of the entity receiving the contract;
- (viii.) The primary location of the contract, including the city, state, congressional district and country;
- (ix.) The DUNS number, or name and zip code for the entity headquarters;
- (x.) A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- (xi.) The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; 2) \$25M or more in annual gross revenue from Federal awards and; 3) if the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;

e. For any contracts of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation.

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov. The additional requirements will be added to this contract(s).

08/10/09

STATE OF UTAH - STATE COOPERATIVE CONTRACT**CONTRACT NUMBER AR233**

1. **CONTRACTING PARTIES:** This State Cooperative Contract is between the **Division of Purchasing and General Services (State)**, 3150 State Office Building, PO Box 141061, Salt Lake City, UT 84114-1061, an agency of the State of Utah, and the following **CONTRACTOR**:

Cisco Systems, Inc.

Name

170 West Tasman Dr.

Address

San Jose

CA

95134

City

State

Zip

(Corporate Headquarters Address)

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor
 Non-Profit Corporation
 For-Profit Corporation
 Partnership
 Government Agency

Contact Person Mimi Farr Phone # 408-527-2627 Fax # 408-608-1802 Email mimnguye@cisco.com
 Federal Tax ID# 77-0059951 Vendor #VC0000118462 Commodity Code #20458, 20464, 20621, 20623, 20659, 83833, 83800, 88332, 92000

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide:

Data communication equipment and services. A detailed list of awarded categories and subcategories are included in Attachment B - Scope of Work.

Cisco is authorized to provide equipment and services in the following categories:

- 5.2.1 Data Center Application Service
- 5.2.2 Networking Software
- 5.2.3 Network Optimization and Acceleration
- 5.2.4 Optical Networking
- 5.2.5 Routers
- 5.2.6 Security
- 5.2.7 Storage Networking
- 5.2.8 Switches
- 5.2.9 Wireless
- 5.3.0 Unified Communications

3. **CONTRACT PERIOD:** Effective date: June 1, 2014 Termination date: May 31, 2019 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): N/A
4. **PRICING AS PER THE ATTACHMENT C**
PAYMENT TERMS: Net 30
DAYS REQUIRED FOR DELIVERY: 30 days ARO
MINIMUM ORDER: N/A
FREIGHT TERMS: FOB Destination, Freight Prepaid
5. **ATTACHMENT A:** Standard Contract Terms and Conditions, State Cooperative Contract
ATTACHMENT B: Scope of Work
ATTACHMENT C: Product Offerings and Pricing
ATTACHMENT D: Vendors Response to Solicitation JP14001. The parties hereby acknowledge and agree that any exceptions stated in attachment "D" – Vendor's Proposal Response have been removed and/or resolved between the parties. Any exception in attachment "D" are explicitly NOT a part of this contract.

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A. State specific Terms and Conditions will be found in the executed Participating Addendums. State Terms


State of Utah Contract Number AR233

and Conditions in an executed Participating Addendum will take priority in the event of conflict between those terms and conditions and this Cooperative Contract.

- 6. 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 State Procurement Code, Procurement Rules, CONTRACTOR'S response to Bid #JP14001 and JP14001-1 dated August 30, 2013 and December 2, 2013.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR



Contractor's Signature March 19, 2014
 Juan Pablo Brockmann Date
 Director, Finance
 Type or Print Name and Title

STATE OF UTAH



Director, Div. of Purchasing & General Svs. 3/20/14
 Date

APPROVED BY LEGAL



ATTACHMENT A

WSCA-NASPO Master Agreement Terms and Conditions

1. AGREEMENT ORDER OF PRECEDENCE:

The Master Agreement shall consist of the following documents:

1. A Participating Entity's Participating Addendum ("PA");
2. WSCA-NASPO Master Agreement Terms and Conditions (the "Agreement" or "Master Agreement");
3. The Statement of Work;
4. The Solicitation; and
5. Contractor'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. 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. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor.

2. AMENDMENTS The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA-NASPO Contract Administrator.

3. ASSIGNMENT/SUBCONTRACT Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA-NASPO Contract Administrator, which approval will not be unreasonably withheld or delayed.

Notwithstanding the foregoing, 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.

4. CANCELLATION The Master Agreement may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the Master Agreement due to Contractor default may be immediate.

Cisco Systems, Inc.

On termination, all accounts and payments will be processed according to the financial arrangements set forth herein for products delivered and/or approved services rendered to date of termination.

Rights upon Termination or Expiration

1. Upon termination or expiration of this Master Agreement or a Participating Addendum, (a) Contractor reserves the right to cease all further delivery of product or services, and (b) all outstanding invoices become due and 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 Customer shall pay for such products or services in advance within thirty (30) days.
2. Except for a termination of this Master Agreement or a Participating Addendum resulting from Customer's breach of Contractor's proprietary rights and software licensing, Confidential Information, or Export, Re-Export, Transfer and Use Controls, upon termination or expiration of this contract, Customer may continue to use, in accordance with the terms and conditions of this contract and/or the Participating Addendum, 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.
3. In the event of any termination pursuant to this section, and unless otherwise required by law or court of competent jurisdiction, Customer shall remain obligated to comply in perpetuity with the provisions of Contractor's Software License terms, and Confidential Information.

5. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF

5.1 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 may be deemed confidential. 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 limited to, the following "Confidential Information": (a) any Participating Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of the disclosing party (the "Disclosing Party"). Any reports or other documents or items (including software) that result from the use of the Confidential Information shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by the Disclosing Party) publicly known; (b) is furnished by the Disclosing Party to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in the Receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from an independent source without the obligation of confidentiality, (e) is disclosed with the written consent of Participating Entity or; (f) is independently developed by employees, agents or subcontractors of either party who can be shown to have had no access to the Confidential Information.

Neither party shall disclose the Confidential Information to any third party, except that the receiving party may disclose Confidential Information to its employees, subcontractors, or Affiliates' employees and subcontractors only: (a) on a "need to know" basis, (b) consistent with the objectives of this Master Agreement, and (c) pursuant to separate written non-disclosure terms that contractually obligate such employees and subcontractors to maintain the confidentiality of the Confidential Information.

Notwithstanding termination of this Master Agreement as described herein, the obligations of the Receiving Party with respect to Confidential Information received prior to termination shall continue for three (3) years from the date the Confidential Information was received.

Customer agrees that aspects of the Software and associated documentation, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of Contractor.

5.2 Non-Disclosure. The Receiving Party shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use

Confidential Information for any purposes whatsoever other than the performance of this Master Agreement, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. The Receiving Party shall use commercially reasonable efforts to assist the Disclosing Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, the Receiving Party shall advise the Disclosing Party immediately if the Receiving 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 the Receiving Party shall at its expense cooperate with the Disclosing Party in seeking injunctive or other equitable relief in the name of the Disclosing Party against any such person. Except as directed by the Disclosing Party, the Receiving Party will not at any time during or 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 the Disclosing Party's request, the Receiving Party shall turn over to the Disclosing Party all documents, papers, and other matter in the Receiving Party's possession that embody Confidential Information. Notwithstanding the foregoing, the Receiving Party may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

5.3 Injunctive Relief. The parties acknowledge that breach of this Section, including disclosure of any Confidential Information, may cause irreparable injury to the Disclosing Party that is inadequately compensable in damages. Accordingly, the Disclosing Party may seek injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. The Receiving Party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Participating Entity and are reasonable in scope and content.

6. 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. If the contractor cannot certify this statement, attach a written explanation for review by WSCA-NASPO.

7. DEFAULTS & REMEDIES

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- i. Nonperformance of contractual requirements; or
- ii. A material breach of any term or condition of this Master Agreement; or
- iii. Any representation or warranty by Contractor in response to the solicitation or in this Master Agreement proves to be untrue or materially misleading; or
- iv. 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
- v. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the non-defaulting party shall issue a written notice of default, identifying the nature of the default, and providing a period of 60 calendar days in which the defaulting party shall have an opportunity to cure the default. The non-defaulting party 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 non-defaulting party, 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 the defaulting party's liability for damages, to the extent provided for under this Master Agreement.

Participating Addendum: 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 cure periods stated in the above paragraphs shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

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 Lead State shall have the right to exercise any or all of the following remedies:

- i. Exercise any remedy provided by law; and
- ii. Terminate this Master Agreement and any related Contracts or portions thereof; and
- iii. Suspend Contractor from receiving future bid solicitations; and
- iv. Suspend Contractor's performance; and
- v. Withhold payment until the default is remedied.

d. 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 have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum.

8. DELIVERY

8.1 After receipt and acceptance by Contractor of Customer'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 (v) situations where government rated orders create delays in lead-times.

Notwithstanding the foregoing, at any time when Customer states "expedite" on an order 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.

8.2 Contractor will communicate scheduled shipping dates in the order acknowledgement and/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, Customer 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 Customer after such notification.

8.3 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 Customer 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.

8.4 Shipping terms are FOB destination, shipping and handling prepaid by Contractor. The method of shipment shall be consistent with the nature of the products and hazards of transportation. Title and risk of loss shall pass to Customer upon delivery.

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

8.6 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.

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 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.

9. FORCE MAJEURE Neither party to this Master Agreement shall be held responsible for delay or default caused by including, but not limited to, fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA-NASPO may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

The obligations and rights of the excused party shall be extended on a day-by-day basis for the time period equal to the period of the excusable delay. When payments are delayed solely due to a force majeure event, late fees with respect to such payment will not accrue during the period of such force majeure event.

10. GOVERNING LAW This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the Master Agreement(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the Master Agreement(s) or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

11. INDEMNIFICATION

Each party to this Agreement shall defend, indemnify, and hold harmless the other, its corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), including without limitation those based on contract or tort, arising out of or in connection with a claim, suit, or proceeding brought by a third party based upon bodily injury (including death) or damage to tangible personal property (not including lost or damaged data) arising from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors, and assigns of any of them. In the event that the indemnified party's or a third party's negligent or intentional acts or omissions contributed to cause the injury or damage for which a claim of indemnity is being asserted against the indemnifying party hereunder, the damages and expenses (including, without limitation, reasonable attorneys' fees) shall be allocated or reallocated, as the case may be, between the indemnified party, the indemnifying party, and any other party bearing responsibility in such proportion as appropriately reflects the relative fault of such parties, or their subcontractors, or the officers, directors, employees, agents, successors, and assigns of any of them, and the liability of the indemnifying party shall be proportionately reduced.

The foregoing indemnification obligations are conditioned upon the 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.

12. INDEMNIFICATION – INTELLECTUAL PROPERTY

12.1 Contractor will have the obligation to defend any claim, action, suit, or proceeding ("IPR Claim") brought against Purchaser so far as it is based on a claim that any product supplied under this Master Agreement infringes Third Party IPR (as defined below). Contractor will indemnify Purchaser against any final judgment entered in respect of such an IPR Claim by a court of competent jurisdiction and against any settlements arising out of such an IPR Claim.

Contractor's obligations to defend the IPR Claim and indemnify the Purchaser are conditional upon:

- 12.1.1 Purchaser notifying Contractor promptly in writing of the IPR Claim or threat thereof;
 - 12.1.2 Purchaser giving Contractor full and exclusive authority for the conduct of the defense and settlement of the IPR Claim and any subsequent appeal; and
 - 12.1.3 Purchaser 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.
- 12.2 For the purposes of this Master Agreement, "Third Party IPR" means a United States copyright existing as at the date of order or a United States patent issued as at the date of order.
- 12.3 If an IPR Claim has been made, or in Contractor's reasonable opinion is likely to be commenced, Purchaser agrees to permit Contractor, at its option and expense, either to: (a) procure for Purchaser the right to continue using the product; (b) replace or modify the product so that it becomes non-infringing; or (c) immediately terminate both parties' respective rights and obligations under this Master Agreement with regard to the product, in which case Purchaser will return the product to Contractor and Contractor will refund to Purchaser the price originally paid by Purchaser to Contractor for the product, as depreciated or amortized by an equal annual amount over three (3) years from date of original shipment.
- 12.4 Notwithstanding the foregoing, Contractor has no liability for, and Purchaser will defend and indemnify Contractor against, any IPR Claim arising from:
- 12.4.1 the combination, operation, or use of a product supplied under this Master Agreement with any product, device, or software not supplied by Contractor;
 - 12.4.2 a Claim that asserts damages based upon the amount or duration of use which Purchaser makes of the product, revenue earned by Purchaser from services it provides which utilize the product, or services offered by Purchaser to external or internal customers;
 - 12.4.3 the alteration or modification of any product supplied under this Master Agreement from and after the date such product is so supplied and such alteration or modification is not made by Contractor;
 - 12.4.4 Contractor's compliance with Purchaser's designs, specifications, or instructions; or
 - 12.4.5 Purchaser's use of the product after Contractor has informed Purchaser of modifications or changes in the product required to avoid such an IPR Claim if the alleged infringement would have been avoided by implementation of Contractor's recommended modifications or changes.

THIS SECTION STATES THE ENTIRE OBLIGATION OF CONTRACTOR AND ITS SUPPLIERS, AND THE EXCLUSIVE REMEDY OF PURCHASER, IN RESPECT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS. THIS INDEMNITY OBLIGATION AND REMEDY ARE GIVEN TO PURCHASER SOLELY FOR ITS BENEFIT AND IN LIEU OF, AND CONTRACTOR DISCLAIMS, ALL WARRANTIES, CONDITIONS, AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO ANY PRODUCT.

Limitation of Liability. Except for those obligations under Intellectual Property Infringement, General Indemnity, notwithstanding anything else herein, all liability of Contractor and its suppliers to any Participating Entity for claims arising under this Agreement, the applicable Participating Addendum, or otherwise shall be limited to Three Million Dollars (\$3,000,000). This limitation of liability is cumulative and not per incident.

Waiver of Consequential and Other Damages. In no event shall Contractor or its suppliers be liable for any incidental, special, indirect, or consequential damages, or lost or damaged data (except for a loss of

Purchaser data caused by Contractor's negligence), arising in tort (including negligence), or otherwise, even if Contractor or its suppliers have been informed of the possibility thereof.

13. INDEPENDENT CONTRACTOR The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

14. INDIVIDUAL CUSTOMER Except to the extent modified by a Participating Addendum, each Participating 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 to recover any costs allowed in the Master Agreement and applicable Participating Addendum for their purchases. Each Participating Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Participating Entity individually.

15. INSURANCE 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 the Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's 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.

Coverage shall be written on an occurrence basis. The limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of \$1 million per occurrence/\$2 million general aggregate;
- b) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies.

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, but only to the extent of liabilities falling within Contractor's indemnity obligations pursuant to the terms of this 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.

Contractor shall furnish to Participating Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at State's sole option, result in this Master Agreement's termination. In addition, should any of the required insurance be cancelled or non-renewed, Contractor shall immediately replace such insurance and provide to Participating Entity a certificate of insurance evidencing the replacement insurance.

Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement.

16. LAWS AND REGULATIONS Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

17. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY

- 17.1 License. Conditioned upon compliance with the terms and conditions of the license granted herein or as represented in Contractor's End User License Agreement, Contractor grants to

Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees, subject to the terms herein and Exhibit 1, End User License Agreement.

Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or that number of agent(s), concurrent users, sessions, IP addresses, port(s), seat(s), server(s), or site(s), as set forth in the applicable Purchase Order which has been accepted by Contractor and for which Customer has paid to Contractor the required license fee.

Unless otherwise expressly provided in the documentation, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable documentation permits installation on non-Contractor equipment) for communication with Contractor equipment owned or leased by Customer and used for Customer's internal business purposes. For evaluation or beta copies for which Contractor does not charge a license fee, the above requirement to pay license fees does not apply.

17.2 General Limitations. This is a license, not a transfer of title, to the Software and Documentation, and Contractor retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Contractor, its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Accordingly, except as otherwise expressly provided under this Agreement, Customer shall have no right, and Customer specifically agrees not to:

17.2.1 transfer, assign or sublicense its license rights to any other person or entity, or use the Software on unauthorized or secondhand Contractor equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense, or use shall be void;

17.2.2 except as approved in writing by Contractor, make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;

17.2.3 reverse engineer or decompile, decrypt, disassemble, or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;

17.2.4 use or permit the software (other than embedded in the product) to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Contractor; or

17.2.5 except and to the extent expressly required by a Participating State's applicable records laws or final court order (provided that the Participating State provides: (1) prior written notice to Contractor of such obligation and (2) the opportunity to oppose such disclosure, provision, or otherwise making available), disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Contractor. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by law, and at Customer's written request, Contractor shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Contractor's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Contractor makes such information available.

17.3 Software, upgrades/updates, and additional copies.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS MASTER AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR

UPGRADES UNLESS CUSTOMER, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CONTRACTOR EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR WHO OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

- 17.4 Proprietary Notices. Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in this Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Contractor.
- 17.5 Term and Termination of License. This license granted herein shall remain effective until terminated. Customer may terminate the license at any time by destroying all copies of Software and any Documentation except as to the minimum number of copies required by law to keep for archival records purposes only. Customer's rights under this license will terminate immediately if Customer fails to comply with any material provision of this license and Contractor will give Customer notice of such non-compliance. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control.
- 17.6 Customer Records. Customer grants to Contractor and its independent accountants the right to examine Customer's books, records, and accounts during Customer's normal business hours to verify compliance with this license. In the event such audit discloses non-compliance with this license, Customer shall promptly pay to Contractor the appropriate license fees, plus the reasonable cost of conducting the audit. In all other circumstances, the audit fees shall be paid by Contractor.

18. 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 a Lead State or a Participating Entity, be a waiver by the Participating Entity 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.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating 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.

19. ORDER NUMBERS Master Agreement order and purchase order numbers shall 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 Customer purchase order number in the free form notes.

ORDERS. Notwithstanding anything contained in the Master Agreement to the contrary:

1. Contractor reserves the right to require that purchases be made through Fulfillment Partners. Where so 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.

2. Any contingencies on Purchaser'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 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.
3. 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.
4. 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 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 Customer may cancel the order without charge.
5. 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 2, 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.
6. 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. Purchaser 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 Purchaser is exempt from property and sales taxes, it will not be charged same.
7. 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: <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.

20. PARTICIPANTS WSCA-NASPO is the cooperative purchasing arm of the National Association of State Procurement Officials. It is a cooperative group contracting consortium 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 organized US territories. Obligations under this Master Agreement are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive. Purchaser under a *Participating Addendum* shall have no liability to Contractor beyond funds that are appropriated and made available to the Purchaser by the applicable legislative body. If sufficient funds are not appropriated by legislative action to a Purchaser as to any future period, Purchaser may terminate its Order(s) prospectively as to such future performance impacted by and to the extent of non-appropriation, or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser shall notify Contractor in writing of such non-appropriation within thirty (30) calendar days of final legislative action.

21. ENTITY PARTICIPATION Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other 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.

22. PAYMENT

Upon and subject to credit approval by Contractor, payment is net thirty (30) days from invoice date. Invoices for products ordered without implementation services shall be rendered by Contractor 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.

Where permitted by the law of the Participating State/Entity, lease financing is an allowable payment option under the resulting contract. The terms and conditions of the capital lease financing arrangement with Cisco Capital, or its designated and/or approved financing partner, will be set forth between the purchaser and Cisco Capital or its designated and/or approved financing partner.

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

24. RECORDS ADMINISTRATION AND AUDIT The contractor will maintain, or require the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this Master Agreement. These records will be retained by the contractor for at least four years after the Master Agreement terminates, or until all audits initiated within the four years have been completed, whichever is later. The contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access to all the records of this Master Agreement and any order placed under this Master Agreement, for audit and inspection, and monitoring of services. Such access will be 1) with at least ten (10) business days advance written notice, during normal business hours, 2) shall not unduly interrupt or interfere with Contractor's normal business operations, and 3) shall not unduly interrupt or interfere with Contractor's normal business operations, and 4) 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.

25. REPORTS and ADMINISTRATIVE FEES The contractor shall submit quarterly reports to the WSCA-NASPO Contract Administrator showing the quantities and dollar volume of purchases by each participating entity.

The contractor must pay a WSCA-NASPO administrative fee of one quarter of one percent (.25%) in accordance with the terms and conditions of the Master Agreement. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on sales of products and services. The WSCA-NASPO administrative fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

Additionally, some States may require that an additional fee be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated in a Participating Addendum that is made a part of the Master Agreement. The contractor may adjust the Master Agreement pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements may not affect the WSCA-NASPO administrative fee or the prices paid by the procuring agencies outside the jurisdiction of the State requesting the additional fee.

26. STANDARD OF PERFORMANCE AND ACCEPTANCE Purchaser has thirty (30) days after Product delivery to inspect the Product for external damage and for any concealed damage ("Acceptance Period"). If external or concealed damage is revealed during the Acceptance Period, then Purchaser shall notify Contractor. At Contractor's option, Contractor shall 1) repair such damage, 2) ship a replacement, or 3) refund the purchase price (upon return of the Product). After such Acceptance Period the Products shall be deemed accepted.

27. Section Intentionally Left Blank.

28. TITLE OF PRODUCT Title and risk of loss shall pass to Purchaser upon delivery. Any transfers of Embedded Software shall be per Contractor's then-current Transfer and Re-Licensing Policy.

29. WAIVER OF BREACH Failure of Lead State or Participating Entity 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 by the Lead State or Participating Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements 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 or Participating Addendum.

30. WARRANTY

All products are sold with Contractor's standard limited warranty listed below:

- 30.1 **Hardware.** Contractor warrants that from the date of shipment by Contractor to Customer, 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, the Hardware will be free from defects in material and workmanship, under normal use. This limited warranty extends only to the original user of the product. Customer'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, shipment of a replacement within the period and according to the replacement process described in the Warranty Card, or a refund of the purchase price, if the Hardware is returned to the party supplying it to Customer, if different than Contractor, freight and insurance prepaid. Contractor replacement parts, used in Hardware repair, 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 Material Authorization (RMA) procedures.

- 30.2 **Software.** Contractor warrants that from the date of delivery by Contractor to Customer (but in case of resale by a Contractor reseller, commencing not more than ninety (90) days after original shipment by Contractor), 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 (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship, under normal use; and (b) the Software substantially conforms to its published specifications. The date of shipment of a product by Contractor is set forth on the packaging material in which the product is shipped. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Contractor and its suppliers under this limited warranty will be, at Contractor or its service center's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to Customer, if different than Contractor. In no event does Contractor warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the Software or any equipment, system, or network on which the Software is used will be free of vulnerability to intrusion or attack.
- 30.3 **Restrictions.** This warranty does not apply if the product (a) has been altered, except by Contractor, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is sold or, in the case of Software, licensed, for beta, evaluation, testing, or demonstration purposes for which Contractor does not receive a payment of purchase price or license fee.
- 30.4 **DISCLAIMER OF WARRANTY.** EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. This disclaimer shall apply even if the above-stated warranty fails of its essential purpose.

The above warranty does not apply to any beta software, any software made available for testing or demonstration purposes, any temporary software modules or any software for which Contractor does not receive a license fee. All such software is provided AS IS without any warranty whatsoever.

31. ASSIGNMENT OF ANTITRUST RIGHTS Contractor irrevocably assigns to a Participating Entity 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 to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

Contractor shall require any subcontractors hired to perform any of Contractor's obligations, under this Master Agreement or Participating Addendum, to irrevocably assign to a Participating Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue 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 to the subcontractor for the purpose of carrying out the subcontractor's obligations to

the Contractor in pursuance of this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

32. WSCA-NASPO eMARKET CENTER Awarded responders are required to participate in the WSCA-NASPO eMarket Center and, working through WSCA-NASPO's contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either a hosted (by SciQuest) or Punchout Level 2 catalog configurations, but actual requirements will be determined by the Lead State Contract Administrator, WSCA-NASPO, WSCA-NASPO's contractor (SciQuest) and the awarded contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological understanding.

Definitions

Contractor - means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Lead State - means the State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States.

Master Agreement – means the underlying agreement executed by and between the Lead State, as WSCA-NASPO contract administrator, acting on behalf of WSCA-NASPO, and the Contractor, as now or hereafter amended.

Order - means any purchase order, sales order, or other document used by a Participating Entity to order the Products.

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, or other legal entity, properly authorized by a state to enter into the Master Agreement or Participating Addendum or who is authorized to order under the Master Agreement or Participating Addendum.

Product - Any equipment, software (including embedded software), documentation, or deliverable supplied or created by the Contractor pursuant to this Master Agreement.

WSCA-NASPO -is a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for all states and the District of Columbia. WSCA-NASPO is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO).

Additional Definitions and Alternative Terms

Customer - see "Purchaser" or "Participating Entity."

Documentation – means user manuals, training materials, product descriptions and specifications, technical manuals, license agreements, supporting materials, and other information relating to Products or Advanced Services offered by Contractor, whether distributed in print, electronic, CD-ROM, or video format.

Effective Date – means June 1, 2014.

Fulfillment Partner (also referred to as "Reseller" or "Authorized Reseller") - means a third-party contractor 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 this Master Agreement including but not limited to providing Products and Services under this Master Agreement and billing Purchasers 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 Master Agreement or to bind Contractor to any additional terms and conditions.

Participating State – see “Participating Entity.”

Purchaser - (also referred to as “Customer”) means: (a) the Lead State, (b) any office, department, commission, council, board, committee, institution, legislative body, agency, public authority, public benefit corporation, other government corporation, or public educational institution of a Participating State or a Local Public Body within such Participating State, provided that such entity is authorized, under applicable laws, rules and/or regulations of the Participating State, (i) to purchase Product(s) and Services pursuant to this Master Agreement solely by execution of the applicable Participating Addendum, and (ii) to legally bind such body to the terms of such agreement solely by the issuance of a Purchase Order, Order, or Order Document in accordance with and pursuant to this Master Agreement, and (iii) has been authorized by the WSCA Contract Manager and Contractor to participate under this Master Agreement.

Purchase Order – see “Order.”

Services - “Services” means those services within the scope of this Master Agreement, to include the attached Master Services Agreement, and listed on Contractor’s then-current Global Price List, including consulting, training, installation and maintenance services, and/or other services related to the products being acquired and further described at cisco.com and which are subject to the terms of service set forth in the SOW Terms and Conditions.

(Revised March 2013)

Exhibit 1 — Additional Vendor Terms and Conditions**End User License Agreement (EULA)**

Cisco Systems, Inc. or its affiliate licensing the software ("Cisco") is willing to license this software to you only upon the condition that you purchased the software from an approved source and that you accept all of the terms contained in this end-user license agreement plus any additional limitations on the license set forth in a supplemental license agreement accompanying the product, available at the time of your order, or posted on the Cisco website at www.cisco.com/go/terms (collectively, the "agreement"). To the extent of any conflict between the terms of this end-user license agreement and any supplemental license agreement, the supplemental license agreement shall apply. By downloading, installing, or using the software, you are representing that you purchased the software from an approved source and binding yourself to the agreement. If you do not agree to all of the terms of the agreement, then Cisco is unwilling to license the software to you and (a) you may not download, install, or use the software, and (b) you may return the software (including any unopened cd package and any written materials) for a full refund, or (c), if the software and written materials are supplied as part of another product, you may return the entire product for a full refund. Your right to return and refund expires 30 days after purchase from an approved source, and applies only if you are the original and registered end user purchaser. For the purposes of this end-user license agreement, an "approved source" means (a) Cisco; or (b) a distributor or systems integrator authorized by Cisco to distribute/sell Cisco equipment, software, and services within your territory to end users; or (c) a reseller authorized by any such distributor or systems integrator in accordance with the terms of the distributor's agreement with Cisco to distribute/sell the Cisco equipment software and services within your territory to end users.

Please note that the remaining license terms are addressed in the WSCA – NASPO Master Agreement Terms and Conditions.

Exhibit 2 — Additional Vendor Terms and Conditions

Master Services Agreement

This Master Services Agreement governs all Orders for Services placed under the WSCA NASPO Master Agreement Terms and Conditions ("WSCA Master Agreement").

This Agreement is entered into between Cisco Systems, Inc. ("Cisco"), a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134 and the WSCA-NASPO Cooperative Purchasing Organization LLC ("WSCA"), on behalf of their Public Sector Customers formed under the laws of United States ("Customer") having its principal place of business at State of Utah, Division of Purchasing and General Services, State Office Building, Capitol Hill, Room 3150, Salt Lake City, UT 84114-1061, United States, and is entered into as June 1, 2014.

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

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 WSCA NASPO 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 WSCA 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 WSCA 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 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 WSCA NASPO Terms and Conditions.
- 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.**

Cisco Systems, Inc.

- (a) The term of any service order shall commence on the Effective Date of the Order and shall continue for a period of one (1) year, or such other multi-year period as set forth in the purchase order or SOW. Such term will be renewed automatically for successive one (1) 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 term.
- (b) The term of an Equipment List shall commence on the date set forth on such.
- (c) 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 be for a period of one (1) year and shall be renewed automatically for successive one (1) 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 (1) year term.
- (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 WSCA 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 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 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 WSCA NASPO Terms and Conditions.

- 8. Confidentiality.** Terms of this Section are covered in the WSCA NASPO 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 WSCA NASPO Terms and Conditions.
11. **License.** Terms of this Section are covered in the WSCA NASPO Terms and Conditions.
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 WSCA NASPO Terms and Conditions.
14. **Applicable law and Jurisdiction.** Terms of this Section are covered in the WSCA NASPO Terms and Conditions.
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/www/export/compliance_provision.html.
16. **Assignment.** Terms of this Section are covered in the WSCA NASPO Terms and Conditions.
17. **Subcontracting.** Cisco reserves the right to subcontract Services to a third party organization including Fulfillment Partners or Servicing Subcontractors (as defined in the WSCA 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 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. Cisco will charge a Service fee if it finds that unauthorized Services are being provided. This Service fee includes amounts which should have been paid, interest, and attorneys' and audit fees. Attorneys' and audit fees will only be payable by the customer where the discrepancy exceeds 5 percent of the amount otherwise due and payable. 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 Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
22. **Severability.** In the event that one or more terms of this 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 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 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 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, 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 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 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 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 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), Section 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 WSCA Master Agreement, the following definitions shall apply to this 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 WSCA Master 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 WSCA Master 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 WSCA Master 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 WSCA Master Agreement means the entity purchasing Services for its own internal use either directly or through a Fulfillment 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, GSR 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.

Cisco Systems, Inc.



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.

Fulfilment Partner means a system integrator, distributor or reseller authorized by Cisco to sell Services under the WSCA Master Agreement in a Participating State.

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].

Cisco Systems, Inc.



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.

Participating State means a member of WSCA authorized under state law to participate under this Agreement who subsequently executes a Participating Addendum, or any other state or Local Public Body authorized by the WSCA Contract Manager and Cisco to be a party to the resulting Agreement who subsequently executes a Participating Addendum.

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.

WSCA shall mean the WSCA NASPO Contracting Alliance (WSCA). WSCA is a cooperative group contracting consortium for state government departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.). Rights and obligations under this contract are limited to those Participating States who execute a Participating Addendum with Cisco.

“WSCA Contract Manager” or “Contract Manager” shall mean the individual state member designated as the contract manager by WSCA, currently the State of Utah, as responsible for the legal maintenance and administration of the WSCA Master Agreement, notices, reports, and any other pertinent documentation or information.

“WSCA Master Agreement” (also referred to as “Agreement” or “Contract”) shall mean the underlying purchasing agreement executed by and between WSCA-NASPO Cooperative Purchasing Organization LLC (“State”), and Cisco, as now or hereafter amended.

ATTACHMENT B – Scope of Work

The following categories are authorized under this contract:

5.2.1 DATA CENTER APPLICATION SERVICES — Application networking solutions and technologies that enable the successful and secure delivery of applications within data centers to local, remote, and branch-office users using technology to accelerate, secure, and increase availability of both application traffic and computing resources.

5.2.1.1 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

5.2.1.2 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

5.2.2 NETWORKING SOFTWARE — Software that runs on a server and enables the server to manage data, users, groups, security, applications, and other networking functions. The network operating system is designed to allow shared file and printer access 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

5.2.2.1 Network Management and Automation — Software products and solutions for data center automation, cloud computing, and IT systems management.

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

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

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

5.2.3 NETWORK OPTIMIZATION AND ACCELERATION — Devices and tools for increasing data-transfer efficiencies across wide-area networks.

5.2.3.1 Dynamic Load Balancing — 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.

5.2.3.2 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

5.2.3.3 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.

5.2.4 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.

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

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

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

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

5.2.5 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.

5.2.5.1 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.

5.2.5.2 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.

5.2.5.3 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).

5.2.5.4 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.

5.2.5.5 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).

5.2.6 SECURITY

5.2.6.1 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.

5.2.6.2 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)

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

5.2.6.4 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.

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

5.2.6.6 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.

5.2.6.7 On-premise and Cloud-based services for Web and/or Email Security — Solutions that provide threat protection, data loss prevention, message level encryption, acceptable use and application control capabilities to secure web and email communications.

5.2.6.8 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

5.2.7 STORAGE NETWORKING — High-speed network of shared storage devices connecting different types of storage devices with data servers.

5.2.7.1 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.

5.2.7.2 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.

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

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

5.2.8 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.

5.2.8.1 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:

Security

- i. SSHv2 (Secure Shell Version 2)
- ii. 802.1X (Port Based Network Access Control)
- iii. Port Security
- iv. DHCP (Dynamic Host Configuration Protocol) Snooping

VLANs

Fast Ethernet/Gigabit Ethernet

PoE (Power over Ethernet)

link aggregation

10 Gb support

Port mirroring

Span Taps

Support of IPv6 and IPv4

Standards-based rapid spanning tree
 Netflow Support (Optional).

5.2.8.2 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.

5.2.8.3 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

5.2.8.4 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), all at Gigabit and 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

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

5.2.8.6 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.

5.2.8.7 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)

5.2.8.8 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 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

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

- Redundancy and automatic failover
- IPv6 compatibility
- NTP Support

5.2.9.1 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

5.2.9.2 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)

5.2.9.3 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

5.2.9.4 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

5.2.9.5 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

5.2.9.6 Bring Your Own Device (BYOD) — Mobile Data Management (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

5.3.0 UNIFIED COMMUNICATIONS (UC) — A set of products that provides a consistent unified user interface and user experience across multiple devices and media types. Unified Communications that is able to provide services such as session management, voice, video, messaging, mobility, and web conferencing. 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
- Call Processing Redundancy

5.3.0.1 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
- 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

5.3.0.2 Instant messaging/ Presence — Solutions that allow communication over the Internet that offers quick transmission of text-based messages from sender to receiver. In push mode between two or more people using personal computers or other devices, 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.

5.3.0.3 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)

5.3.0.4 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 and automatic contact distribution, combined with a high degree of sophistication in terms of dynamic contact traffic management.

5.3.0.5 Communications End Points and Applications

- Attendant Consoles
- IP Phones

5.3.0.6 UC Network Management — Provides end-to-end service management for Unified Communications. Capabilities include testing, performance monitoring, configuration management, and business intelligence reporting.

5.3.0.7 Collaboration — Voice, video, and web conferencing; messaging; mobile applications; and enterprise social software.

5.3.0.8 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.

5.3.0.8.1 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 end-users 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.

5.3.0.8.2 Physical Security — Technology utilized to restricting physical access by unauthorized people to controlled 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, mobile phones, IP phones, and digital signage
- d. Building and energy controls

5.3.1 SERVICES — For each Category above (5.21-5.30), the following services should be available for procurement as well at the time of product purchase or anytime afterwards.

5.3.1.1 Maintenance Services — Capability to provide technical support, flexible hardware coverage, and smart, proactive device diagnostics for hardware.

5.3.1.2 Professional Services

Deployment Services

Survey/ Design Services — Includes, but not limited to, discovery, design, architecture review/validation, and readiness assessment.

Implementation Services — Includes, but not limited to, basic installation and configuration or end-to-end integration and deployment.

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.

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.

Consulting/Advisory Services — Includes, but not limited to, assessing the availability, reliability, security and performance of Customer's existing solutions.

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Data Communications Architectural Design Services — Developing architectural strategies and roadmaps for transforming Customer's existing network architecture and operations management.

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.

5.3.1.3 Partner Services — Provided by Contractor's Authorized Partners/Resellers.

Subject to Contractor's approval and the certifications held by its Partners/Resellers, many Partners/Resellers can also offer and provide some or all of the Services as listed above at competitive pricing, along with local presence and support. As the prime, Contractor is still ultimately responsible for the performance of its Partners/Resellers. Customers can have the option to purchase the Services to be directly delivered by Contractor (OEM) or its certified Partners/Resellers.

5.3.1.4 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.

STATE OF UTAH CONTRACT NUMBER – AR233

Attachment C – Pricing
Solicitation Number JP14001
WSCA-NASPO Data Communications RFP

Vendor Name: Cisco Systems, Inc.

RFP Product Categories:**Minimum Discount Percentage:****5.2.1 DATA CENTER APPLICATION SERVICES**Discount % 35.00 **5.2.2 NETWORKING SOFTWARE**Discount % 35.00 **5.2.3 NETWORK OPTIMIZATION AND ACCELERATION**Discount % 35.00 **5.2.4 OPTICAL NETWORKING**Discount % 35.00 **5.2.5 ROUTERS**Discount % 35.00 **5.2.6 SECURITY**Discount % 35.00 **5.2.7 STORAGE NETWORKING**Discount % 35.00 **5.2.8 SWITCHES**Discount % 35.00 **5.2.9 WIRELESS**Discount % 35.00 **5.3.0 UNIFIED COMMUNICATIONS (UC)**Discount % 35.00

WARRANTY: See Section 30 of the WSCA-NASPO/Cisco Master Agreement.

CAPITAL LEASE FINANCING: Allowed under and subject to Section 22 of the WSCA-NASPO Master Agreement.

5.3.1 SERVICES

For RFP evaluation purposes, vendors must provide not to exceed post sale on site service and consulting rates that are fully loaded (inclusive of travel, lodging, and meals) for each service category below. Remote access rates for non-warranty and consultation services must be expressed as a separate net hourly labor rate.

Definition of Onsite: Customer premise.

Definition of Remote: Vendor premise.

Maintenance Services

Onsite Hourly Rate \$ NTE 600.00

Remote Hourly Rate \$ NTE 525.00

Professional Services - Deployment Services

Onsite Hourly Rate \$ NTE 743.17

Remote Hourly Rate \$ NTE 661.17

Consulting/Advisory Services

Onsite Hourly Rate \$ NTE 743.17

Remote Hourly Rate \$ NTE 661.17

Architectural Design Services

Onsite Hourly Rate \$ NTE 743.17

Remote Hourly Rate \$ NTE 661.17

Statement of Work ServicesOnsite Hourly Rate \$ [NTE 743.17](#)Remote Hourly Rate \$ [NTE 661.17](#)**Partner Services**Onsite Hourly Rate \$ [NTE 600.00](#)Remote Hourly Rate \$ [NTE 525.00](#)**Training Deployment Services**Onsite Hourly Rate \$ [NTE 600.00](#)Remote Hourly Rate \$ [NTE 525.00](#)

In addition to the above, Cisco, through applicable [Authorized Resellers](#), is pleased to offer hosted service offerings for certain technology categories listed above (at Cisco's discretion). These hosted offerings provide WSCA-NASPO customers with an alternative way to consume the technology to best meet their needs and provide flexible payment models. These models may be well suited for customers that have limited technical staff for technology deployment and ongoing administration.

The hosted service offerings are based on Cisco validated architectures and delivered through carefully vetted and approved [Authorized Resellers](#). Due to the unique requirements of each customer, Cisco and the approved [Authorized Resellers](#) can work with the customer to understand their unique requirements and deploy hosted offerings to best meet their needs. Additional contractual terms and conditions specific to the hosted solutions may be required.

Current Cisco Systems, Inc. pricing sheets, approved by the State of Utah, can be found at the following web link:

[VENDOR PRICING SHEETS CLICK HERE](#)

IMPORTANT: The minimum discount percentage listed in this attachment is for general informational purposes only and may not apply to every line item authorized under this contract. For specific item pricing, please refer to the contact price list weblink provided in this document.

Vendors are required to post state specific pricing on their hosted website or through the WSCA-NASPO eMarket center as required by solicitation JP14001, in addition to the vendor pricing sheets approved and hosted by the State of Utah's master contract summary sheet. The State of Utah vendor pricing sheets will serve as the approved base price and do not include any applicable state specific administrative fees. State specific pricing, hosted on the vendor website or WSCA-NASPO eMarketcenter may reflect authorized state specific administrative fees. No other fees are authorized under this contract. Pricing audits may be conducted at any time by the State of Utah, WSCA-NASPO, or 3rd party audit provider to ensure accurate pricing.

Per Solicitation JP14001, the following pricing/product requirements and instructions apply:

1.11 Pricing Structure

Pricing Structure: Pricing for the State of Utah WSCA-NASPO Master Agreements shall be based on the Percent Discount off the current global MSRP Schedule applicable to United States customers.

1.12 Price Guarantee Period

Price Guarantee Period: The Data Communication Provider's Discount rate shall remain in effect for the term of the WSCA-NASPO Master Price Agreement.

1.13 Price Escalation

Equipment, Supplies and Services: Data Communications provider may update the pricing on their MSRP price list one time every year after the first year of the original contract term. The WSCA-NASPO Contract Administrator will review a documented request for a Price Schedule price list adjustment only after the Price Guarantee Period.

1.14 Price Reductions

In the event of a price decrease in any category of product at any time during the contract in a Provider's Price Schedule, including renewal options, the WSCA-NASPO Contract Administrator shall be notified immediately. All Price Schedule price reductions shall be effective upon the notification provided to the WSCA-NASPO Master Agreement Administrator.

1.15 Usage Reporting Requirement

All Data Communication Provider's will be required to provide quarterly usage reports to the WSCA-NASPO Contract Administrator or designee. The initiation and submission of the quarterly reports are the responsibility of the Data Communication Contract Provider. You are responsible to collect and report all sales data including your resellers and partners sales associated with your Master Agreement. There will be no prompting or notification provided by the WSCA-NASPO Contract Administrator. The quarterly usage reports are due as follows:

Quarter #1:	July 1 through September 30, due annually by November 30.
Quarter #2:	October 1 through December 31, due annually by February 28.
Quarter #3:	January 1 through March 31, due annually by May 31.
Quarter #4:	April 1 through June 30, due annually by August 31.

1.20 WSCA Administrative Fee

The Contracted Supplier must pay a WSCA-NASPO administrative fee of one quarter of one percent (.25%) in accordance with the terms and conditions of the contract. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on the actual sales of all products and services in conjunction with your quarterly reports. The WSCA-NASPO administrative fee must be included when determining the pricing offered. The WSCA-NASPO administrative fee is not negotiable and shall not be added as a separate line item on an invoice.

Additionally, some WSCA-NASPO participating entities may require that an administrative fee be paid directly to the WSCA-NASPO participating entity on purchases made by purchasing entities within that State. For all such requests, the fee percentage, payment method and payment schedule for the participating entity's administrative fee will be incorporated in the Participating Addendum. Data Communications Provider will be held harmless, and may adjust (increase) the WSCA-NASPO Master Agreement pricing by the fee percentage for that participating entity accordingly for purchases made by purchasing entities within the jurisdiction of the State. All such agreements may not affect the

WSCANASPO fee or the prices paid by the purchasing entities outside the jurisdiction of the participating entities requesting the additional fee. **The WSCA-NASPO quarterly administrative fee will be submitted along with the quarterly usage reports as set forth below:**

Quarter #1:	July 1 through September 30, due annually by November 30.
Quarter #2:	October 1 through December 31, due annually by February 28.
Quarter #3:	January 1 through March 31, due annually by May 31.
Quarter #4:	April 1 through June 30, due annually by August 31.

5.3.2 ADDING PRODUCTS

The ability to add new equipment and services is for the convenience and benefit of WSCA-NASPO, the Participating States, and all the Authorized Purchasers. The intent of this process is to promote “one-stop shopping” and convenience for the customers and equally important, to make the contract flexible in keeping up with rapid technological advances. The option to add new product or service categories and/items will expedite the delivery and implementation of new technology solutions for the benefit of the Authorized Purchasers.

After the contracts are awarded, additional IT product categories and/or items may be added per the request of the Contractor, a Participating State, an Authorized Purchaser or WSCA-NASPO. Additions may be ad hoc and temporary in nature or permanent. All additions to an awarded Contractor or Manufacturer’s offerings must be products, services, software, or solutions that are commercially available at the time they are added to the contract award and fall within the original scope and intent of the RFP (i.e., converged technologies, value adds to manufacturer’s solution offerings, etc.).

5.3.2.1 New Product from Contractors — If Contractor, a Participating State, an Authorized Purchaser or WSCA-NASPO itself requests to add new product categories permanently, then all awarded Contractors (Manufacturers) will be notified of the proposed change and will have the opportunity to work with WSCA to determine applicability, introduction, etc. Any new products or services must be reviewed and approved by the State of Utah WSCA-NASPO Contract Administrator.

5.3.2.2 Ad Hoc Product Additions — A request for an ad hoc, temporary addition of a product category/item must be submitted to WSCA-NASPO via the governmental entity’s contracting/purchasing officer. Ad hoc, temporary requests will be handled on a case-by-case basis. The State of Utah WSCA-NASPO Contract Administrator must also be notified and will review and approve the addition before the purchase is finalized by the end user. The State of Utah WSCA-NASPO Contract Administrator has the final approval on any Ad Hoc product additions.

5.3.2.3 Pricelist Updates — As part of each Contractor’s ongoing updates to its pricelists throughout the contract term, Contractor can add new SKUs to its awarded product categories that may have been developed in-house or obtained through mergers, acquisitions or joint ventures; provided, however, that such new SKUs fall within the Contractor’s awarded product categories. Updated price lists will be reviewed and approved by the State of Utah WSCA-NASPO Contract Administrator before the revised price list is considered valid.



October 29, 2020

County of Orange
320 North Flower Street
Santa Ana, CA 92703

Re: Installment Payment Agreement No. CAM268-8 dated as of October 29, 2020 between ePlus Group, inc. and the County of Orange.

Enclosed please find the following documentation for the above-referenced transaction:

1. Installment Payment Agreement No. CAM268-8 (Original and Copy) -To be executed by a representative who is named as an authorized representative on the Certificate of Incumbency.
2. Certificate of Incumbency (Original) - This form should include all Officers of your company who will sign Agreement documents, including Acceptance Certificates. Those individuals who are being encumbered should be Officers of the Corporation. The name, title and signature of these individuals should appear on the bottom portion of the document. A Corporate Secretary or Assistant Secretary (if not, then another Officer of the Corporation or legal counsel) will authorize these signatures by stating their name and title at the top of the document and dating and signing the "In Witness Whereof" section of the document and embossing the Corporate Seal where noted (see Sample Incumbency Certificate enclosed). Please note that an individual cannot authorize himself on the Certificate of Incumbency.
3. Certificate of Acceptance for Installment Payment Agreement No. CAM268-8 (Original) - To be dated and executed when all equipment is delivered and found to be in good working order, by a representative who is named as an authorized representative on the Certificate of Incumbency, and immediately returned to ePlus Group, inc.
4. Insurance Information Form for Installment Payment Agreement No. CAM268-8 - To be completed and signed. Please provide insurance certificates naming "ePlus Group, inc. or its assignee" as Additional Insured and Loss Payee or a letter of self-insurance, if applicable.
5. Sample Opinion Letter - To be completed and executed on counsel's letterhead.
6. Essential Use Form - To be completed and signed, by a representative who is named as an authorized representative on the Certificate of Incumbency, at the time a deposit is required by the vendor.

Please review all documents and upon finding them to be acceptable, please have them executed and returned (Originals & Copies) to my attention. Upon final review and approval, we will return a full set of executed documents back to you. If you have any questions or comments regarding any of the documents, please contact me at (703) 984-8303.

Thank you for your assistance with this transaction.

Sincerely,

Karol Powers
Contracts Manager

Enclosures



Installment Payment Agreement

Date: October 29, 2020 Installment Payment Agreement No. CAM268-8 THIS IS A NON-CANCELABLE, LEGALLY BINDING CONTRACT

Customer (Customer Name) Use EXACT registered name if a Corp., LLC, or LP				County of Orange		
Customer's Chief Executive Office	Street: 320 North Flower Street	City: Santa Ana	State: CA	County:	Zip: 92703	Customer Telephone (not cell):

This Installment Payment Agreement, as it may be amended or supplemented from time to time (the "Contract"), represents the final and only agreement between You and Us regarding the subject matter herein and may not be contradicted or modified by evidence of prior, contemporaneous or subsequent oral [including documents generated by You and not signed by Us] agreements. There are no unwritten oral agreements between You and Us. The Contract can be changed only by a signed written agreement between You and Us. If any provision is found unlawful, it shall be removed and the rest enforced per its term.

1. CONTRACT. Customer ("You" or "Your") agrees to finance through ePlus Group, inc. ("We," "Us" or "Our") the Licensed Product listed below and all existing accessories, embedded software, additions, replacements and repairs ("Asset") upon the terms stated herein. This Contract is non-cancelable and may not be terminated early except as set forth in Section 10. This Contract is not binding until We and You sign below.

Asset Location (if different than "Chief Executive Office" shown above)	John Wayne Airport, 18601 Airport Way, Santa Ana, CA 92707
Asset Description: See Attached Attachment A – Asset Description	Asset Supplier: ePlus Technology, inc.

Your Fiscal Period: _____ to _____

Original Term	Forty-three (43) Months	Contract Payment Start Date	Commencement Date	Asset Cost	Advance Payment Applied as First Pmt:	n/a	Security Deposit\$	n/a
	Contract Payment	\$100,000.00 due net thirty (30) of the Commencement Date followed by \$413,043.82 due 7/15/21, 7/15/22 and 7/15/23 (Contract Payment amount is exclusive of any sales tax, if applicable)			\$1,339,131.46	Check here if Contract Payment Includes Sales/Use Tax: <input type="checkbox"/>		

2. UNCONDITIONAL OBLIGATIONS. You agree that: (a) You, not We, selected the Asset(s) and the Supplier, (b) no statement made by the Supplier is binding on Us, (c) We are not a party to any contract you may have with the Supplier, and no breach by the Supplier will excuse You from performing Your obligations to Us, (d) if the Asset is unsatisfactory or if the Supplier fails to fulfill any obligation to You, You agree not to make any claim against Us and to continue performing hereunder, (e) You represent and warrant for Our benefit and that of Our assigns that, as of the time of execution of this Contract: (i) You are an entity organized and existing under the laws of California and have adequate corporate power to enter into and perform this Contract; (ii) This Contract has been duly authorized, executed and delivered by You and constitutes a valid, legal and binding agreement enforceable in accordance with its terms; (iii) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by You of this Contract or such approval and consent has been granted by the necessary governmental authority; and (iv) The entering into and performance of this Contract will not violate any judgment, order, law or regulation applicable to You, and (g) Your obligations to Us are unconditional, despite any failure of any Asset or other adverse condition, and Your obligation to make the Contract Payments shall not abate, reduce or diminish for any reason, including setoff, counterclaim, recoupment or any other defenses or doctrines. Nothing in this paragraph shall negate the cancellation of Customer's obligations if funds are not appropriated by the governing body as stated in Section 10. Appropriation of Funds.

3. TERM. This Contract will begin on the Date of Acceptance as noted on the Certificate of Acceptance form ("Commencement Date") and will continue for the number of months shown above ("Original Term") and is non-cancelable during the full Original Term, except as set forth in Section 10.

4. PAYMENTS. Contract Payments and other charges are payable in advance periodically as set forth above. Restrictive endorsements on Your checks are not binding. Payments will be applied to past-due and current-due charges in such order as We determine. Any security deposit or estimated future Governmental Charge paid by You is non-interest bearing, and at the end of the Contract, the unused portion (if any) will be returned to You. If You pay late, You shall also pay a late fee of 5% of the amount that is late per month (or the maximum rate allowable by law, if less) until the date paid. If any check is dishonored, We will charge a fee of \$20.

5. NO WARRANTIES. We are financing the Asset(s) to You "as is". We have not made and hereby disclaim any and all warranties, express or implied, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. You hereby grant Us a security interest in the Asset(s) and all proceeds thereof effective as of the Commencement Date. You authorize Us to record (and amend, if appropriate) a UCC financing statement to protect Our interests. You may be entitled under Article 2A to the promises and warranties (if any) provided to Us by the Vendor(s) in connection with or as part of the contract (if any) by which We acquire the Asset(s). You may contact the Supplier for an accurate and complete statement of those promises and warranties (if any), including any disclaimers and limitations of them or of remedies. We hereby transfer to You, without recourse to Us, all automatically transferable promises and warranties, if any, made to Us by the Supplier or manufacturer.

6. INDEMNIFICATION. We are not liable for any claims, damages (whether direct, indirect, incidental or consequential), losses or costs made against or incurred by You relating to the Asset(s) or this Contract. You shall indemnify and defend Us against any and all claims, damages, losses and costs (including reasonable attorneys' fees) made

against or incurred by Us relating to the Asset(s) or this Contract. This obligation shall survive the termination of this Contract.

7. ASSIGNMENT. You shall not sell, transfer, assign or otherwise encumber (collectively, "Transfer"), or sublease, this Contract in whole or in part. We may, with notice to You, Transfer Our interests in the Asset(s) and/or this Contract, in whole or in part, to a third party (a "New Owner"), in which case the New Owner will have all of Our rights but none of Our obligations. You agree not to assert against the New Owner any claim, defense or offset You may have against Us.

8. TAXES; OTHER FEES. You are responsible for all taxes and governmental charges relating to the Asset(s) or this Contract (collectively, with such taxes, "Governmental Charges").

9. DEFAULT. You will be in default if, with respect to this Contract or any other agreement between You and Us, (i) You fail to pay any sum within 10 business days after written notice is given that a specific payment is past due, (ii) fail to perform or observe any other obligation, (iii) any representation or warranty made by You to Us in connection with the Contract shall be untrue in any material respect, or (iv) a change of control of Customer shall occur. If You default, You agree We may do any or all of the following: (A) cancel this Contract, (B) require You to stop using the Asset(s) and upon 30 business days notice to You, take possession of the Asset(s) wherever located, without demand, liability, court order or other process of law, (C) require You to pay to Us on demand an amount equal to the sum of (i) all Contract Payments and other amounts then due and past due, (ii) all remaining Contract Payment for the Present Term discounted at a rate of 2% per annum, (iii) interest at the rate of 1.5% per month on the amounts specified in clauses "i" and "ii" above until the date paid and (iv) all other amounts that may later become due hereunder, and/or (D) exercise any other remedy available to Us under law. You also agree to reimburse Us on demand for all reasonable expenses of enforcement (including, without limitation, reasonable attorney's fees) and reasonable expenses of denying use of the Asset(s), plus interest at the rate of 1.5% per month on such amounts until the date paid.

10. APPROPRIATION OF FUNDS. You intend to continue this Contract for the term of this Contract and to pay the Contract Payments due under this Contract and other amounts due hereunder. Notwithstanding the foregoing, in the event sufficient funds are not appropriated by the Customer's government body to continue the term of this Contract for any Fiscal Period of You beyond the Fiscal Period first in effect at the Commencement Date, You may terminate this Contract with regard to not less than all of the Assets on this Contract so affected, provided You provide Us written notice within 10 business days after the Customer's government body has determined not to appropriate the funds and confirming this Contract will be so terminated. All of Your obligations to pay the Contract Payments due after the end of the Fiscal Period for which such termination applies will cease, all of Your interests in the Assets will terminate and You shall surrender the Assets in accordance with this Contract. We and You understand and intend that the obligation of You to pay the Contract Payments hereunder shall constitute a current expense of You and shall not in any way be construed to be a debt of You in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by You, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of You beyond the Fiscal Period for which sufficient funds have been appropriated to pay the Contract Payments hereunder.

11. REPRESENTATIONS AND WARRANTIES. You represent, covenant and warrant for Our benefit and Our assignee(s): (i) The use of the Asset(s) is essential to Your proper, efficient and economic operation; and (ii) You understand and agrees that We are relying on the essential nature of the Asset(s) to You and upon Your covenant to complete full

implementation of the Asset(s) and any system associated therewith (the "Project"). In the absence of such a covenant by You, We would not provide the financing for the project under this Contract. Failure to honor this covenant shall be a material breach of this Contract and constitute an event of default hereunder, independent of any failure of the legislature to appropriate funds.

12. **INSURANCE.** You, at Your expense, shall maintain all risks, including fire and extended coverage, insurance against loss, theft, damage, or destruction of the Asset(s), in an amount not less than the applicable Casualty Value set forth in Attachment B attached hereto and made a part hereof. This coverage shall have standard commercial terms and conditions and may not contain endorsements excluding coverage for mysterious or mere disappearance, seizure or other governmental acts or dishonesty of Your officers or employees or restrict recovery for the kinds of Asset(s) covered by this Contract. You shall further, at its expense, provide and maintain comprehensive public liability insurance in an amount of \$1,000,000 per occurrence against claims for bodily injury, death and/or property damage arising out of the use, ownership, possession, operation or condition of the Asset(s), together with such other insurance as may be required by law. Both coverages shall name You as an insured and Us and Our Assignee(s) as additional insureds and loss pay as their respective interest may appear, shall be satisfactory to Us, and shall contain a clause requiring the Insurer to give Us at least one month prior written notice of the cancellation or any alteration in the terms of such policy. No insurance shall be subject to any co-insurance clause. Each insurance policy shall be with an insurance carrier licensed to provide the insurance required herein in the State where the Asset(s) are located. We are hereby appointed as Your attorney-in-fact in connection with Contract Payments made with respect to the Asset(s) as a result of such insurance policies. You will not make adjustments with insurers except with Our prior written consent, which consent shall not be unreasonably withheld. You shall furnish to Us certificates of insurance or other evidence satisfactory to Us that such insurance coverage is in effect and that Us and Our Assignees are named as additional insureds, and, upon Our request, You shall promptly provide Us with a copy of the insurance policy. Your liability for loss shall not be diminished by any insurance payment less than the actual amount of the loss.

13. **RISK OF LOSS.** (a) With regard to the Asset(s), commencing upon delivery and continuing throughout the Original Term, You hereby assume and shall bear the risk of loss for any reason with respect to any damage, destruction, loss, theft, or governmental taking, whether partial or complete and whether through any fault or neglect of You or otherwise; (b) If any Asset is damaged, You shall promptly notify Us and shall, at Your expense, within sixty (60) days of such damage, cause to be made repairs necessary to return such Asset to its previous condition. You shall then be entitled to receive from Us any insurance received by Us in connection with such damage; (c) In the event any Asset is destroyed, damaged beyond repair, lost, stolen, or taken by governmental action for a stated period extending beyond the Original Term (an "Event of Loss"), You shall promptly notify Us and pay to Us, on the next Contract Payment date following such Event of Loss, an amount equal to the Casualty Value amount for such Asset as set forth in Attachment B. After payment of such Casualty Value amount and all Contract Payments due and owing on or before such Payment date, Your obligation to pay further Contract Payments allowable to the Asset which suffered the Event of Loss shall cease. After paying such Casualty Value amount to Us, You shall be entitled

to receive from Us any insurance received by Us in connection with such Event of Loss; (d) In the event of a governmental taking of any Asset for an indefinite period or a stated period which does not extend beyond the Original Term, all obligations of You with respect to such Asset (including payment of Contract Payments) shall continue. So long as You are not in default hereunder, We shall pay to You all sums received by Us from the government by reason of such taking.

14. **TITLE.** Title to the Asset(s) will pass to You on the Commencement Date. Title will revert to Us upon termination pursuant to Section 10.

15. **SECURITY INTEREST.** You grant to Us and We retain a security interest in the Asset(s). You will not change or remove any insignia or lettering which We may place on the Asset(s) to indicate its interest therein. During the Original Term, You will keep the Asset(s) free from any lien, encumbrance or legal process and You will promptly discharge any claim which might become a lien against the Asset(s).

16. **ASSET RETURN.** You are responsible for the return costs related to the termination of this Contract pursuant to Section 10. You will pay for any repairs necessary to make the Asset(s) acceptable for manufacturer's maintenance. You further agree to immediately return all originals and copies of the Software portion of the Asset(s) to Us and erase all Software resident in computer memory.

17. **MISCELLANEOUS.** This Contract shall be deemed to be performed in Orange County, California (the place of where the contract has been executed), and the Contract shall be governed by the laws of the State of California. All legal actions relating to this Contract shall be venue in a state or federal court located in Orange County, California. You consent to personal jurisdiction in such courts. This Contract may be executed in counterparts, all of which together shall constitute the same document. You agree that a facsimile or other copy containing Your faxed or copied signature shall be as enforceable as the original executed Contract. You agree to provide Us with Your Financial Statements that may be publicly disclosed and that are not readily accessible online. If You are a privately held entity then, You shall provide Us complete audited financial statements at each quarter end and fiscal year end, certified by Your independent certified public accountants and reasonably acceptable to Us within fourteen days of receipt of same from Your certified public accountants. If it is determined that any amount charged under this Contract is greater than the amount allowed by law, including any amount that is determined to exceed applicable usury limits (an "Excess Amount"), then any Excess Amount will be waived (or, if the Excess Amount was paid, it will be applied to past-due amounts, if any, or else refunded). This Contract shall not be binding on Us until executed and delivered by You and executed by Us. Electronically-signed or other non-original transmittal of this Contract when received by Us shall have the same force and effect as the use of a manual signature if and only if it embodies all of the attributes pursuant to California Government Section Code 16.5. You represent and warrant that any documents electronically signed and delivered to Us are genuine, legally valid and enforceable as if originally signed and delivered. You represent to Us, and acknowledge that We are reasonably relying on this representation, as follows: The digital signature which You affixed to this Contract shall have the same force and effect as the use of a manual signature, and (1) it is unique to the signer; (2) it is capable of verification; (3) it is under the sole control of the signer; (4) it is linked to data in such a manner that if the data is changed, the digital signature is invalidated; (5) it conforms to regulations adopted by the California Secretary of State. Notwithstanding the foregoing, We may require and You agree to provide an original signature version of this Contract.

Accepted by ePlus Group, Inc. 13595 Dulles Technology Drive, Herndon, VA 20171		Customer Name	County of Orange		
By	<i>JM</i> <i>Steven Mancarini</i>	By	<i>Monica Rodriguez</i>	Date	11/06/2020
Date	10/29/20	Print Name	Monica Rodriguez	Title	Deputy Purchasing Agent

STEVEN MENCARINI
SENIOR VICE PRESIDENT

Attachment A - Asset Description

Page 1 of 3

<u>Line #</u>	<u>Part #</u>	<u>Asset Description</u>	<u>Qty</u>	<u>Asset Cost</u>
1	C9300-24U-A	CATALYST 9300 24-PORT UPOE, NETWORK ADVANTAGE	17	50,947.81
2	CON-SNT-C93002UA	SNTC-8X5XNBD CATALYST 9300 24-PORT UPOE, NETWORK ADVA	17	32,310.88
3	C9300-NW-A-24	C9300 NETWORK ADVANTAGE, 24-PORT LICENSE	17	-
4	PWR-C1-1100WAC-P	1100W AC 80+ PLATINUM CONFIG 1 POWER SUPPLY	17	-
5	PWR-C1-1100WAC-P/2	1100W AC 80+ PLATINUM CONFIG 1 SECONDARY POWER SUPPLY	17	15,019.50
6	CAB-TA-NA	NORTH AMERICA AC TYPE A POWER CABLE	34	-
7	C9300-SSD-NONE	NO SSD CARD SELECTED	17	-
8	CAB-CONSOLE-USB	CONSOLE CABLE 6FT WITH USB TYPE A AND MINI-B	17	790.50
9	STACK-T1-50CM	50CM TYPE 1 STACKING CABLE	17	790.50
10	CAB-SPWR-30CM	CATALYST STACK POWER CABLE 30 CM	17	751.06
11	C9300-DNA-A-24	C9300 DNA ADVANTAGE, 24-PORT TERM LICENSES	17	-
12	C9300-DNA-A-24-5Y	C9300 DNA ADVANTAGE, 24-PORT, 5 YEAR TERM LICENSE	17	26,481.75
13	PI-LFAS-T	PRIME INFRASTRUCTURE LIFECYCLE & ASSURANCE TERM	17	-
14	PI-LFAS-AP-T-5Y	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	17	-
15	C9300-NM-8X	CATALYST 9300 8 X 10GE NETWORK MODULE	17	20,157.75
16	NETWORK-PNP-LIC	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	17	-
17	S9300UK9-1612	CISCO CATALYST 9300 XE 16.12 UNIVERSAL	17	-
18	C9300-48U-A	CATALYST 9300 48-PORT UPOE, NETWORK ADVANTAGE	51	262,050.75
19	CON-SNT-C93004UA	SNTC-8X5XNBD CATALYST 9300 48-PORT UPOE, NETWORK ADVA	51	166,200.84
20	C9300-NW-A-48	C9300 NETWORK ADVANTAGE, 48-PORT LICENSE	51	-
21	S9300UK9-1612	CISCO CATALYST 9300 XE 16.12 UNIVERSAL	51	-
22	PWR-C1-1100WAC-P	1100W AC 80+ PLATINUM CONFIG 1 POWER SUPPLY	51	-
23	PWR-C1-1100WAC-P/2	1100W AC 80+ PLATINUM CONFIG 1 SECONDARY POWER SUPPLY	51	45,058.50
24	CAB-TA-NA	NORTH AMERICA AC TYPE A POWER CABLE	102	-
25	C9300-SSD-NONE	NO SSD CARD SELECTED	51	-
26	CAB-CONSOLE-USB	CONSOLE CABLE 6FT WITH USB TYPE A AND MINI-B	51	2,371.50
27	STACK-T1-50CM	50CM TYPE 1 STACKING CABLE	51	2,371.50
28	CAB-SPWR-30CM	CATALYST STACK POWER CABLE 30 CM	51	2,253.18
29	C9300-DNA-A-48	C9300 DNA ADVANTAGE, 48-PORT TERM LICENSES	51	-
30	C9300-DNA-A-48-5Y	C9300 DNA ADVANTAGE, 48-PORT, 5 YEAR TERM LICENSE	51	148,930.20
31	C1-ADD-OPTOUT	CISCO ONE ADD-ON SESSION OPT OUT (NO FULFILLMENT)	51	-
32	PI-LFAS-T	PRIME INFRASTRUCTURE LIFECYCLE & ASSURANCE TERM	51	-
33	PI-LFAS-AP-T-5Y	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	51	-
34	C9300-NM-8X	CATALYST 9300 8 X 10GE NETWORK MODULE	51	60,473.25
35	NETWORK-PNP-LIC	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	51	-
36	C9200-24PB-A	CATALYST 9200 24-PORT POE+, ENHANCED VRF, NETWORK ADVANTAGE	15	28,179.00
37	CON-SNT-C9202AA4	SNTC-8X5XNBD CATALYST 9200 24-PORT POE+, ENHANCED VRF	15	17,896.50
38	C9200-NW-A-24	C9200 NETWORK ADVANTAGE, 24-PORT LICENSE	15	-
39	PWR-C6-600WAC/2	600W AC CONFIG 6 POWER SUPPLY - SECONDARY POWER SUPPLY	15	8,788.50
40	CAB-TA-NA	NORTH AMERICA AC TYPE A POWER CABLE	30	-
41	C9200-NM-4X	CATALYST 9200 4 X 10G NETWORK MODULE	15	13,950.00
42	C9200-DNA-A-24	C9200 CISCO DNA ADVANTAGE, 24-PORT TERM LICENSES	15	-
43	C9200-DNA-A-24-5Y	C9200 CISCO DNA ADVANTAGE, 24-PORT, 5 YEAR TERM LICENSE	15	23,366.25
44	PI-LFAS-T	PRIME INFRASTRUCTURE LIFECYCLE & ASSURANCE TERM	15	-
45	PI-LFAS-AP-T-5Y	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	15	-
46	NETWORK-PNP-LIC	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	15	-
47	C9200-48PB-A	CATALYST 9200 48-PORT POE+, ENHANCED VRF. NETWORK ADVANTAGE	2	8,714.10
48	CON-SNT-C920AP48	SNTC-8X5XNBD CATALYST 9200 48-PORT POE+, ENHANCED VRF	2	5,535.00
49	C9200-NW-A-48	C9200 NETWORK ADVANTAGE, 48-PORT LICENSE	2	-
50	PWR-C6-1KWAC/2	1KW AC CONFIG 6 POWER SUPPLY - SECONDARY POWER SUPPLY	2	1,757.70
51	CAB-TA-NA	NORTH AMERICA AC TYPE A POWER CABLE	4	-
52	C9200-NM-4X	CATALYST 9200 4 X 10G NETWORK MODULE	2	1,860.00
53	C9200-DNA-A-48	C9200 CISCO DNA ADVANTAGE, 48-PORT TERM LICENSES	2	-

<u>Line #</u>	<u>Part #</u>	<u>Asset Description</u>	<u>Qty</u>	<u>Asset Cost</u>
54	C9200-DNA-A-48-5Y	C9200 CISCO DNA ADVANTAGE, 48-PORT, 5 YEAR TERM LICENSE	2	5,840.40
55	PI-LFAS-T	PRIME INFRASTRUCTURE LIFECYCLE & ASSURANCE TERM	2	-
56	PI-LFAS-AP-T-5Y	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	2	-
57	NETWORK-PNP-LIC	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	2	-
58	WS-C3560CX-12PC-S	CISCO CATALYST 3560-CX 12 PORT POE IP BASE	4	4,523.52
59	CON-SNT-WSC312PC	SNTC-8X5XNBD CISCO CATALYST 3560-CX 12 PORT POE IP BA	4	2,280.92
60	CAB-TA-NA	NORTH AMERICA AC TYPE A POWER CABLE	4	-
61	CMPCT-CBLE-GRD	CABLE GUARD FOR THE 3560-CX AND 2960-CX COMPACT SWITCHES	4	83.72
62	PWR-CLP	POWER RETAINER CLIP FOR 3560-C, 2960-L & C1000 SWITCHES	4	-
63	CMPCT-MGNT-TRAY	MAGNETIC MOUNTING TRAY FOR 3560-CX & 2960-CX COMPACT SWITCH	4	83.72
64	C3560CX-DNA-A-12	C3560CX DNA ADVANTAGE, 12-PORT TERM LICENSE	4	-
65	C3560CX-DNA-A-12-5	C3560CX DNA ADVANTAGE, 12-PORT, 5 YEAR TERM LICENSE	4	2,176.20
66	NETWORK-PNP-LIC	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	4	-
67	SFP-10G-LR-S=	10GBASE-LR SFP MODULE, ENTERPRISE-CLASS	274	264,884.02
68	SFP-10/25G-LR-S=	10/25GBASE-LR SFP28 MODULE	14	15,272.46
69	GLC-TE=	1000BASE-T SFP TRANSCEIVER MODULE FOR CATEGORY 5 COPPER WIRE	20	4,380.40
70	GLC-SX-MMD=	1000BASE-SX SFP TRANSCEIVER MODULE, MMF, 850NM,DOM	10	2,408.70
71	SFP-H10GB-CU1M=	10GBASE-CU SFP+ CABLE 1 METER	2	101.38
72	SFP-H10GB-CU3M=	10GBASE-CU SFP+ CABLE 3 METER	8	409.20
73	SFP-H10GB-CU5M=	10GBASE-CU SFP+ CABLE 5 METER	6	454.80
74	SFP-25G-AOC1M=	25GBASE ACTIVE OPTICAL SFP28 CABLE, 1M	3	673.80
75	STACK-T1-1M=	1M TYPE 1 STACKING CABLE	6	708.96
76	STACK-T1-3M=	3M TYPE 1 STACKING CBL	6	1,063.38
77	CAB-SPWR-150CM=	CATALYST STACK POWER CABLE 150 CM SPARE	10	1,052.20
78	SFP-10G-SR-S=	10GBASE-SR SFP MODULE, ENTERPRISE-CLASS	20	6,770.40
79	SFP-10G-LR-S=	10GBASE-LR SFP MODULE, ENTERPRISE-CLASS	12	11,600.76
80	GLC-LH-SMD=	1000BASE-LX/LH SFP XCVR MOD MMF/SMF 1310	10	4,787.10
81	SFP-10G-SR-S=	10GBASE-SR SFP MODULE, ENTERPRISE-CLASS	8	2,708.16
82	L-N3548-24P-UPG=	NEXUS 3524 SECOND 24PT E-DELIVERY	6	39,196.74
83	CON-ECMU-LUN35482	SWSS UPGRADES NEXUS 3524, SECOND 24 PORTS, E- DELIVERY	6	20,664.00
84	C9800-L-F-K9	CISCO CATALYST 9800-L WIRELESS CONTROLLER_FIBER UPLINK	2	-
85	CON-SNT-C9800LFL	SNTC-8X5XNBD CISCO CATALYST 9800-L WIRELESS CONTROLLE	2	-
86	LIC-C9800-DTLS-K9	CISCO CATALYST 9800 SERIES WIRELESS CONTROLLER DTLS LICENSE	2	-
87	SC9800LK9-1612	C9800L UNIVERSAL (NETWORK ESSENTIALS)	2	-
88	C9800L-RMNT	C9800 WIRELESS CONTROLLER RACK MOUNT TRAY	2	-
89	AIR-DNA-A-PROMO	AIRONET CISCO PROMO DNA ADVANTAGE TERM LICENSES	2	-
90	DNA-A-PROMO-5Y	AIRONET CISCO PROMO DNA ADVANTAGE TERM LICENSES	2	-
91	WLC-AP-T	AIRONET AP LICENSE TERM LICENSES	2	-
92	WLC-AP-T-5Y	AIRONET AP LICENSE 5 YEAR TERM LICENSE	2	-
93	PI-LFAS-AP-T	PRIME AP TERM LICENSES	2	-
94	PI-LFAS-AP-T-5Y	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	2	-
95	AIR-DNA-A-T	AIRONET AP LICENSE TERM LICENSES	2	-
96	AIR-DNA-A-T-5Y	AIRONET CISCO DNA ADVANTAGE 5 YEAR TERM LICENSE	2	-
97	AIR-DNA-NWSTACK-A	AIR CISCO DNA PERPETUAL NETWORK STACK	2	-
98	D-DNAS-EXT-T	CISCO DNA SPACES EXTEND OPTION FOR CISCO DNA 1YR TERM	2	-
99	D-DNAS-EXT-5Y	CISCO DNA SPACES EXTEND OPTION FOR CISCO DNA 5Y	2	-
100	C9800-AC-110W	CISCO CATALYST 9800 L WIRELESS CONTROLLER POWER SUPPLY	2	-

<u>Line #</u>	<u>Part #</u>	<u>Asset Description</u>	<u>Qty</u>	<u>Asset Cost</u>
101	CAB-AC-C5	AC POWER CORD, TYPE C5, US, CANADA	2	-
102	C1-TAAS-SW-K9	TETRATION SAAS SOFTWARE SUBSCRIPTION BUNDLE Line Note: Initial Term - 12.00 Months / Auto Renewal Term - 0 Months / Billing Model-Prepaid Billing / Requested Start Date - 05-Oct-2020 / Requested End Date - 04-Oct-2021	1	-
103	C1-TAAS-WP-FND-K9	TETRATION SAAS WORKLOAD PROTECTION(BASE+ENFORCEMENT) LICENSE	250	-
104	SVS-TAAS-WP	TETRATION AS A SERVICE SOFTWARE SUBSCRIPTION BUNDLE SUPPORT	1	-
			TOTAL ASSET COST:	1,339,131.46

ATTACHMENT B

<u>Rent Pmt#</u>	<u>C.V.%</u>
1	105.09
2	86.5
3	64.77
4	40.00

INCUMBENCY CERTIFICATE

I, _____, do hereby certify that I am the authorized _____ of the County of Orange. ("Customer"), a political subdivision of the State of California, do hereby certify that, under the existing by-laws of the Customer, formal contracts of the Customer may be executed, signed and endorsed by certain officers and employees of the Customer, including those listed below.

I further certify that the officer(s) and/or employee(s) of the Customer whose name(s) and signature(s) appear below are authorized in the name and behalf of the Customer to enter into, execute and deliver Installment Payment Agreement No. CAM268-8 between ePlus Group, inc. and Customer, and providing for the financing to Customer of Asset(s) (as defined in said Installment Payment Agreement), and to enter into, execute and deliver any Schedules, Riders, Amendments and other documents related thereto which may now or hereafter appear advisable, as evidenced by the signature of said officer(s) or employee(s) thereon.

NAME	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I set my hand on _____.

Signature _____

Name _____

CERTIFICATE OF ACCEPTANCE

Certificate of Acceptance under Installment Payment Agreement No. CAM268-8 dated as of October 29, 2020 ("Contract") between ePlus Group, inc. ("ePlus") and the County of Orange ("Customer").

1. Asset(s). Customer hereby certifies that the Asset(s) set forth and described in the above mentioned Contract have been delivered to the location(s) set forth in the Contract, inspected by Customer, found to be in good order and accepted, all on the Date of Acceptance set forth below:

Date of Acceptance: _____, 20_____

2. Representations by Customer. Customer hereby represents and warrants to ePlus and any Assignees that on the Date of Acceptance set forth above:

- (a) the representations and warranties of Customer set forth in the Contract are true and correct in all material respects as though made on and as of such Date of Acceptance; (b) Customer has satisfied or complied with all requirements set forth in the Contract to be satisfied or complied with on or prior to such Date of Acceptance; (c) no Default or Event of Default under this Contract has occurred and is continuing on such Date of Acceptance; and (d) the Asset(s) are insured in accordance with the provisions of the Contract.

A facsimile transmitted document with facsimile transmitted signatories thereon shall be deemed an original.

Customer: County of Orange

By

Name

Title

REQUEST FOR INSURANCE

In accordance with Section 12 of Installment Payment Agreement No. CAM268-8 dated as of October 29, 2020, we have agreed, and instructed the insurance agent named below (please fill in name, address, etc.), to provide and maintain full insurance coverage for the Asset(s) per the terms of the Installment Payment Agreement.

INSURANCE COMPANY: _____

ADDRESS: _____

CONTACT: _____

TELEPHONE: _____

POLICY NO.: _____

FAX: _____

Please issue:

- A. An Insurance Certificate with Liability Coverage in the amount of \$1,000,000.00 total liability per occurrence naming ePlus Group, inc. and its assignee(s) as Certificate Holder and additional insured at the address listed below:

ePlus Group, inc. and its assignee(s)
 13595 Dulles Technology Drive
 Herndon, VA 20171

- B. Evidence of Property Insurance in the form of a Certificate of Insurance and Long Form Loss Payable Clause with the following statement:

“ePlus Group, inc. and its assignee(s) are included as lender loss payee in an amount not less than the Casualty Values of the leased Asset(s) under Installment Payment Agreement No. CAM268-8 dated as of October 29, 2020.”

- C. A certificate noting this coverage, with a 30 day notice of cancellation or non-renewal clause should be sent to ePlus Group, inc., to the attention of: INSURANCE COORDINATOR.

The Certificate(s) must reference Installment Payment Agreement No. CAM268-8 dated as of October 29, 2020 and extend for the term of the Contract.

Customer: County of Orange

BY: _____

TITLE: _____

Please fax this information to your Insurance carrier and forward a copy of this form to ePlus Group, inc. with the other documentation.

SELF-INSURANCE QUESTIONNAIRE

These questions are to be used as a guideline for a description of the Lessee's self-insurance program. While a response to each question is not required, a written statement covering the areas of concern below would be appreciated. Please provide responses in a letter signed by your appropriate representative.

- 1) Does the Lessee intend to self-insure for:
 - a) damage or destruction to the property; b) liability for injury (including death) to persons?
- 2) What are the limits (in dollars) of the liability the Lessee proposes to assume for claims under 1) above?
- 3) Does the Lessee maintain an umbrella insurance policy for claims in excess of Lessee's self-insurance limits under question 2) above? If so,
 - a) Does the umbrella policy provide all-risk property damage coverage and coverage for liability for injuries, including death, to persons?
 - b) What are the umbrella policy's limits for such property damage and liability coverage?
- 4) From what source does the Lessee obtain funds to pay its self-insured liabilities?
 - a) Does the Lessee maintain a self-insurance fund? If so,
 - i) Are the monies in this fund subject to annual appropriations?
 - ii) What total amount is maintained in the fund to cover the Lessee's self-insurance liabilities?
 - iii) Are amounts paid from the fund subject to limitations per each claim?
 - iv) If the Lessee does not maintain an umbrella policy, are claims limited only to amounts available in the fund, or may a claimant pursue other avenues of relief against the Lessee?
 - v) Who or what is the decision making authority for payment of claims submitted against the Lessee?
 - vi) If a claimant receives an adverse decision from the entity described in 4.a)v) above, does the claimant have recourse to the courts or to another administrative agency (i.e. who/what is the authority of last resort for paying a claim against the Lessee's self-insurance liability)?
 - b) If the Lessee does not maintain a self-insurance fund, from what source(s) does the Lessee obtain funds to pay claims against its self-insured liability?
 - i) What are the limitations and amounts payable for claims against these funding sources?
 - ii) Who/What is the entity authorizing payment from a claim against the Lessee's self-insurance liability?
 - iii) Who/What is the authority of last resort for paying a claim against the Lessee's self-insurance liability?

SAMPLE OPINION LETTER
TO BE EXECUTED ON COUNSEL'S LETTERHEAD

ePlus Group, inc.
13595 Dulles Technology Drive
Herndon, Virginia 20171

Ladies and Gentlemen:

We are counsel to the County of Orange (the "Customer") and, in that capacity, we have examined Installment Payment Agreement No. CAM268-8, dated as of October 29, 2020, (the "Agreement"), between the Customer and ePlus Group, inc. ("ePlus"),

As a result of our examination of the Agreement and such other examinations as we have deemed appropriate, we are of the opinion as follows:

(a) The Customer is a public body corporate and politic and is authorized by the Constitution and laws of the State of California to carry out its obligations under the Agreement;

(b) The Agreement has been duly authorized, executed and delivered by *, and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

(c) No approval, consent or withholding of objection is required from any governmental authority with respect to the entering into or performance by the Customer of the Agreement and the transactions contemplated thereby or such approval has been obtained;

(d) The entering into and performance of the Agreement will not violate any judgment, order, law or regulation applicable to the Agreement or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of the Customer or on the Asset(s) subject to the Agreement pursuant to any instrument to which the Customer is a party or by which it or its assets may be bound;

(e) Customer has complied with any applicable public bidding requirements in connection with the Agreement and the transactions contemplated thereby;

(f) There are no actions, suits or proceedings pending or to our knowledge, threatened against or affecting the Customer in any court or before any governmental commission, board or authority which, if adversely determined, will have a material, adverse effect on the ability of the Customer to perform its obligations under the Agreement.

This opinion is delivered to the addressee for its benefit and the benefit of its assigns for the purpose contemplated by the Agreement.

Very truly yours,

*Authorized Signatory of Customer under the Agreement.

ESSENTIAL USE LETTER
To Be Submitted on Customer's Letterhead

RE: That certain Installment Payment Agreement No. CAM268-8 dated as of October 29, 2020 (the "Contract"), between ePlus Group, inc. and the County of Orange ("Customer").

The following information sets forth the use of the property (herein so called) to be sold to the undersigned under the above-referenced Agreement.

- 1) The property will be used by _____.
- 2) The responsibilities of the Customer are _____.
- 3) The property is essential to the Customer's obligation to perform the following functions:
_____.
- 4) The Customer has/has not (circle one) always provided the functions set forth above.
- 5) Without the property, the Customer would/would not (circle one) be able to perform the functions.
- 6) The functions being performed with the property are/are not (circle one) permanent and non-cyclical?
- 7) The property is/is not (circle one) replacing equipment which performed a similar function.

If the property is replacing equipment which performed a similar function, what was the prior equipment, was it owned or leased, how old was it and what happened to it?
_____.
- 8) The property is/is not (circle one) supplementing priorequipment.

If the property is supplementing prior equipment, what portion is the property of the entire system (e.g., 50% of the total system in size and function)?-
_____.
- 9) Would the Customer be able to perform its functions without the property? _____.
- 10) What is the useful life of the property? _____.
- 11) What portion of the Customer's overall function will be performed using the property? _____.
- 12) What are the chances of the Customer replacing the property _____.
- 13) What is the flow of appropriations for the property? _____.

The undersigned hereby represents that the use of the property is essential to its proper, efficient and economic operation and will not be used for private purposes.

Sincerely,

By: _____

Title: _____



Customer Name: COUNTY OF ORANGE

Quote No: 22567847

Quote Name:

Quotation Date: 10/16/2020

Sales Support Contact: Alison Leaver

Sales Support Phone: 719-208-3428

Sales Support Email: aleaver@eplus.com

Account Executive: John Karle

Account Executive Phone:

Account Executive Email: jkarle@eplus.com

Customer PO No:

Order No:

Expiration Date: 11/14/2020

Line No.	Part Number	MFG	Description/Line Notes	QTY	Unit Price	Ext. Price
001	C9300-24U-A	CISCO	CATALYST 9300 24-PORT UPOE, NETWORK ADVANTAGE	17	2,996.93	50,947.81
002	CON-SNT-C93002UA	CISCO	SNTC-8X5XNBD CATALYST 9300 24-PORT UPOE, NETWORK ADVA	17	1,900.64	32,310.88
003	C9300-NW-A-24	CISCO	C9300 NETWORK ADVANTAGE, 24-PORT LICENSE	17	0.00	0.00
004	PWR-C1-1100WAC-P	CISCO	1100W AC 80+ PLATINUM CONFIG 1 POWER SUPPLY	17	0.00	0.00
005	PWR-C1-1100WAC-P/2	CISCO	1100W AC 80+ PLATINUM CONFIG 1 SECONDARY POWER SUPPLY	17	883.50	15,019.50
006	CAB-TA-NA	CISCO	NORTH AMERICA AC TYPE A POWER CABLE	34	0.00	0.00
007	C9300-SSD-NONE	CISCO	NO SSD CARD SELECTED	17	0.00	0.00
008	CAB-CONSOLE-USB	CISCO	CONSOLE CABLE 6FT WITH USB TYPE A AND MINI-B	17	46.50	790.50
009	STACK-T1-50CM	CISCO	50CM TYPE 1 STACKING CABLE	17	46.50	790.50
010	CAB-SPWR-30CM	CISCO	CATALYST STACK POWER CABLE 30 CM	17	44.18	751.06
011	C9300-DNA-A-24	CISCO	C9300 DNA ADVANTAGE, 24-PORT TERM LICENSES	17	0.00	0.00
012	C9300-DNA-A-24-5Y	CISCO	C9300 DNA ADVANTAGE, 24-PORT, 5 YEAR TERM LICENSE	17	1,557.75	26,481.75
013	PI-LFAS-T	CISCO	PRIME INFRASTRUCTURE LIFECYCLE & ASSURANCE TERM - SMART LIC	17	0.00	0.00
014	PI-LFAS-AP-T-5Y	CISCO	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	17	0.00	0.00
015	C9300-NM-8X	CISCO	CATALYST 9300 8 X 10GE NETWORK MODULE	17	1,185.75	20,157.75
016	NETWORK-PNP-LIC	CISCO	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	17	0.00	0.00
017	S9300UK9-1612	CISCO	CISCO CATALYST 9300 XE 16.12 UNIVERSAL	17	0.00	0.00
018	C9300-48U-A	CISCO	CATALYST 9300 48-PORT UPOE, NETWORK ADVANTAGE	51	5,138.25	262,050.75
019	CON-SNT-C93004UA	CISCO	SNTC-8X5XNBD CATALYST 9300 48-PORT UPOE, NETWORK ADVA	51	3,258.84	166,200.84

020	C9300-NW-A-48	CISCO	C9300 NETWORK ADVANTAGE, 48-PORT LICENSE	51	0.00	0.00
021	S9300UK9-1612	CISCO	CISCO CATALYST 9300 XE 16.12 UNIVERSAL	51	0.00	0.00
022	PWR-C1-1100WAC-P	CISCO	1100W AC 80+ PLATINUM CONFIG 1 POWER SUPPLY	51	0.00	0.00
023	PWR-C1-1100WAC-P/2	CISCO	1100W AC 80+ PLATINUM CONFIG 1 SECONDARY POWER SUPPLY	51	883.50	45,058.50
024	CAB-TA-NA	CISCO	NORTH AMERICA AC TYPE A POWER CABLE	102	0.00	0.00
025	C9300-SSD-NONE	CISCO	NO SSD CARD SELECTED	51	0.00	0.00
026	CAB-CONSOLE-USB	CISCO	CONSOLE CABLE 6FT WITH USB TYPE A AND MINI-B	51	46.50	2,371.50
027	STACK-T1-50CM	CISCO	50CM TYPE 1 STACKING CABLE	51	46.50	2,371.50
028	CAB-SPWR-30CM	CISCO	CATALYST STACK POWER CABLE 30 CM	51	44.18	2,253.18
029	C9300-DNA-A-48	CISCO	C9300 DNA ADVANTAGE, 48-PORT TERM LICENSES	51	0.00	0.00
030	C9300-DNA-A-48-5Y	CISCO	C9300 DNA ADVANTAGE, 48-PORT, 5 YEAR TERM LICENSE	51	2,920.20	148,930.20
031	C1-ADD-OPTOUT	CISCO	CISCO ONE ADD-ON SESSION OPT OUT (NO FULFILLMENT)	51	0.00	0.00
032	PI-LFAS-T	CISCO	PRIME INFRASTRUCTURE LIFECYCLE & ASSURANCE TERM - SMART LIC	51	0.00	0.00
033	PI-LFAS-AP-T-5Y	CISCO	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	51	0.00	0.00
034	C9300-NM-8X	CISCO	CATALYST 9300 8 X 10GE NETWORK MODULE	51	1,185.75	60,473.25
035	NETWORK-PNP-LIC	CISCO	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	51	0.00	0.00
036	C9200-24PB-A	CISCO	CATALYST 9200 24-PORT POE+, ENHANCED VRF, NETWORK ADVANTAGE	15	1,878.60	28,179.00
037	CON-SNT-C9202AA4	CISCO	SNTC-8X5XNBD CATALYST 9200 24-PORT POE+, ENHANCED VRF	15	1,193.10	17,896.50
038	C9200-NW-A-24	CISCO	C9200 NETWORK ADVANTAGE, 24-PORT LICENSE	15	0.00	0.00
039	PWR-C6-600WAC/2	CISCO	600W AC CONFIG 6 POWER SUPPLY - SECONDARY POWER SUPPLY	15	585.90	8,788.50
040	CAB-TA-NA	CISCO	NORTH AMERICA AC TYPE A POWER CABLE	30	0.00	0.00
041	C9200-NM-4X	CISCO	CATALYST 9200 4 X 10G NETWORK MODULE	15	930.00	13,950.00
042	C9200-DNA-A-24	CISCO	C9200 CISCO DNA ADVANTAGE, 24-PORT TERM LICENSES	15	0.00	0.00
043	C9200-DNA-A-24-5Y	CISCO	C9200 CISCO DNA ADVANTAGE, 24-PORT, 5 YEAR TERM LICENSE	15	1,557.75	23,366.25
044	PI-LFAS-T	CISCO	PRIME INFRASTRUCTURE LIFECYCLE & ASSURANCE TERM - SMART LIC	15	0.00	0.00

045	PI-LFAS-AP-T-5Y	CISCO	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	15	0.00	0.00
046	NETWORK-PNP-LIC	CISCO	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	15	0.00	0.00
047	C9200-48PB-A	CISCO	CATALYST 9200 48-PORT POE+, ENHANCED VRF. NETWORK ADVANTAGE	2	4,357.05	8,714.10
048	CON-SNT-C920AP48	CISCO	SNTC-8X5XNBD CATALYST 9200 48-PORT POE+, ENHANCED VRF	2	2,767.50	5,535.00
049	C9200-NW-A-48	CISCO	C9200 NETWORK ADVANTAGE, 48-PORT LICENSE	2	0.00	0.00
050	PWR-C6-1KWAC/2	CISCO	1KW AC CONFIG 6 POWER SUPPLY - SECONDARY POWER SUPPLY	2	878.85	1,757.70
051	CAB-TA-NA	CISCO	NORTH AMERICA AC TYPE A POWER CABLE	4	0.00	0.00
052	C9200-NM-4X	CISCO	CATALYST 9200 4 X 10G NETWORK MODULE	2	930.00	1,860.00
053	C9200-DNA-A-48	CISCO	C9200 CISCO DNA ADVANTAGE, 48-PORT TERM LICENSES	2	0.00	0.00
054	C9200-DNA-A-48-5Y	CISCO	C9200 CISCO DNA ADVANTAGE, 48-PORT, 5 YEAR TERM LICENSE	2	2,920.20	5,840.40
055	PI-LFAS-T	CISCO	PRIME INFRASTRUCTURE LIFECYCLE & ASSURANCE TERM - SMART LIC	2	0.00	0.00
056	PI-LFAS-AP-T-5Y	CISCO	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	2	0.00	0.00
057	NETWORK-PNP-LIC	CISCO	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	2	0.00	0.00
058	WS-C3560CX-12PC-S	CISCO	CISCO CATALYST 3560-CX 12 PORT POE IP BASE	4	1,130.88	4,523.52
059	CON-SNT-WSC312PC	CISCO	SNTC-8X5XNBD CISCO CATALYST 3560-CX 12 PORT POE IP BA	4	570.23	2,280.92
060	CAB-TA-NA	CISCO	NORTH AMERICA AC TYPE A POWER CABLE	4	0.00	0.00
061	CMPCT-CBLE-GRD	CISCO	CABLE GUARD FOR THE 3560-CX AND 2960-CX COMPACT SWITCHES	4	20.93	83.72
062	PWR-CLP	CISCO	POWER RETAINER CLIP FOR 3560-C, 2960-L & C1000 SWITCHES	4	0.00	0.00
063	CMPCT-MGNT-TRAY	CISCO	MAGNETIC MOUNTING TRAY FOR 3560-CX & 2960-CX COMPACT SWITCH	4	20.93	83.72
064	C3560CX-DNA-A-12	CISCO	C3560CX DNA ADVANTAGE, 12-PORT TERM LICENSE	4	0.00	0.00
065	C3560CX-DNA-A-12-5	CISCO	C3560CX DNA ADVANTAGE, 12-PORT, 5 YEAR TERM LICENSE	4	544.05	2,176.20
066	NETWORK-PNP-LIC	CISCO	NETWORK PLUG-N-PLAY CONNECT FOR ZERO-TOUCH DEVICE DEPLOYMENT	4	0.00	0.00
067	SFP-10G-LR-S=	CISCO	10GBASE-LR SFP MODULE, ENTERPRISE-CLASS	274	966.73	264,884.02
068	SFP-10/25G-LR-S=	CISCO	10/25GBASE-LR SFP28 MODULE	14	1,090.89	15,272.46
069	GLC-TE=	CISCO	1000BASE-T SFP TRANSCEIVER MODULE FOR CATEGORY 5 COPPER WIRE	20	219.02	4,380.40
070	GLC-SX-MMD=	CISCO	1000BASE-SX SFP TRANSCEIVER MODULE, MMF, 850NM,	10	240.87	2,408.70

			DOM			
071	SFP-H10GB-CU1M=	CISCO	10GBASE-CU SFP+ CABLE 1 METER	2	50.69	101.38
072	SFP-H10GB-CU3M=	CISCO	10GBASE-CU SFP+ CABLE 3 METER	8	51.15	409.20
073	SFP-H10GB-CU5M=	CISCO	10GBASE-CU SFP+ CABLE 5 METER	6	75.80	454.80
074	SFP-25G-AOC1M=	CISCO	25GBASE ACTIVE OPTICAL SFP28 CABLE, 1M	3	224.60	673.80
075	STACK-T1-1M=	CISCO	1M TYPE 1 STACKING CABLE	6	118.16	708.96
076	STACK-T1-3M=	CISCO	3M TYPE 1 STACKING CBL	6	177.23	1,063.38
077	CAB-SPWR-150CM=	CISCO	CATALYST STACK POWER CABLE 150 CM SPARE	10	105.22	1,052.20
078	SFP-10G-SR-S=	CISCO	10GBASE-SR SFP MODULE, ENTERPRISE-CLASS	20	338.52	6,770.40
079	SFP-10G-LR-S=	CISCO	10GBASE-LR SFP MODULE, ENTERPRISE-CLASS	12	966.73	11,600.76
080	GLC-LH-SMD=	CISCO	1000BASE-LX/LH SFP XCVR MOD MMF/SMF 1310	10	478.71	4,787.10
081	SFP-10G-SR-S=	CISCO	10GBASE-SR SFP MODULE, ENTERPRISE-CLASS	8	338.52	2,708.16
082	L-N3548-24P-UPG=	CISCO	NEXUS 3524 SECOND 24PT E-DELIVERY	6	6,532.79	39,196.74
083	CON-ECMU-LUN35482	CISCO	SWSS UPGRADES NEXUS 3524, SECOND 24 PORTS, E-DELIVERY	6	3,444.00	20,664.00
084	C9800-L-F-K9	CISCO	CISCO CATALYST 9800-L WIRELESS CONTROLLER_FIBER UPLINK	2	0.00	0.00
085	CON-SNT-C9800LFL	CISCO	SNTC-8X5XNBD CISCO CATALYST 9800-L WIRELESS CONTROLLE	2	0.00	0.00
086	LIC-C9800-DTLS-K9	CISCO	CISCO CATALYST 9800 SERIES WIRELESS CONTROLLER DTLS LICENSE	2	0.00	0.00
087	SC9800LK9-1612	CISCO	C9800L UNIVERSAL (NETWORK ESSENTIALS)	2	0.00	0.00
088	C9800L-RMNT	CISCO	C9800 WIRELESS CONTROLLER RACK MOUNT TRAY	2	0.00	0.00
089	AIR-DNA-A-PROMO	CISCO	AIRONET CISCO PROMO DNA ADVANTAGE TERM LICENSES	2	0.00	0.00
090	DNA-A-PROMO-5Y	CISCO	AIRONET CISCO PROMO DNA ADVANTAGE TERM LICENSES	2	0.00	0.00
091	WLC-AP-T	CISCO	AIRONET AP LICENSE TERM LICENSES	2	0.00	0.00
092	WLC-AP-T-5Y	CISCO	AIRONET AP LICENSE 5 YEAR TERM LICENSE	2	0.00	0.00
093	PI-LFAS-AP-T	CISCO	PRIME AP TERM LICENSES	2	0.00	0.00
094	PI-LFAS-AP-T-5Y	CISCO	PI DEV LIC FOR LIFECYCLE & ASSURANCE TERM 5Y	2	0.00	0.00
095	AIR-DNA-A-T	CISCO	AIRONET AP LICENSE TERM LICENSES	2	0.00	0.00

096	AIR-DNA-A-T-5Y	CISCO	AIRONET CISCO DNA ADVANTAGE 5 YEAR TERM LICENSE	2	0.00	Attachment A 0.00
097	AIR-DNA-NWSTACK-A	CISCO	AIR CISCO DNA PERPETUAL NETWORK STACK	2	0.00	0.00
098	D-DNAS-EXT-T	CISCO	CISCO DNA SPACES EXTEND OPTION FOR CISCO DNA 1YR TERM	2	0.00	0.00
099	D-DNAS-EXT-5Y	CISCO	CISCO DNA SPACES EXTEND OPTION FOR CISCO DNA 5Y	2	0.00	0.00
100	C9800-AC-110W	CISCO	CISCO CATALYST 9800 L WIRELESS CONTROLLER POWER SUPPLY	2	0.00	0.00
101	CAB-AC-C5	CISCO	AC POWER CORD, TYPE C5, US, CANADA	2	0.00	0.00
102	C1-TAAS-SW-K9	CISCO	TETRATION SAAS SOFTWARE SUBSCRIPTION BUNDLE Line Note: Initial Term - 12.00 Months Auto Renewal Term - 0 Months Billing Model - Prepaid Billing Requested Start Date - 05-Oct-2020 Requested End Date - 04-Oct-2021 The following terms from Cisco apply to Customer's use of the products and services on this quote (the "Licensed Services"): the Cisco Universal Cloud Agreement and the applicable Cisco Service Description Documents at http://www.cisco.com/c/en/us/about/legal/cloud-andsoftware/cloud-terms.html or such other terms as agreed between Cisco and Customer. By purchasing the Licensed Services through ePlus, Customer consents to ePlus and Cisco sharing Customer data with each other to the extent required to provide the Licensed Services.	1	0.00	0.00
103	C1-TAAS-WP-FND-K9	CISCO	TETRATION SAAS WORKLOAD PROTECTION(BASE+ENFORCEMENT) LICENSE	250	0.00	0.00
104	SVS-TAAS-WP	CISCO	TETRATION AS A SERVICE SOFTWARE SUBSCRIPTION BUNDLE SUPPORT	1	0.00	0.00

Totals 1,339,131.46

Shipping:	Sub Total (USD):	1,339,131.46
Packing:	Tax (USD):	81,954.85
	Shp&Hnd (USD):	0.00
	Total (USD):	1,421,086.31

All orders are governed by your organization's signed agreement with ePlus or applicable public sector contract; if there is no such agreement the Customer Terms and Conditions for Products and/or Services located at www.ePlus.com govern. No additional or contrary terms in a purchase order shall apply, and ePlus' performance shall not be deemed acceptance of any preprinted PO terms. Use of software, subscription services or other products resold by ePlus is subject to manufacturer/publisher end user agreements or subscription terms. Any periodic payment obligations for specific offerings, along with customer-incurred overages, consumption fees, add-ons, quantity adjustments and automatic renewals are non-cancelable for any reason except by public sector customers required by law to terminate due to non-appropriation of funds.

[ePlus offers flexible and easy leasing options for your IT equipment. Use leasing to increase your IT acquisition capability, overcome limited budgets, and manage the lifecycle of your assets. Contact an ePlus Leasing Coordinator at 1-703-984-8021 or \[leasing@eplus.com\]\(mailto:leasing@eplus.com\) to receive a lease quote today.](#)

Thank you for your inquiry. Recent US govt tariffs on certain imports are causing price increases for many IT products, with little or no notice, and beyond ePlus' control. As a result, this

quote is subject to change without notice, even before the expiration date reflected above. Please confirm pricing prior to order placement. Unless freight amount is indicated, or is zero, freight will be added to the invoice. Unless Bill-To company is exempt from Sales Tax, it will be added to the invoice. Recognizing that the global pandemic has disrupted operations for many organizations, ePlus will ship products for delivery in accordance with customer's written ship-to instructions and products will be deemed delivered notwithstanding any failure of customer personnel to sign for receipt due to facility closing or otherwise.

Customer Acceptance	Bill To	Ship To
Signature: _____	COUNTY OF ORANGE	COUNTY OF ORANGE
Name: _____	JOHN WAYNE AIRPORT	JOHN WAYNE AIRPORT
Title: _____	3160 AIRWAY AVENUE	3180 AIRWAY AVENUE
Date: _____	COSTA MESA CA 92626	COSTA MESA CA 92626
Customer PO #: _____	UNITED STATES	UNITED STATES
	ACCOUNTS PAYABLE	

Contract Summary Form

ePlus Technology, Inc.

SUMMARY OF SIGNIFICANT CHANGES

N/A – new contract

SUBCONTRACTORS

This contract does not currently include subcontractors or pass through to other providers.

CONTRACT OPERATING EXPENSES

Payment Number	Payment Due Date	Payment Amount
#1	Net 30 Upon Date of Acceptance	\$100,000.00
#2	Due on July 15, 2021	\$413,043.82
#3	Due on July 15, 2022	\$413,043.82
#4	Due on July 15, 2023	\$413,043.82
	Subtotal:	\$1,339,131.46
	*Sales Tax:	\$81,954.85
	Total Payments:	\$1,421,086.31

*Payment for sales tax on hardware is payable upon date of acceptance.

Appropriations for this purchase are included in the FY 2020-21 Budget for Airport Operating Fund 280 and will be included in the budgeting process for future years. The equipment will be financed at zero percent interest over a three-year period.

RISK ASSESSMENT OR MODIFICATION OF INSURANCE TERMS

Use this form to request a Risk Assessment and determine Proper Insurance Requirements when developing an Agreement. *Please attach Agreement and prior Risk Approval(s) if any*****

Date: 11/4/2020

TO: RiskMgmtInsurance@ocgov.com

FROM: Monica Rodriguez

JWA

County Employee (Contact for Questions)

County Department

Phone# (Including area code): 949-252-5240

CONTRACT TYPE: Commodities Public Works Service Lease/License

A & E Other _____

Vendor Name: ePlus Technology Inc.

Contract#/RFP#: MA-280-21010706

IFB: Yes No

Contract Amount: \$1,421,086.31

Insurance Type to be Reviewed for Waiver or Modification of Terms

- | | | |
|--|---|---|
| <input type="checkbox"/> Commercial General Liability (CGL) | <input type="checkbox"/> Workers' Compensation (W/C) | <input type="checkbox"/> Property Insurance |
| <input type="checkbox"/> Commercial Auto Liability (AL) | <input type="checkbox"/> Employer's Liability | <input checked="" type="checkbox"/> Indemnification |
| <input type="checkbox"/> Professional Liab. (Errors & Omissions) | <input type="checkbox"/> Sexual Misconduct | <input checked="" type="checkbox"/> Limitation of Liab. |
| <input type="checkbox"/> Network Security & Privacy Liab. | <input type="checkbox"/> Technology Error & Omissions | |
| <input checked="" type="checkbox"/> Other _____ | | |

Request and Justification: The purchase is for commodity purchase only for standard Cisco hardware/software equipment (Add another page if necessary) and support. The hardware and software are standard off-the-shelf products. Indemnity is provided for third party and infringement claims. There is a limitation of liability for the purchase price which is standard for off-the-shelf software products, but the limitation of liability does not affect the vendor's indemnity obligations for third party or infringement claims, so there is no risk to the County by accepting these terms.

To Be Completed By CEO/Risk Management

Approved

Denied

Approved as Modified

Comments: _____

Rhonda Marshall
Manager/CEO/Risk Management

Digitally signed by Rhonda Marshall
DN: cn=Rhonda Marshall, o=County of Orange, ou=CEO/Risk Management,
email=Rhonda.Marshall@ocgov.com, c=US

11-04-20
Date

Note: CEO Risk Mgmt. acts as an advisory to departments regarding Risk Assessment. Any changes to a contract requires formal modification.