



TOM TINDALL
Director

County of Los Angeles
INTERNAL SERVICES DEPARTMENT
1100 North Eastern Avenue
Los Angeles, California 90063

Telephone: (323) 267-2101
FAX: (323) 264-7135

"To enrich lives through effective and caring service"

June 12, 2012

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**AUTHORIZATION TO EXECUTE AN AGREEMENT
WITH CISCO SYSTEMS FOR CISCO SMARTNET®
TECHNICAL EQUIPMENT MAINTENANCE SERVICES
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

Authorization to procure technical equipment maintenance services known as SMARTnet® from Cisco Systems on a countywide basis under a Western States Contracting Alliance Agreement for a period of five (5) years at a 33 percent discount off list price; and to finance the purchase of the services at an annual interest rate of not to exceed 2.58 percent.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Delegate authority to the Director of the Internal Services Department (ISD), or his designee to execute an Agreement identified as an "Authorization to Order Under State Contract" (ATO), similar to Attachment I, with Cisco Systems (Cisco) under the Western States Contracting Alliance's (WSCA) Data Communications Equipment and Associated Original Equipment Manufacturer (OEM) Maintenance and Training Master Agreement; and to manage the Cisco equipment maintenance centrally at ISD.

This Agreement will provide technical equipment maintenance services for the County's Cisco equipment, known collectively as SMARTnet®, in the amount of \$20,400,950 to be used over the next five-years from Fiscal Years (FY) 2012-13 through 2016-17.

2. Authorize the Director of ISD, or his designee, to execute amendments and to make necessary changes to the scope of services to accommodate the future addition and/or deletion of equipment covered under the Agreement through the term, and to increase the Agreement amount up to 20 percent of the sum approved by your Board based on the County's needs for Cisco equipment maintenance.

3. Authorize the Chief Executive Officer, or his designee, to finance the purchase of the services in the amount of \$20,400,950 through Key Government at an annual interest rate of not to exceed 2.58 percent, and to execute all related financing documents and amendments.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to authorize ISD to procure Cisco equipment and software services for County departments at a significantly reduced cost directly from Cisco, through a WSCA Agreement, as amended by the State of California.

Cisco is the OEM for the majority of the networking equipment used by County departments. SMARTnet® is the umbrella of maintenance services that enables software upgrades, return material authorization replacements, and technical support for covered Cisco equipment.

Currently, there are approximately 160 individual SMARTnet® Contracts in effect across the County, covering more than 10,300 pieces of equipment. Nearly all of these Contracts are effective for 12-month periods, and are generally managed in a decentralized fashion. County departments pay an average of 15 percent off Cisco's Global List Price for these maintenance services.

Cisco has proposed a five-year direct Agreement with the County to provide SMARTnet® maintenance services under a single Agreement rather than the approximately 160 separate Contracts currently in effect. By simplifying the contracting process, leveraging the County's combined expenditure on SMARTnet®, and pre-paying for these services for a multi-year term, Cisco will extend a 33 percent discount from its Global List Price for SMARTnet® services. Additionally, by pre-payment (which will be financed), the County avoids any periodic price increases that Cisco may make for SMARTnet for that equipment for the life of the Agreement.

Consolidated program oversight will be managed by ISD and will require 2 positions (included in ISD's FY 2012-13 final changes request) to manage the Agreement and centrally coordinate the program for the County.

Implementation of Strategic Plan Goals

The recommended action supports the County's Strategic Plan Goal 1, Operational Effectiveness, by effectively managing County resources.

FISCAL IMPACT/FINANCING

This action will lead to net savings countywide estimated at approximately \$5.5 million over five years versus individual 12-month Contracts given similar equipment inventories. Beyond the projected savings, the Cisco offer includes additional services and support, which include a designated County Technical Services Manager, Network Optimization Services, and other benefits, which are valued at approximately \$3.5 million.

The estimated cost of the five-year Agreement for FYs 2012-13 through 2016-17, which will be financed, is \$21,371,211, including finance charges. The annual financing cost is not to exceed 2.58 percent per year. Total interest payments to the County will be in the amount of \$970,261. The additional discount from Cisco list price as compared to current County pricing exceeds the financing cost and generates the net \$5.5 million in savings across all departmental funding sources over the term of the Agreement.

Any increase(s) to provide service coverage of new equipment added beyond the initial Agreement amount will be prepaid, using prices calculated at 33 percent off of the Cisco Global List Price at the time of those additions through the term of the Agreement. At the County's option, the additional amount due may be financed as an additional schedule to the proposed financing Agreement at the then-current market rates and within the existing term of the financing period.

The annual payments will be funded from the existing IT operating budgets of the various departments and agencies with the covered equipment. Those departmental budgets already include funding for the Cisco maintenance of existing equipment at the higher rate.

In order to obtain the significant savings identified above, this Agreement reflects a five-year County commitment, prepaid to Cisco and financed by the County with Key Government, a Cisco partner in government financing. The financing arrangement includes interest costs that are payable over four fiscal years beginning in FY 2013-14.

According to the Auditor-Controller, interest costs incurred in conjunction with maintenance and other operating expenses are generally not reimbursable for programs funded by the State and federal government. In this case, the Agreement savings significantly exceed the related interest costs and are cost effective for all programs, including those which are subvented. The Auditor-Controller will work with the State Controller during FY 2012-13 to explain the overall cost-effectiveness of this arrangement. Based on the savings that this Agreement will provide to County programs funded by State and federal revenues, the Auditor-Controller will seek permission to allow the County to claim reimbursement for the related interest costs.

The Chief Executive Office will identify County General Funds to pay for interest costs, beginning with \$408,554 due in FY 2013-14. This amount will be included in ISD's FY 2013-14 budget request. If the State Controller determines that interest costs are allowable under Federal guidelines, future fiscal year County General Fund appropriations will not be required.

To manage Cisco equipment maintenance centrally, ISD's FY 2012-13 Final Changes Budget request will include 1 Senior Typist-Clerk and 1 Staff Assistant III positions and \$4.6 million for services and supplies appropriation for the first year maintenance payments. ISD will recover an administration fee of 7 percent from participating departments for the centralized administration of the Cisco agreement. ISD will bill each department for their pro-rata share of the Cisco equipment maintenance contract.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

SMARTnet® is the brand name for a set of technical equipment maintenance services provided directly by Cisco to maintain, repair, and optimize its products. It includes technical support, advanced hardware replacement, network equipment software upgrades, online technical resources, inventory management, and other maintenance-related services.

The County has approximately 10,300 Cisco devices under SMARTnet® maintenance Contracts, ranging from network routers and switches, to Voice over Internet Protocol (VoIP) equipment and handsets, to security-related hardware. The County opened 1,260 technical support cases and requested 419 equipment replacements during the period of July 1, 2009 through March 16, 2012 under SMARTnet®.

The initial SMARTnet® coverage is typically acquired at time of the initial equipment purchase and is generally one-year in length. After the first year, SMARTnet® may be extended through competitive bid award or acquired through Board-approved master agreements, such as the Cisco Networking Equipment and Technical Service Master Agreement or the Telecommunications Equipment and Services Master Agreement (TESMA).

Historically, Cisco's SMARTnet® services have been provided to local governments through its channel partners (resellers). Based on this practice, there are currently 160 SMARTnet® contracts supporting the County's Cisco equipment, which are held by 14 Cisco resellers. These contracts do not leverage the County's total Cisco services purchase volume, nor do they realize multi-year discounts as each contract is paid on a year-by-year basis.

Due to these decentralized SMARTnet® purchases and the large number of existing contracts, it is difficult to determine the County's total spend on SMARTnet®. However, the departments with annual SMARTnet® maintenance renewals greater than \$100,000 have procured those services under TESMA, as reflected below:

- FY 2008-09 - \$3,758,838
- FY 2009-10 - \$4,617,393
- FY 2010-11 - \$4,801,230
- FY 2011-12 - \$6,012,963

There are eleven main departments participating in this Agreement: Fire, Health Services, Mental Health, Natural History Museum, Public Health, Public Social Services, Public Works, Regional Planning, Registrar-Recorder/County Clerk, Sheriff, and ISD, which provides network support for other County departments.

This Agreement does not alter the County's current procurement practices with regard to future purchases of Cisco equipment and related initial SMARTnet® terms purchased via the competitive bid process. Instead, following the initial one-year maintenance term, ISD, under its delegated authority, may add those SMARTnet® services to the direct Agreement with Cisco on a co-terminus basis. Additions to the Agreement will be pre-paid and receive a 33 percent discount from Cisco Global List Price in effect at the time. SMARTnet® coverage acquired under this Agreement will not extend beyond June 30, 2017.

Not all Cisco equipment is covered by this technical equipment maintenance agreement. The County has the right to determine coverage and service levels. There are approximately 2,100 eligible devices that are not covered because County departments have elected not to cover them. There are also many devices that are beyond their designed lifespan but are still in active use.

The Agreement amount does not include any equipment not already in use nor assumes any future equipment coverage. The amount of SMARTnet® services for the current equipment inventory will decline over time as equipment reaches the end of maintenance support, as reflected below:

- FY 2012-13 - \$4,565,607
- FY 2013-14 - \$4,887,924
- FY 2014-15 - \$4,541,155
- FY 2015-16 - \$3,983,695
- FY 2016-17 - \$3,392,929

Replacements and additions are not included in the initial Agreement amount, so changes based on the departments' future SMARTnet® needs will increase the Agreement amount during the five-year period.

In addition to the discount to SMARTnet® services, Cisco is offering value-added services at no additional cost to enhance the County's technical equipment maintenance operations. These include Network Optimization Services for the County's networks and consolidated County data center, knowledge transfer, and an assigned Cisco Technical Services Operations Manager to expedite technical support requests and return materials authorizations.

ISD will provide contract management, contract monitoring, and billing services for all departments to ensure successful delivery of the Agreement services. This will ensure consistency in those functions and relieve departments of some of the contract administration responsibilities associated with SMARTnet®.

CONTRACTING PROCESS

The Western States Contracts Alliance (WSCA) is a purchasing cooperative administered by nine state agencies in the western region of the United States, including California. These state agencies aggregate their purchases and solicit bids for commonly used products and services to leverage their combined purchasing power, and establish Agreements that are accessible to other state and local government agencies. On behalf of WSCA, the State of Utah conducted a competitive solicitation to procure SMARTnet® services in August 2006, which resulted in a direct Agreement with Cisco. On May 23, 2008, the State of California entered into an amendment to the WCSA Agreement with Cisco. The WSCA Agreement term, with extensions runs through May 31, 2014. The executed Agreement between the County and Cisco will be extended along with the standard terms and conditions set forth in any successor WSCA Agreement, or will stand alone and incorporate the terms and conditions of the current WSCA, as amended by the State of California, if no successor WSCA Agreement is established.

As a “piggyback” Agreement and Amendment established by other government entities, the WSCA and amended agreements possess basic protections in its terms and conditions that are inherent in most government contracts. Additionally, Cisco has agreed, as noted in the ATO, to comply with the following County-specific contract provisions:

- Jury Service Policy
- Safely Surrendered Baby Law
- Governing Law, Jurisdiction and Venue
- Child Support Compliance Program
- County’s Defaulted Property Tax Reduction Program

However, this does not include all of those terms and conditions specific to the Board’s social programs that are included in County Contracts. Attachment II represents a comparison and explanation of those County terms and conditions that are addressed, or partially addressed in the base WSCA Agreement and/or State of California Amendment, as well as those County terms and conditions that will be excluded in the Cisco Agreement with the County.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The proposed five-year, direct Agreement with Cisco for SMARTnet® maintenance services will consolidate the administration of these services under a single Agreement, simplify the contracting process for these services, and leverage the County’s combined purchase power to achieve a 33 percent discount from its Global List Price for SMARTnet® services. Additionally, it enables the County to lock in pricing for these services for equipment under contract and avoids any Cisco SMARTnet® price increases for this equipment for the duration of the Agreement.

CONCLUSION

Approval of the recommended Agreement with Cisco will streamline the contracting process and will provide the County with the lowest possible prices for SMARTnet® services.

The Honorable Board of Supervisors
6/12/2012
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Respectfully submitted,



TOM TINDALL
Director



RICHARD SANCHEZ
Chief Information Officer

TT:RS:JS:ES

Attachments(2)

c: Chief Executive Officer
Executive Officer, Board of Supervisors
County Counsel
Deputy CEO
Affected Department(s)

ATTACHMENT I

Authorization to Order Under State Contract

This Authorization to Order Under State Contract, effective on July 1, 2012, are by and between the Internal Services Department, County of Los Angeles ("County"), an agency of the County of Los Angles with offices at 1100 North Eastern Avenue, Los Angeles, California 90063, and Cisco Systems, Inc. ("Cisco") having its principal place of business at 170 West Tasman Drive, San Jose, California 95134 These Supplemental Purchase Order Terms (including any Exhibits hereto), along with the State of Utah – State Cooperative Contract, Contract Number: AR-233, the California Participating Addendum Agreement Number 7-08-70-13 Under Western States Contracting Alliance (WSCA) Cisco Networking Communications & Maintenance Master Agreement for the "Agreement".

The County and Cisco are entering into this Agreement solely for Cisco's provision of SMARTnet services to the County for Cisco Networking Equipment that the County elected during the term. The term of the Contract and the SMARTnet support service is for five (5) years, through June 30, 2017. The agreement consists of the following documents, which, in case of conflict, shall have priority in the order listed, and are hereby incorporated as if fully set forth:

- These Supplemental Purchase orders terms including 1) Cisco direct SMARTnet offer to the County of Los Angeles (Exhibit 1) and supplemental contractual terms requested by the County of Los Angeles (Exhibit 2)
- California Participating Addendum Agreement Number 7-08-70-13 Under Western States Contracting Alliance (WSCA) Cisco Networking Communications & Maintenance Master Agreement (<http://www.documents.dgs.ca.gov/pd/wasca/datacomm2/PA-Cisco.pdf>)
- State of Utah – State Cooperative Contract, Contract Number: AR-233 (http://www.cisco.com/web/strategy/government/wasca/states/utah/docs/signed_cisco_wasca_contract.pdf)

Cisco will be paying the contract usage fee of 1.00% to the State of California and 0.50% to the State of Utah.

AGREED AND ACCEPTED:**County of Los Angeles**

Signature: _____

Name (Printed): _____

Title: _____

Date: _____

Cisco Systems, Inc.

Signature: _____

Name (Printed): _____

Title: _____

Date: _____

Exhibit 1 – Cisco’s Direct SMARTnet Offer to the County of Los Angeles

1.1 Problem Isolation and Resolution Support

Cisco SMARTnet Service provides the County with access to Cisco Technical Assistance Center (TAC) Support Engineers, Cisco.com online technical resources, and operating system support and updates and upgrades.

1.1.1 TAC Engineer Support

Cisco’s TAC is available 24 hours a day, 365 days a year around the world, with support available in local languages. You can interact with Cisco TAC engineers in a way that is most convenient and useful for you, including email, telephone, web-based collaboration, or a face-to-face discussion using Cisco WebEx® collaboration.

1.1.1.1 *Operating System Support Updates*

SMARTnet Service entitles the County to online access to Cisco’s latest operating system software updates and upgrades.

Unless the County is notified otherwise by Cisco or unless tangible property is requested by the County, it is not Cisco’s current practice to provide tangible property in the transfer of software and/or software updates, patches or new version releases.

1.1.2 Service Restoration Support

Depending on the option selected by the County, Cisco SMARTnet Service provides a variety of Advance Hardware Replacement options including:

- Advance Hardware Replacement Next Business Day
- Advance Hardware Replacement 8x5x4
- Advanced Hardware Replacement 24x7x4
- Advanced Replacement 24x7x2
- Cisco Smart Foundation: The Cisco Smart Foundation service (formerly known as Cisco SMB Support Assistant) is an entry-level technical support service designed specifically for small and medium-sized businesses with data-only networks, SMB-class products, and fewer than 250 network users and 50 or fewer network devices. *Note that this offering is typically offered to Small and Medium sized businesses only. However, in 2009, Cisco agreed to offer this service level to the County in order to reduce cost for eligible product lines.*

Please refer to Attachment D for a full description of Cisco SMARTnet services.

1.2 Cisco Advanced Services

1.2.1 Network Optimization Services (NOS)

The Optimization Services outlined below are value added services that are provided by Cisco and offered at no cost to the County. The specific technologies supported include:

- Five (5) years of NOS for Routers and Switches
- Two (2) years of NOS for Datacenter
 - Unified Computing System (UCS)
 - Nexus (Data Center Switching)

Please refer to Attachment C for a specific list of NOS deliverables. Please note that each of these service deliverables is for a twelve (12) month period. Cisco is willing to work with the County to repurpose the deliverables described for another Advanced Service deliverable upon agreement of both parties in writing. Any repurposed deliverables will be at equal or lesser value of the original deliverable.

Please note that this is not intended to offer and sell professional services to the County. The services outlined above are being offered by Cisco to ensure adequate resources are in place to manage a direct contract with the County.

1.2.2 Technical Services Operations Manager

Cisco will provide the County with access to a Technical Services Operations Manager (TSOM). The TSOM is a Cisco operations expert who will work with the County to escalate technical service requests and return material authorizations. Below is a list of specific deliverables that the TSOM will provide to the County:

- A customer kick-off meeting to introduce team members and review roles and responsibilities
- Provide a weekly status log of critical items
- A monthly report outlining key activities
- Semi-annual business review
- Training and support recommendations
- Collation of systemic issues and communication to customer and Cisco account team
- Escalation assistance is during local business hours (8:00 AM – 5:00 PM)

To provide greater insight into the management of the contract, the Cisco TSOM and LA County will meet quarterly to review relevant reports, metrics and contract matters.

This service is being provided at no charge to the County for the full five (5) year Term.

2 Pricing

2.1 Coverage Term of Master Contract

The term of the SMARTnet services will be from July 1, 2012* ("Effective Date") and shall continue until June 30, 2017 ("Services Term"). The services will provide five (5) years of coverage* for the specific devices that the County elects to cover. Attachment A provides a cost breakdown by agency for the devices that will be covered under this agreement. Attachment B provides a detailed list of equipment by agency for items that were elected to have coverage.

Any equipment not included on Attachment B is not covered during the Services Term. The total cost for SMARTnet Service coverage during the Services Term is as follows:

Item	List Price *	Discount	Net Price to County *
Five (5) years of SMARTnet coverage for the specific devices as determined by the County on Attachment B (The List Price and Net Price does not take into account the addition/subtraction of hardware over the five year Term).	\$30,449,177.78	33.00% **	\$20,400,949.11

* The pricing provided is prorated for each device to reflect a contract start date that begins at the termination of an existing SMARTnet contract or July 1, 2012, whichever is later. All devices will have a contract end date of June 30, 2017 or the Cisco announced End of Support date, whichever is earlier.

Any true-ups will be processed in the same manner to account for the start and end dates.

** Cisco is providing a maximum discount of 33% to the County for this direct offer. The County may at their own discretion utilize a portion of this discount to pay for finance charges and any related expenses. If a portion of the discount is used for such purpose, Cisco will reduce the discount accordingly to cover these expenses and the remaining discount will be applied directly as a discount to the SMARTnet purchase.

The list price figure above represents inventory to be covered as of January 26, 2012.

2.2 Coverage Term of Specific Devices

The contract start date is defined by each device and varies based on existing SMARTnet contracts that are in place today. The pricing provided above is prorated to reflect a contract start date by device of either 1) the end date of the existing SMARTnet contract, or 2) July 1, 2012. All devices captured under this SMARTnet contract will have a contract end date of 1) June 30, 2017 or 2) the End of Service date that is announced by Cisco, whichever is earlier. Any products that are added to the contract via the true-up process during the Services Term will have a contract end date of June 30, 2017, or the End of Service Date that is announced by Cisco, whichever is earlier. Attachment B provides the contract start date and end date for each device that will be covered under the contract.

Any hardware that is on an existing SMARTnet contract today will remain in place for the life of its original contract term and is not covered during the Services Term. The County may elect to add such hardware at end of its contract term to the master SMARTnet contract during a true-up cycle.

2.3 Contract Structure

To maintain better integrity of inventory by each agency, Cisco will create a contract structure to provide unique service level contracts by agency. In addition, Cisco will implement a standardized naming convention to help manage the changes to inventory and have an established taxonomy of contract data elements.

2.4 Finance Payment Option

The County will make payment in full to Cisco at time of purchase.

2.4.1 Finance Option

The County can arrange for flexible payment terms by entering into a payment plan agreement with a lease or finance institution approved to do business with the County. Under a payment plan agreement, the lender or finance institution will make payment in full to Cisco at the time of purchase and the County will then make periodic payment to the lending institution (i.e. monthly, quarterly, semi-annually, or annually). Any financing terms shall be solely between the County and the finance institution.

2.5 True-Up Process

To account for the additions and deletions of devices within the County's network that will have SMARTnet coverage during the Services Term, Cisco will perform an annual true-up audit to account for inventory adjustments. If there is a net positive adjustment, the County may elect to add a separate lease schedule to the master payment plan agreement (if any) or it may elect to pay cash to Cisco for the added services. If there is a net negative adjustment, Cisco will issue a credit memo to the County for the overage amount and the County may apply the credit memo for payment against a future invoice from Cisco as described below in sections 2.5.1 and 2.5.2.

Please note that Cisco is providing a maximum discount of 33% to the County for this direct offer. The County may at their own discretion utilize a portion of this discount to pay for finance charges and any related expenses. If a portion of the discount is used for such purpose, Cisco will reduce the discount accordingly to cover these expenses and the remaining discount will be applied directly as a discount to the SMARTnet purchase.

All SMARTnet cost for true-ups will be based on the then-current list price. The term of the SMARTnet Service for the newly added devices will be for the time period from when the items are added to the SMARTnet contract until the earlier of June 30, 2017 or the End of Service date that is announced by Cisco.

If financing is elected for any true-up, the finance charges will be paid by the County and will be based on the then-current market rates at the time of the true-up.

2.5.1 Service Removals and Additions – Annual True-Up

During the Services Term, Cisco and the County acknowledge that the County may desire to add new products to its network and remove products included on Attachment B from its network. During the Services Term, on an annual basis, ("Annual Reconciliation"), Cisco and the County will reconcile the list of products in the County's network and either an invoice or a credit will be issued as described below ("Annual True-Up"). During the Annual Reconciliation, the County will identify in writing to Cisco's Services Account Manager any products removed from the County's network, and any products added to the County's network for which Customer intends to purchase entitlement to Cisco services. The County and Cisco will review and approve the identified products. The County understands and agrees that the County will no longer be entitled to receive Cisco services for products identified as decommissioned and

removed, and that the County will not have any claim against Cisco related to Cisco services for such removed products.

At the conclusion of each Annual Reconciliation, for purchases of products by the County, which products are added to Attachment B, the County will be issued an invoice by Cisco for a pro-rated amount for Cisco services on such new products, which will be coterminous with the Term of the applicable equipment list.

At the conclusion of each Annual Reconciliation, for decommissioned products removed from the equipment list during the Term for which Cisco has received pre-paid SMARTnet services fees from the County, Cisco agrees to extend a credit to the County in an amount equal to a pro-rata portion of the unused SMARTnet services fees paid by the County to Cisco for such services in accordance with the terms of this section.

The provision of any such credits is conditioned upon the County providing written notification to Cisco of any de-commissioned equipment within thirty (30) days of the date of decommission. If the County does not notify Cisco within such thirty (30) day period, then the County will not be entitled to receive and Cisco will not be obligated to extend any credit on such decommissioned equipment. Both the County and Cisco will mutually agree on the final list of equipment that will be part of the annual true-up.

Cisco's standard policy states that services are not terminable by the County for convenience. However, if the County finances the fee for the SMARTnet Services, the County may terminate for non-appropriation of funds for outlying years if the County and the financing company so agree. Under Cisco's standard policy, decommissions are allowed.

Credits can be applied to the purchase of new Cisco hardware or services, are non-transferable and must be used within a twelve (12) month period from the date of issuance or the credit will be forfeited. If a credit memo has been issued to the County and Cisco services are not required for the specific agency that holds the credit memo, the County may use the value of the credit memo to place direct hardware orders to Cisco under the WSCA contract. The terms and conditions of any hardware purchases will be in accordance with the WSCA Master Contract and California Participating Addendum.

2.5.2 Service Removals and Additions – Off-Cycle

If an off cycle true-up (i.e. other than the annual true-up) is required, Cisco and the County will mutually agree to the timing of the required off-cycle true-up. Any off-cycle true-up will follow the guidelines set forth in section 2.5.1 above.

2.5.3 Short-Term SMARTnet Coverage

For products that are on a current SMARTnet contract and the term of the SMARTnet contract expires prior to the Annual Reconciliation, Cisco recommends that the County work with the original Cisco partner from which the equipment was purchased and procure the necessary SMARTnet coverage for a one (1) year contract term. At the Annual Reconciliation, this equipment will be added to the master contract, if the County deems necessary. The same process will be utilized for new product purchases and is defined in section 2.8.

The final SMARTnet pricing for short-term coverage is between the Cisco reseller and the County. The discounts referenced for a direct order to Cisco do not apply for orders to a Cisco partner.

2.5.4 Payment for True-Ups

If at the completion of a true-up process a balance is due from the County to Cisco, the County will, within ten business days after completion of the true-up process, notify Cisco of its election to pay cash or

finance.

The County will issue a purchase order to Cisco and Cisco will forward the County an invoice for payment in full net 30 days from when the invoice is issued to the County. If the County elects to execute a new payment plan with its financing company, the County will forward the final true-up quote and an updated data sheet to the financing company and will work with the lender to execute a new schedule to the payment plan that is co-terminus to the original payment plan within thirty days after completion of the true-up process.

2.5.5 True-Up Process

Cisco and the County will meet on a quarterly basis to review new equipment purchases that may be added to the SMARTnet master contract at a later date, decommissioned hardware items, RMAs that were processed, and any contractual issues that need to be discussed. The annual true-up will operate as follows:

- Annual True up process starts on March 1st of each year.
- On March 1st, Cisco will provide an uncovered equipment report and/or delta report on equipment not currently covered on the master contract.
- The County will distribute the uncovered equipment report to each department to validate what they want covered on the SMARTnet master contract and the level of service for each covered device.
- Each department will review the uncovered equipment report and schedule a meeting with the Cisco Service Sales Manager to validate the data and identify what should be placed under the master contract and what should be retired or removed from the master contract.
- Cisco will then run a validated quote to determine what the costs will be to that department (credits will also be considered if there is more equipment being retired than added to the master contract).
- Once approved by the department, that department will notify the County that they accept the change order.
- Cisco will perform this same task for each department that has adopted the master contract.
- On a quarterly basis, Cisco will compile all quotes that the County has received acceptance for by each department and Cisco will submit a final quote to the County for review and acceptance.

2.6 Lapse in Coverage

If SMARTnet coverage has lapsed on Cisco hardware and the County elects to cover that hardware with SMARTnet at a later date, Cisco reserves the right to inspect and verify that the hardware can be added to the SMARTnet contract. Cost associated with certifying the equipment and re-licensing the software will be the sole responsibility of the County.

Inspection fees are dependent on the list price of the component (chassis, card, module, port adapter, and GBIC) to be inspected and Cisco will determine the final inspection costs once the item(s) requiring inspection are known. For example purposes only, the net cost fees (discount of 33% does not apply) and inspection part number as of January 2012 are as follows:

Inspection Part Number	Inspection Price (US)
OSS-INSPECT-CAT.A	\$518 / unit
OSS-INSPECT-CAT.B	\$624 / unit
OSS-INSPECT-CAT.C	\$864 / unit

2.7 Return Materials Authorization (RMA)

The management of RMAs, including serial number management for changes to the contract, will be the responsibility of the Cisco TSOM. A summary of RMAs will be provided to the County on a monthly basis.

Additional Q&A about RMAs can be found at:

http://www.cisco.com/web/ordering/cs_info/or3/o32/Return_a_Product/WebReturns/rma_faq.html#7

2.8 New Hardware Purchases

As the County continues to build out its infrastructure or refresh existing equipment, Cisco recommends that new Cisco hardware be purchased with one (1) year of SMARTnet. The County may continue to work with the authorized Cisco resellers to purchase SMARTnet for new hardware purchases. It is the County's decision to determine what service offering and service level (if any) are procured for new hardware.

As stated in section 2.5.1 above, Cisco will accept direct purchase orders for hardware under specific circumstances.

Attachment A – SMARTnet Services Cost by Agency

Table 1 – SMARTnet Services Five Year List Price and Net Price by Agency

Department	Pro Rated List Price	Discount	Pro Rated Net Price
Animal Care & Control (c/o ISD)	\$ 31,846.81	33.00%	\$ 21,337.36
Assessor (c/o ISD)	\$ 38,593.06	33.00%	\$ 25,857.35
Children & Family Services (c/o ISD)	\$ 1,158,828.70	33.00%	\$ 776,415.23
CJIS (c/o ISD)	\$ 607,772.52	33.00%	\$ 407,207.59
Community & Senior Services (c/o ISD)	\$ 1,749.16	33.00%	\$ 1,171.93
Fire Department	\$ 188,328.86	33.00%	\$ 126,180.34
Hall of Administration (c/o ISD)	\$ 652,297.41	33.00%	\$ 437,039.27
Health Services	\$ 5,574,865.52	33.00%	\$ 3,735,159.90
Human Resources (c/o ISD)	\$ 1,925.00	33.00%	\$ 1,289.75
ISD Data Center	\$ 5,092,971.09	33.00%	\$ 3,412,290.63
ISD LAN	\$ 3,611.94	33.00%	\$ 2,420.00
ISD Shared Computing Infrastructure	\$ 236,305.14	33.00%	\$ 158,324.44
ISD VoIP	\$ 2,073,561.57	33.00%	\$ 1,389,286.25
ISD WAN	\$ 2,289,600.01	33.00%	\$ 1,534,032.01
ISD Wi-Fi	\$ 267,618.03	33.00%	\$ 179,304.08
Mental Health	\$ 389,240.00	33.00%	\$ 260,790.80
Natural History Museum	\$ 138,459.95	33.00%	\$ 92,768.17
Office of Emergency Mgmt (c/o ISD)	\$ 270.00	33.00%	\$ 180.90
Public Health	\$ 412,976.30	33.00%	\$ 276,694.12
Public Library (c/o ISD)	\$ 174,219.66	33.00%	\$ 116,727.17
Public Social Services	\$ 1,955,564.18	33.00%	\$ 1,310,228.00
Public Works	\$ 840,965.69	33.00%	\$ 563,447.01
Regional Planning	\$ 1,372.32	33.00%	\$ 919.45
Registrar-Recorder/CC	\$ 343,667.76	33.00%	\$ 230,257.40
Sheriff's Department	\$ 7,926,217.90	33.00%	\$ 5,310,566.00
World Trade Center (c/o ISD)	\$ 46,349.20	33.00%	\$ 31,053.97
Total	\$ 30,449,177.78		\$ 20,400,949.11

Please note that "c/o ISD" represents departmental inventories managed by ISD. Per ISD, these costs will be covered by ISD's LAN Support rates."

Table 2 – Actual Annual Net Cost of SMARTnet Services by Agency

Department	Year 1	Year 2	Year 3	Year 4	Year 5	Department Total
Animal Care & Control (c/o ISD)	\$ 7,619.62	\$ 8,183.00	\$ 8,183.00	\$ 4,119.18	\$ 3,742.00	\$ 31,846.81
Assessor (c/o ISD)	\$ 12,209.06	\$ 6,596.00	\$ 6,596.00	\$ 6,596.00	\$ 6,596.00	\$ 38,593.06
Children & Family Services (c/o ISD)	\$ 219,055.18	\$ 256,280.00	\$ 256,280.00	\$ 215,896.52	\$ 211,317.00	\$ 1,158,828.70
CJIS (c/o ISD)	\$ 233,161.53	\$ 116,475.00	\$ 116,203.77	\$ 112,300.22	\$ 29,632.00	\$ 607,772.52
Community & Senior Services (c/o ISD)	\$ 567.00	\$ 567.00	\$ 567.00	\$ 48.16	\$ -	\$ 1,749.16
Fire Department	\$ 22,810.52	\$ 43,828.00	\$ 43,828.00	\$ 39,148.34	\$ 38,714.00	\$ 188,328.86
Hall of Administration (c/o ISD)	\$ 117,654.11	\$ 137,431.00	\$ 137,431.00	\$ 130,622.30	\$ 129,159.00	\$ 652,297.41
Health Services	\$ 1,297,584.56	\$ 1,158,277.37	\$ 1,066,672.01	\$ 1,048,032.40	\$ 1,004,299.20	\$ 5,574,865.52
Human Resources (c/o ISD)	\$ 385.00	\$ 385.00	\$ 385.00	\$ 385.00	\$ 385.00	\$ 1,925.00
ISD Data Center	\$ 1,106,381.15	\$ 1,074,423.39	\$ 1,023,967.04	\$ 983,335.77	\$ 904,863.71	\$ 5,092,971.09
ISD LAN	\$ 831.18	\$ 840.00	\$ 840.00	\$ 563.29	\$ 537.47	\$ 3,611.94
ISD Shared Computing Infrastructure	\$ 9,784.06	\$ 33,669.08	\$ 67,469.07	\$ 69,233.11	\$ 56,149.82	\$ 236,305.14
ISD VoIP	\$ 567,302.41	\$ 611,479.40	\$ 414,951.25	\$ 292,578.80	\$ 187,249.71	\$ 2,073,561.57
ISD WAN	\$ 486,383.58	\$ 559,394.80	\$ 541,575.94	\$ 440,597.94	\$ 261,647.77	\$ 2,289,600.02
ISD Wi-Fi	\$ 69,047.40	\$ 56,724.00	\$ 56,724.00	\$ 56,724.00	\$ 28,398.63	\$ 267,618.03
Mental Health	\$ 77,848.00	\$ 77,848.00	\$ 77,848.00	\$ 77,848.00	\$ 77,848.00	\$ 389,240.00
Natural History Museum	\$ 28,853.28	\$ 28,446.63	\$ 28,067.82	\$ 27,844.00	\$ 25,248.22	\$ 138,459.95
Office of Emergency Mgmt (c/o ISD)	\$ 54.00	\$ 54.00	\$ 54.00	\$ 54.00	\$ 54.00	\$ 270.00
Public Health	\$ 81,939.34	\$ 85,249.00	\$ 83,117.57	\$ 81,374.39	\$ 81,296.00	\$ 412,976.30
Public Library (c/o ISD)	\$ 36,784.49	\$ 36,560.57	\$ 36,539.00	\$ 32,453.22	\$ 31,882.39	\$ 174,219.66
Public Social Services	\$ 429,586.34	\$ 435,881.34	\$ 435,737.88	\$ 334,811.00	\$ 319,547.61	\$ 1,955,564.18
Public Works	\$ 175,139.47	\$ 176,015.44	\$ 183,764.35	\$ 169,512.54	\$ 136,533.89	\$ 840,965.69
Regional Planning	\$ 330.00	\$ 330.00	\$ 330.00	\$ 197.32	\$ 185.00	\$ 1,372.32
Registrar-Recorder/CC	\$ 42,538.50	\$ 83,811.00	\$ 83,811.00	\$ 83,811.00	\$ 49,696.26	\$ 343,667.76
Sheriff's Department	\$ 1,781,826.77	\$ 1,686,754.94	\$ 1,659,484.65	\$ 1,455,164.58	\$ 1,342,986.97	\$ 7,926,217.90
World Trade Center (c/o ISD)	\$ 8,513.57	\$ 10,122.00	\$ 10,122.00	\$ 8,854.63	\$ 8,737.00	\$ 46,349.20
Total List Price	\$ 6,814,190.13	\$ 6,685,625.95	\$ 6,340,549.35	\$ 5,672,105.70	\$ 4,936,706.65	\$ 30,449,177.77
Discount	33.00%	33.00%	33.00%	33.00%	33.00%	
Total Net Price	\$ 4,565,507.39	\$ 4,479,369.39	\$ 4,248,168.06	\$ 3,800,310.82	\$ 3,307,593.46	\$ 20,400,949.11

Table 3 – Cisco Value Added Services

The net price of \$20,400,949.11 listed above in Table 1 and 2 includes the following Cisco value added services for the noted term. These value added services do not add cost to the SMARTnet Services paid for by the County.

Service Description	Contract Term
Network Optimization Services – Unified Computing System	2 Years
Network Optimization Services – Nexus (Data Center Switching)	2 Years
Network Optimization Services	5 Years
Technical Support Operations Manager	5 Years

Table 4 – Optional Network Optimization Services

If the County elects to purchase Network Optimization Services for UCS and Data Center Switching for years 3,4, and 5, the following schedule shows the price to the County for each year.

Service Description	Option Years	List Price / Year	Discount to County of LA	Net Price / Year
Network Optimization Services - Unified Computing System	3, 4, and 5	\$ 1,072,293.00	37.78%	\$ 667,180.70
Network Optimization Services - Nexus (Data Center Switching)	3, 4, and 5	\$ 482,160.00	37.78%	\$ 300,000.00

* This annual net price assumes the same list of deliverables as defined in Attachment C and the same amount of equipment within the County network.

Attachment B – Detailed SMARTnet Quote by Agency

Please refer to this Attachment B for a detailed breakdown of Cisco's quote by agency

Attachment C – Network Optimization Services (NOS) Deliverables

Below is a list of NOS deliverables and the specific annual allowance that is provided under the contract.

I. Wide Area Network (WAN)

Deliverable	Annual Allowance	Description of Service
Software Management Strategy Review	1	Work with the County to reduce active number of IOS versions in the Enterprise.
Design Review (Routing)	1	Design reviews may include MPLS Multicast review to QOS and DCN network build out.

II. Network Support

Deliverable	Annual Allowance	Description of Service
Configuration Best Practices Report (Requires Cisco Network Collector - CNC) * Note that CNC is in place with ISD. If CNC is needed by other agencies, another CNC will need to be installed.	1	CNC Configuration Best practice reports allows the County to see exact configuration changes needed to comply with Cisco best practices. This is a direct device by device review.
Ongoing Software Support	1	Software review to warn the County about software defects as well as mitigation.
Proactive Software Recommendation Report	1	Full software scrubs of code. All known bugs reviewed and documented. This allows the County to be able to fully understand IOS operation prior to putting into production.
Software Infrastructure Analysis Report (Requires CNC)	1	This provides the number of IOS versions in use in the enterprise and the devices running the code. This gives a device by device listing of all versions running in the network.
Software Security Alert	1	Cisco Network Consulting Engineer (NCE) does a complete review and impact assessment of the impacted devices. The NCE will then notify the County on release of the PSIRT what changes and/or modifications are available.
Hardware EoX Report (Requires CNC)	1	An exact list of what devices that will reach last day of support and a 3 year window into what is coming. This allows exact planning for replacement of equipment. The list is an exact device by device named list of the parts and chassis that will need to be replaced.

Engineering Recommendation Report	3 over the 5 year term of the contract	Examples include: Modification of LAN/WAN QOS STP best practices, L3 routing best practices. However, this can cover a very wide array of support. The County and Cisco will mutually agree on the topics.
Hardware Field Notice Report (Requires CNC)* see <i>notice above</i>	1	The Field Notice Report shows exactly which devices are affected by any of the Cisco field notices. This is a good report to validate that there are no potential issues out in the County network.
Ongoing Hardware Support	1	Escalation support for TAC cases where the NOS NCE can assist in the correction of an issue.
Technology or Protocol Audit (Requires CNC)	1	A review of L3 routing protocols that will validate the County's overall network design. This is meant as a proactive review looking for issues with fail over and or stability.
Ongoing Design Support	1	Design support for any technology area covered by the contract. This is a deliverable that is agreed to between the County and Cisco.
Ongoing Escalation Engineering Support	4	Escalation of issues beyond TAC support. This will help speed resolution of issues within Cisco's Business units and the County.
Ongoing Flexible Support	1	Escalation and/or change support that can either be on site or remote. Cisco and the County will work together to make sure that the change/escalation is handled in a timely fashion.
Onsite Network Consulting Support	1	Planned change windows where an NCE is needed on site. In addition Cisco will open a proactive TAC case so that TAC is also standing by to support.
Onsite Network Optimization Support	1	On site design review and white board sessions. These sessions give direct interaction between the Cisco and the County engineering support staff.
Scheduled Change Support	1	Support of any scheduled network Change. This can be either on site or remote support.

III. Network Learning

Deliverable	Annual Allowance	Description of Service
Remote Knowledge Transfer Session –	1	Knowledge Transfer sessions and a change to deep dive discussions about a particular feature or function

		of the County network. These are not generic 'training' sessions, but direct review of the existing County configurations.
Technical Knowledge Library (TKL)	1	Remote repository of all Cisco documentation. All County members will have access to this library. TKL also includes test tools for Cisco certifications as well as router simulations.

IV. Unified Computing Systems (UCS) Optimization

Deliverable	Annual Allowance	Description of Service
Configuration and Performance Audit	1	UCS Best Practices Audit – Cisco Advanced Services will perform an audit of the UCS platform. This audit will compare the County environment to Cisco best practices in configuration and architecture. The audit will place issues into a red, yellow and green status allowing for the prioritization of fixes.
UCS Best Practices Audit	1	Cisco UCS engineer will perform an audit of the configuration of the UCS servers. Cisco will provide guidance around issues in a red, yellow and green fashion for remediation of the configuration of UCS.
UCS Health Check	1	The UCS healthcheck will encompass an architectural review and recommendations. The report will highlight technical anomalies including interface errors, missing power supplies or downed interfaces that can lead to substandard performance.
On-Site Consultant Support	1 within the first 2 years of the contract	The Cisco UCS engineer will support the County team in reviewing customer created designs. The engineer would make recommendations based on the County's requirements. The engineer could also provide engineering assistance on new features the County is considering on the UCS platform.
Remote Knowledge Transfer Sessions	1 within the first 2 years of the contract	The Cisco engineer will provide informal training to the County team on a Cisco UCS server topic. Potential informal training sessions include: Cisco server

		troubleshooting, scaling the UCS solution or new feature roadmaps for the platform.
Ongoing Design Support	1 within the first 2 years of the contract	This deliverable is worked out as to the exact subject area between the County staff and Cisco.

Duration of Services - WAN

Services will be provided for a total duration of 60 months

Requested Start Date: July 1, 2012

Requested End Date: June 30, 2017

Duration of Services – UCS and Nexus

Services will be provided for a total duration of 24 months

Requested Start Date: July 1, 2012

Requested End Date: June 30, 2014

Attachment D – SMARTnet Services Description

Below contains aspects of Cisco's standard service policy and note that not all items may apply to LA County. The specific Cisco SMARTnet Service Descriptions are located as referenced in Table 4 below.

Cisco SMARTnet Service provides technical support in the operate phase of the Cisco Services Lifecycle. Premium service options can be added that target operational efficiency. Cisco SMARTnet Service includes:

- Around-the-clock global access to the Cisco TAC
- Access to Cisco.com knowledge base and tools
- Next-business-day advance hardware replacement (premium options available for business-critical devices, such as 2-hour replacement and onsite parts replacement and installation)
- Ongoing operating system software updates and upgrades
- Cisco Internet Operating System (IOS) Software support to extend the life of Cisco devices with improved security, increased performance, bandwidth management, new protocol support, and greater interoperability
- Proactive diagnostics and real-time alerts with Smart Call Home to help you quickly identify and resolve issues.

Cisco SMARTnet Service Connects You Directly to the Network Experts at Cisco

Cisco SMARTnet Service connects you directly to the Cisco TAC, staffed by Cisco professionals certified in a broad range of Cisco foundational and advanced technologies. The Cisco TAC employs a system that helps your service request automatically route to the appropriate technology team and automatically escalate to the next level of support if it is not resolved within a specified timeframe. To confirm the right remediation action, Cisco TAC engineers can test solutions in a laboratory environment that simulates your network.

The Cisco TAC is available around the clock and around the globe, with support available in local languages.

Online Troubleshooting Tools Accelerate Problem Resolution

As part of the Cisco SMARTnet Service, your staff has access to troubleshooting and support resources on the support site on Cisco.com.

Parts Replacement

A variety of hardware replacement options are available, including premium options such as 2-hour replacement and onsite parts replacement and installation. At the time of a true-up, the County can select the coverage you need on a device-by-device basis, so you get the flexible coverage you need.

All options include anytime, global access to the Cisco TAC and Cisco.com resources.

The Cisco SMARTnet Service options are shown in the **Table 1**.

Table 1. Cisco SMARTnet Service Features and Options

	Equipment Covered	Duration	Hardware Replacement Options¹	Cisco Operating System Updates	Cisco TAC Support	Onsite Engineer Option	Registered Access to Cisco.com	Smart Services Diagnostics and Alerts
Cisco SMARTnet/ Cisco SMARTnet Onsite Services	All ³	Renewable contracts	Advance Replacement: ▪ 24x7x2 hour ▪ 24x7x4 hour ▪ 8x5x4 hour ▪ 8x5xNBD Other: ▪ RFR ²	Yes, ongoing updates within the licensed feature set	Yes	Only with onsite option	Yes, 24x7 full access	Yes
Cisco Warranty	All	Standard hardware: 90 days (specific products 1 year/limited lifetime) ⁴ Standard software: 90 days ⁴	Advance replacement (10 days) ³	No ⁵	No	No	No	No

¹ Advance hardware replacement is available in various service-level combinations. For example, 8x5xNBD indicates that a technical support engineer is available 24x7 and advance hardware replacement is available 8 hours per day (delivering the replacement hardware during normal business hours only), 5 days a week, with next business day delivery.

² Return for Repair on select video products only.

³ Some equipment exclusions might apply; consult service sales representatives for more details.

⁴ Optical networking products offer 5 year limited hardware warranty with 15 days return to factory replacement and 1 year limited software warranty, this warranty only applies to Optical products.

⁵ Warranty ensures only that software media are defect-free and the software substantially conforms to its published specifications.

The Cisco TAC is available 24 hours a day, 365 days a year in more than 140 languages, by email or telephone (1-800-553-2447). When you contact the TAC, the first question you will be asked is to establish the priority level of the issue based on the criteria in the **Table 2**.

Table 2. Cisco TAC Priority Levels

TAC Priority Levels		
Priority Level	Definition	Commitment
1	An existing network is down or there is a critical impact to Technical POC's business operations.	Cisco and Technical POC will commit the necessary resources around the clock to resolve the situation.
2	Operation of an existing network is severely degraded, or significant aspects of	Cisco and Technical POC will commit full-time resources during normal business

TAC Priority Levels		
Priority Level	Definition	Commitment
	Technical POC's business operation are being negatively impacted by unacceptable network performance.	hours to resolve the situation.
3	Operational performance of the network is impaired while most business operations remain functional.	Cisco and Technical POC will commit resources during normal business hours to restore service to satisfactory levels.
4	Technical POC requires information or assistance on Cisco product capabilities, installation, or configuration. There is clearly little or no impact to Technical POC's business operation.	Cisco and Technical POC will provide resources during normal business hours to provide information or assistance as requested.

If a case is not progressing adequately or the quality of service is not satisfactory, we encourage the Technical POC to escalate the case. You can do this by contacting the Cisco WW TAC and asking for the manager of Customer Support Engineer (CSE) who is handling the case. If that manager is not available, please ask for the TAC Duty Manager who is available 24 hours a day. **Table 3** displays the automatic escalation path based on priority and how long a case is unresolved.

Table 3. Escalation Process

Automatic Escalation Path				
Elapsed Time	Priority 1	Priority 2	Priority 3	Priority 4
1 Hour	Technical Engineering Manager			
4 Hours	Tech Support Director	Technical Engineering Manager		
12 Hours	Tech Support Director (second contact)			
24 Hours	VP of Technical Advocacy	Tech Support Director		
48 Hours	President (CEO)	VP of Customer Advocacy		
72 Hours			Technical Engineering Manager	
96 Hours		President (CEO)	Tech Support Director	Customer Engineering Manager

Table 4. Service Descriptions

The link below provides additional information on Cisco SMARTnet services and provides additional reference material. The level of service provided is dependent on the level of service purchased by the County.

Service Level	Description	Please refer to the following URL
C4P	Smartnet onsite HW coverage- 24x7x4	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Smartnet_Onsite_Exhibit.pdf
S2P	Smartnet HW coverage- 24x7x2	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Smartnet_Onsite_Exhibit.pdf
SNT	Smartnet HW coverage- 8x5xNBD	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Smartnet_Onsite_Exhibit.pdf
SNTP	Smartnet HW coverage- 24x7x4	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Smartnet_Onsite_Exhibit.pdf
ECDN	HW & SW support for video- major SW Updates & 8x5xNBD	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Essential_Operate_Services_Digital_Media_Solutions.pdf
ESW	SW Coverage for SW Center Access- does not include the major updates. It does include SW Support, TAC and is provider for customers with their own voice solutions	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Essential_Operate_Services_Digital_Media_Solutions.pdf
SAS	SW Programs- standard SW coverage without the SW upgrades and TAC support	http://www.cisco.com/legal/Cisco_SAS-SASU.pdf
SAU	SW Programs- standard SW coverage with the SW upgrades and TAC support	http://www.cisco.com/legal/Cisco_SAS-SASU.pdf
SU1	IPS standard HW coverage 8x5xNBD	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Cisco_IPS.pdf
SU3	IPS standard HW coverage 24x7x4	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Cisco_IPS.pdf
SUO2	IPS standard HW coverage onsite 8x5x4	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Cisco_IPS.pdf
SMBS	Smartnet HW coverage- 8x5xNBD but Severity 1 and Severity 2 cases are not supported under this Service.	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Cisco_Smart_Foundation.pdf
ROSF	Remote Operate Services Fixed Price	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Cisco_Remote_Mgmt_Services.pdf
UCS7	UC Support 24x7x4 onsite, It includes SW Center access, major and minor SW releases and TAC access for Unified Computing Services	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Unified_Computing_Support_Service.pdf
PAMU	Co-Branded Service for video	http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Partner_Core_Bridge_Services.pdf

Additional information about Cisco services can be found by accessing the following URL.
http://www.cisco.com/en/US/products/svcs/ps3034/ps2827/ps2978/serv_group_home.html

Exhibit 2 – Supplemental Contract Terms

Jury Service Program:

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit H and incorporated by reference into and made a part of this Contract.

Written Employee Jury Service Policy.

1. Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.
2. For purposes of this sub-paragraph, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Contractor uses any Subcontractor to perform services for the County under the Contract, the Subcontractor shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.
3. If the Contractor is not required to comply with the Jury Service Program when the Contract commences, the Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Contractor shall immediately notify the County if the Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if the Contractor no longer qualifies for an exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that the Contractor demonstrate, to the County's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the Contractor

continues to qualify for an exception to the Program.

4. Contractor's violation of this sub-paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

County's Commitment to the Safely Surrendered Baby Law

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through Contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

Governing Law, Jurisdiction, and Venue

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

Child Support Compliance Program

The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through Contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise

imposed upon the County and its taxpayers.

As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

Warranty of Compliance with County's Defaulted Property Tax Reduction Program

Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

CALIFORNIA PARTICIPATING ADDENDUM

AGREEMENT NUMBER 7-08-70-13

Under

WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE MASTER AGREEMENT
("WSCA Master Agreement")
(State of Utah Contract Ref. No. AR-233)

Participating State:

Participating State Name	State of California ("Participating State")
Office/Department Name	Procurement Office
Primary Business Address	707 Third Street, Second Floor, MS 202 West Sacramento, CA 95605-2811
Participating Addendum State Contract ID #	7-08-70-13

Contractor:

Contractor Name:	Cisco Systems Inc. ("Contractor" or "Cisco") 170 West Tasman Drive San Jose, California 95314
Participating Addendum Cisco Contract ID #	75833

This WSCA *Participating Addendum* between the above-referenced Participating State and Contractor (collectively hereafter referred to as the "Parties") is entered into for good and valuable consideration, the mutual receipt of which is hereby acknowledged by the Parties, on the terms and conditions set forth below as of the date of last signature below (the "Effective Date" of this *Participating Addendum*).

1. Authority & Scope

The State of California hereby represents to Cisco that it has legal authority to enter into a Participating Addendum under this WSCA Master Agreement and to make this agreement available to other entities under the California Public Contract Code Sections 10298(b), 10299(b) and 12109 and the Government Code Section 14624. This is inclusive of all State and local government agencies, which is any city, county, district or other governmental body empowered to spend public funds per California Public Code Section 12110.

2. State-Specific Constitutional & Statutory Requirements

Notwithstanding WSCA Master Agreement, Attachment B, §§ 9.4 and 17.2, the State of California will not indemnify CISCO or its fulfillment partners.

3. **Incorporation of WSCA Master Agreement**

The WSCA Master Agreement, as now or hereafter amended made by the original parties thereto during the term of this *Participating Addendum*, is incorporated as if set forth at length. All rights and obligations between the Parties are governed by the terms of the WSCA Master Agreement, as amended by this *Participating Addendum*. ("Agreement") Capitalized terms in this *Participating Addendum* shall be defined as set forth in the WSCA Master Agreement, Attachment B.

To the extent of a conflict in terms between the WSCA Master Agreement and this *Participating Addendum*, the following descending order of precedence shall apply:

1. *Participating Addendum – Appendix A:*
 - a. *Statement of Work (SOW)*
 - b. *State of California:*
 - i. *General Provisions for IT (GSPD 401-IT dated April 12, 2007)*
 - ii. *IT Purchase Special Provisions 01/21/03*
 - iii. *Maintenance Special Provisions 01/21/03*
 - iv. *Software Special Provisions 01/21/03*
 - v. *Personal Services Special Provisions 02/08/07*
 2. *Participating Addendum* (remainder of this document)
 - 3: WSCA Master Agreement, Attachments A-E, as now or hereafter amended by the State of Utah and Cisco Systems, Inc.

4. **State-Specific Purchasing Guidelines**

- a. The provisions of this *Participating Addendum*, Appendix A, apply to all transactions under this *Agreement*.
- b. Only Fulfillment Partners authorized under this *Agreement* are able to directly receive Purchase Orders or payments under this *Participating Addendum*. The State of California contract number as set forth at the top of page 1 of this *Participating Addendum* is required to appear on every Purchase Order issued under this *Addendum*.
- c. The discounts identified in the WSCA Master Agreement are the minimum discounts that will be offered by Cisco under this *Agreement*. All authorized Fulfillment Partner's have the option, in their sole discretion and as their sole legal obligation to the Customer, to quote additional, incremental discounts on an order-by-order basis throughout the contract term. Cisco will use its reasonable efforts to assist in resolving any dispute regarding the incremental discounts, if needed.
- d. Contractor shall deliver a copy of the required quarterly volume reports described in the WSCA Master Agreement, Attachment B, Section 16, to the State's Primary Point of Contact set forth in Appendix B, and to pay the Participating State an administrative fee in the amount of one (1%) percent of sales under this *Participating Addendum* which is

to be calculated on the same basis as set forth in the WSCA Master Agreement, Attachment A, for the State of Utah administrative fee. The Participating State will accept the Contractor's reports and fee directly from Authorized Fulfillment Partners named under this *Participating Addendum*.

5. Cisco Fulfillment Partners

Cisco has the right to utilize alternate Fulfillment Partners, including Value Added Resellers (VARs) and/or distributors and dealers (hereafter "Reseller[s]") as fulfillment agents under this *Agreement*, e.g., for direct order taking, processing, fulfillment or provisioning.

Subject to approval of the Participating State, Fulfillment Partners may be added at any time during the *Agreement* term at the sole discretion of Cisco, with a minimum of two Resellers and no set maximum number of Resellers who may be used, subject to the approval of the Participating State. Cisco, in its sole discretion, is not required to add and may delete upon thirty (30) days written notice any Reseller who does not meet Cisco's established qualifying criteria, or where the addition of the entity would violate any state or federal law or regulation.

The name, address and approved contact number for Cisco approved Fulfillment Partners shall be separately set forth at the Contractor's website, as amended by Cisco during the term of this *Agreement*, including any applicable technical certifications or general limitations (e.g., geographic) or Cisco qualifying criteria as applicable (qualifying criteria).

6. Ordering/Invoices

Purchasers may place orders directly only through these Fulfillment Partners, or through Cisco on products or services only provided through Cisco. Only those Fulfillment Partners approved and listed during the term of this *Agreement* at Contractor's WSCA – California website are authorized to directly receive purchase orders, invoice Customers, and receive payment from Purchasers on Contractor's behalf. All authorized Fulfillment Partners are eligible to quote pricing to Purchasers for procurements under this *Participating Addendum* which otherwise meet the Partner's qualifying criteria.

Except as otherwise set forth in the qualifying criteria, Cisco will not, directly or indirectly, restrict any Fulfillment Partner's participation or ability to quote pricing for a Customer. Fulfillment Partner will not offer less favorable pricing discounts than the contract discounts established by Cisco under the WSCA Master Agreement. However, any additional incremental discounts available to WSCA Purchasers, if offered, may be provided in the discretion and as the sole legal obligation of the Fulfillment Partner to the Participating State.

The WSCA Master Agreement number and the State Contract Number must appear on every Purchase Order placed under this *Agreement*.

Authorized Fulfillment Partners are responsible for delivering required contract reports.

and remittances to the WSCA Contract Manager in accordance with the requirements and schedule for delivery established in the WSCA Master Agreement.

7. Product & Services Offering

The full suite of product and service offerings available under the WSCA Master Agreement may be procured under this *Participating Addendum*.

8. Primary Point of Contact

The Parties will keep and maintain current at all times a primary point of contact for administration of this *Participating Addendum*. The Parties' primary points of contact shall be set forth in this *Participating Addendum*, Appendix B - "Primary Points of Contact."

9. Term

The term of this *Participating Addendum* shall begin on the date of last signature of both parties ("Effective Date") and shall continue for a period ending on the Termination Date of the WSCA Master Agreement or when this *Participating Addendum* is terminated in accordance with the WSCA Master Agreement, whichever shall occur first.

10. Entire Agreement/Amendment

This *Agreement* constitutes the entire agreement between the parties concerning the subject matter of this *Agreement* and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This *Agreement* may be modified only by a written document executed by the parties hereto.

11. 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 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* (and notices to Cisco shall be further

addressed to the Office of the General Counsel, Attn: Contract Notice) or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph, or, in the absence of such an address from Customer, to the address to which the last invoice under this *Agreement* was sent before notice is served.

Notwithstanding the foregoing, notices regarding changes in pricing, Software license terms, policies or programs may be by posting on Cisco.com or by e-mail or fax.

The WSCA Master Agreement, together with this *Participating Addendum* and its Appendices A-C, set forth the entire *Agreement* between the Participating State and Cisco with respect to the subject matter and supersedes and replaces 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 the *Agreement* shall not be added to or incorporated into the *Agreement* 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 *Agreement* shall prevail and govern in the case of any such inconsistent or additional terms.

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

CISCO SYSTEMS, INC.
Contractor

Ted Hull, Vice President, Finance
Customer Solutions Finance

By: Mark Coughlin
Printed Name: Mark Coughlin
Title: VP CSE Ops
Date: 5/14/08

STATE OF CALIFORNIA
Participating State

By: Jim Butcher
Printed Name: Jim Butcher
Title: Deputy Director
Date: 5/23/08

KAY GENERAL SERVICES
LEGAL SERVICES

Appendix A

State -Specific Purchasing Guidelines

GENERAL
LEGAL SPECIFICATIONS

STATEMENT OF WORK

Modifications to State of California Standard Terms

Part A. "GENERAL PROVISIONS FOR IT" **(GSPD 401-IT, dated April 12, 2007)**

The following terms supersede and replace, in their entirety, the referenced sections originally contained in this Appendix A, State of California "General Provisions for IT (GSPD 401-IT dated April 12, 2007)".

1. Definitions:

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. "Specifications and other Attachments incorporated herein" are defined as the manufacturer's standard product literature and specifications.

f) "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. All Products sold under this Agreement are 'Commercial Software'.

m) "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 for which the Purchaser has paid the required license fee.

z) "Mean Time Between Failure (MTBF)" [Deleted – N/A]

aa) "Mean Time Between Repair (MTBR)" [Deleted – N/A]

cc) "Operational Use Time" [Deleted – N/A]

dd) "Performance Testing Period" [Deleted – N/A]

ll) "Software"

means any computer code in object code or executable code format and whether embedded in or bundled with the Products in any manner, including as firmware, and even if provided separately on disks or other media or by electronic transmissions, together with all bug fixes, revisions and upgrades thereto, 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.

qq) "Virus"

means any codes, programs or commands designed to: (1) without authorization from Customer, alter, damage or erase equipment, computer data or programs; or (2) permit unauthorized access to Customer's systems that is intended to destroy or cause any of those systems to malfunction. Notwithstanding the foregoing, the term "Virus" does not include any: (i) Software features or functionality that, when first delivered, acts in accordance with Cisco Product Documentation by restricting the number of users, sessions, servers, CPUs, ports, or issued and outstanding IP addresses to the number licensed under the Agreement, or (ii) Software features or functionality performing valid duties or function under the Agreement or as otherwise listed in Cisco Product Documentation.

rr) "Statement of Work (SOW)" – The Statement of Work (SOW) (this Appendix A) shall define any changes made to the California and WSCA terms and conditions which are mutually acceptable for the performance of this Agreement. Any additional terms included on the individual purchase documents shall be limited to those terms specifically allowed under this Participating Addendum. Cisco rejects any purchase document that includes terms that have not been previously allowed by this Appendix A, Statement of Work.

ss) "Acceptance Date" – The date, defined as no more than three (3) days after delivery, on which State accepts Contractor Deliverables which will result in title transfer, initiation of warranty, and payment of invoice.

[Original text of remaining paragraphs of Section 1 are unchanged.]

2. CONTRACT FORMATION *[Deleted in its entirety - N/A.]***7. COMPLIANCE WITH STATUTES AND REGULATIONS**

- a. 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 and 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 Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c. 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); and (ii) and the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d. [Original text remains unchanged.]
- e. [Original text remains unchanged.]

8. CONTRACTOR'S POWER AND AUTHORITY:

The Contractor represents that it has full power and authority to grant the rights herein granted. The State's sole and exclusive remedy for Contractor's breach of this section is as set forth under this SOW, Section 39, below. Further, Contractor represents that it will not enter into any arrangement with any third party which might abridge any previously granted license rights of the State under this Contract.

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. 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); and (ii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

9. ASSIGNMENT

Except as expressly provided under WSCA Master Agreement, Attachment B, Section 23, this Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not prohibit Contractor from freely assigning its right to payment, provided that 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.

11. ORDER OF PRECEDENCE [Deleted in its entirety – N/A]**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 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.

14. DELIVERY:

Contractor shall meet the delivery and completion schedules specified in this Contract. The State's sole and exclusive remedy with respect to a default in meeting the delivery and completion schedule shall be to exercise its right to cancel an individual order in accordance with this SOW, Section 22. With respect to the shipping and delivery terms specified in WSCA Master Agreement, time, if stated as a number of days, shall mean business days unless otherwise specified. The quantities specified herein are the only quantities required. If 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 Contractor's expense or utilize any other rights available to the State at law or in equity.

16. INSPECTION, ACCEPTANCE AND REJECTION:

- a. Cisco meets ISO 9001 and 14001 certifications and meets the standards therein with respect to quality assurance standards for Cisco products.
- b. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- c. The State shall give written notice of rejection of Product Deliverables within three (3) business days after receipt of such Deliverables. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to the product warranty under this agreement. If the State does not provide such notice of rejection within three (3) business days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance shall not be construed to waive any limited warranty rights provided under this Contract with respect to any nonconformity.
- d. [Deleted – N/A]
- e. [Deleted – N/A]

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 during the testing period. Samples may be provided, at customer's request, subject to the terms of the Contractor's "Demo Depot" or "Try and Buy" Programs as set forth in the WSCA Master Agreement, Attachment C. 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, as provided under the "Demo Depot" or "Try and Buy" agreement, be returned to Contractor in its original condition at Contractor's expense.

18. WARRANTY:

- a. Warranties provided by Contractor are set forth in WSCA Master Agreement, Attachment B, § 21 and cannot be changed at the field level by either party. The Limited Warranties in WSCA Master Agreement, Attachment B, § 21, a) begin upon acceptance of the goods or services in question and b) end at the end of the warranty periods set forth in WSCA Master Agreement, Attachment B, § 21. Contractor warrants that the Hardware Deliverables will be free from material defects in materials 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 Cisco and its suppliers under this limited warranty will be, at Cisco'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 Cisco, freight and insurance prepaid. Cisco replacement parts, used in Hardware repair, may be new or equivalent to new. Cisco's obligations hereunder are conditioned upon the returned of affected Products, in accordance with Cisco's then-current Return Material Authorization (RMA) procedures. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will substantially conform to its published specifications. This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be, at Cisco 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 Cisco. In no event, does Cisco 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, Cisco 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.
- b. Contractor warrants that Deliverables furnished hereunder will be free, at the time of delivery, of harmful code (i.e. computer virus, as that term is defined under § 1 of this SOW.) Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction. If Contractor breaches the warranty under this paragraph (b), Contractor will notify Customer as soon as Cisco becomes aware of the problem.
- c. Exclusions:
- i. Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - ii. 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 Contractor, (B) installation, operation, maintenance or use of Software in combination with or on products other than as specified by Contractor, (C) 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 Cisco does not receive a payment of purchase price or license fee.
 - iii. Contractor does not warrant third party Hardware or Software sold under this Agreement. Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers warranties, Contractor will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above for Contractor's Products and Services.
- d. All warranties shall inure to the original user or licensee as set forth in paragraph a, above. The State's exclusive remedy and Contractor's sole obligation will be limited to, at Contractor's option:
- i. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - ii. refund of all amounts paid by the State for the nonconforming Deliverable or service. The payment obligation will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AGAINST INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, WHICH ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. THIS

DISCLAIMER SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a. The following provisions shall supersede the provisions of the WSCA Master Agreement, Addendum B, § 12.2.2 with respect to the State's rights. The State may terminate this WSCA Participating Addendum for its convenience in whole, 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, which shall be a minimum of thirty (30) business days from the date of the notice. The Participating Addendum shall automatically terminate at the end of the notice period. No future orders may be received after such termination date.

Any cancellation under this provision shall not affect the rights and obligations of either party or the validity of orders outstanding at the time of cancellation, e.g., any right of and Participating State 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 prior order.

Individual Product orders placed against this contract may be cancelled for convenience or rescheduled in accordance with Cisco's *Order Management Tool* and *OM Guidelines*, provided that a customer cancellation request is received by Cisco more than ten (10) business days prior to Cisco's scheduled order shipment date without further obligation to the supplier. Order cancellation requests submitted to Cisco less than ten (10) business days prior to the promised shipment date will be already in manufacturing and will not be accepted by Cisco.

- 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 under Purchase Order(s) or Statements of Work (SOWs) issued by the State and accepted by Contractor prior to the effective date of termination established pursuant to paragraph (a), above.
- 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. Unless otherwise set forth in this 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 ordered by the State and not previously paid for, adjusted for any savings on freight and other like charges, including but not limited to the price for all product, services, maintenance and training deliverables under a valid Purchase Order or Statement of Work issued prior to the date of termination; and

ii. The total of:

- A. All other amounts previously due and payable prior to the date of termination, and
 - B. 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;
 - C. 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
 - D. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- d. 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:** *[Deleted in its entirety - N/A.]*25. **RIGHTS AND REMEDIES OF STATE FOR DEFAULT**

- a. In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to materially conform to the manufacturer's published performance specifications of the Deliverable during the warranty period, 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/or at Contractor's sole discretion to immediately repair or replace all such rejected items or refund the amount paid for such items as described in Section 18 above..
- b. In addition to any other rights and remedies the State may have under this agreement, the State may require Contractor, at Contractor's expense and with Contractor's approval, 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.
- c. 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 direct damages sustained by the State will be covered by the "Limitation of Liability" and are subject to the exclusive remedies statements otherwise set forth in this SOW.
- d. The State reserves the right to offset the amount of all direct damages caused by the Contractor as are expressly due as enumerated under the Contract against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

26. LIMITATION OF LIABILITY:

- a. 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 as stated WSCA Master Agreement, § 17.3 and 17.4.
- b. The foregoing limitation of liability shall not apply (i) to liability under paragraph 39, below, 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 under the WSCA Master Agreement, Attachment B, Section 9; (ii) to claims arising under this SOW Clause # 27, and WSCA Master Agreement, Attachment B, Section 17.2 indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct); or (iii) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any of the foregoing actions. The parties expressly agree that the damages enumerated in this paragraph 26 (b) constitute direct damage.
- c. 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 THE CONTRACTOR BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES.**

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. The Contractor shall be liable for damages arising out of injury to the person and/or damage to tangible personal property pursuant to WSCA Master Agreement, Attachment B, Section 17.2.
- b. 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:

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 Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation 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:

- a. The State will notify Contractor promptly of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. 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); and
(ii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

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.

Any appropriately approved and executed amendment to the WSCA Master Agreement executed by Cisco and the lead State of Utah ("Amendment") shall be automatically effective and binding upon the Participating State on the effect date of such Amendment, unless the Participating state, within thirty (30) days of the Amendment being posted online, provides a written notice to Cisco that the Participating State does not agree to the Amendment ("notice"). Upon receipt of such Notice, the Parties will in good faith either: i) negotiate a mutually acceptable resolution; or ii) notify the other Party in writing that the Party wishes to terminate the Participating Addendum for convenience pursuant to WSCA Master Agreement, Attachment B, Section 12.2, or to this SOW, Section 22.

Notwithstanding the foregoing, the Parties have determined that during the Contract term, certain ongoing changes will be made to the WSCA Master Agreement product and service offerings in the normal course of business with the consent of the Lead State and without formal amendment of this *Participating Addendum*, as set forth in the following illustrative list:

- (a) Updates to Cisco's U.S. Global Price List to reflect changes in offerings, prices or rates for existing Product(s) or Service(s);
- (b) Updates to add new commercial Product(s) or Service(s) offerings to the extent reasonably related to and within the stated scope of WSCA Master Agreement, Attachment E;
- (c) Changes to Product(s) or Service(s) published manufacturer's commercial specifications or product/service descriptions; and
- (d) Changes to effect data changes, additions or deletions regarding authorized Fulfillment Partners

Any of the foregoing will be effective immediately upon the Participating State without the need for a formal amendment of the *Participating Addendum*.

34. CONFIDENTIALITY OF DATA:

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated in writing 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. 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, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

36. DOCUMENTATION

- a. The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, 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 in accordance with Contractor's standard commercial practices. 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.
- b. *[Deleted – N/A]*

37. RIGHTS IN WORK PRODUCT: *[Deleted in its entirety – N/A]***39. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**

- a. Subject to and consistent with WSCA Master Agreement Attachment B, § 9.2, 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, as defined in § 9.2 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 reasonably cooperate in enforcing them.

The defense and payment obligations set forth in this Section 39(a) will be conditional upon the following:

1. The State will notify Contractor of any such claim promptly, in writing, and tender thereof within a reasonable time; and
 2. 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); and (ii) the State will reasonably cooperate in the defense and in any related settlement negotiations, and provide all information and assistance reasonably requested by Cisco in connection with the conduct of the defense and settlement of the IPR claim and subsequent appeal.
- b. Should the Deliverables or Software, 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 Contractor's option and expense, either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non infringing. If none of these options in Contractor's sole judgment can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, immediately terminate both parties' respective rights and obligations under this Agreement with regard to the Product, in which case Purchaser will return the Product to Cisco and Cisco will refund to Purchaser the price originally paid by Purchaser to Cisco for the Product, as depreciated or amortized by an equal annual amount over three years from date of original shipment.

- 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, operation, installation, maintenance other than in accordance with Contractor's instructions, or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,
 - ii. The amount, 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;
 - iii. 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
 - iv. The modification by the State of the Equipment furnished hereunder or of the Software; or
 - v. The combination or utilization of Software furnished hereunder with non contractor supplied Software.

THIS SECTION 39 STATES THE ENTIRE OBLIGATION OF CISCO 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 CISCO DISCLAIMS, ALL WARRANTIES, CONDITIONS AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO ANY PRODUCT.

- d. [Deleted - N/A]
e. [Deleted - N/A]

40. EXAMINATION AND AUDIT:

Examination and audit shall be governed by WSCA Master Agreement, Attachment B, Clause 38. During the audit, Contractor shall provide and make available an authorized representative to provide access to required information and records.

42. STOP WORK: [Deleted in its entirety – N/A]

50. 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.

Cisco represents that Products which it has designated as "Year 2000 Compliant" (or Status Description "Green"), as set forth in the "Compliance Table," (including accompanying Notes), located in Cisco's "Year 2000 Compliance" web pages beginning at <http://www.cisco.com> (the "Year 2000 Pages"), are "Year 2000 Compliant," meaning that, as delivered to Customer:

- A. The Products accurately process date and time calculations before and during the years 1999 and 2000;
- B. All manipulation of time-related data yields the desired results for valid date values within the application domain;
- C. Date elements in those Products use four digit storage and indicate century to eliminate the chance for errors;
- D. If a date element exists without a century indication, the correct century continues to be unambiguous and produces accurate results; and Software accurately processes date and time data when used in conjunction with other Year 2000 compliant software products.

Should a Product that is so identified as "Year 2000 Compliant" not be Year 2000 Compliant, or should Cisco otherwise breach the foregoing representation, Cisco will, as Customer's sole and exclusive remedy, repair or replace the Product so that it becomes Year 2000 Compliant or, if Cisco is unable to repair or replace the Product to make it Year 2000 Compliant, Cisco will refund the purchase price of the Product paid to Cisco, provided that Customer returns the Product to Cisco, as originally delivered by Cisco (except for normal wear and tear) and pursuant to Cisco's then-current RMA policy. The foregoing representation and remedy shall only apply to Products returned prior to January 31, 2001, or to Products returned before the Products are no longer supported pursuant to Cisco's standard support policies, whichever event first occurs. Each Product ordered will be subject to Cisco's then-current "Year 2000 Pages" as of the date of delivery.

Restrictions. This warranty does not apply if the Product (a) has been altered, except by Cisco, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (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 Cisco does not receive a payment of purchase price or license fee.

**Part B. IT PURCHASE SPECIAL PROVISIONS
(01-21-03)**

The following sections supersede and replace, in their entirety, the referenced sections originally contained in this Appendix A, State of California IT Purchase Special Provisions (dated 01-21-03).

1. LIQUIDATED DAMAGES [Deleted in its entirety- N/A]**2. TITLE:**

Title to the Equipment shall remain in the Contractor and assigns, if any, until acceptance. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State upon acceptance at no additional charge, together with title to the Machine on which it was installed.

3. PRICE DECLINE [Deleted in its entirety – N/A]**4. PRICE DECLINE [Deleted in its entirety – N/A.]**

Part C. MAINTENANCE SPECIAL PROVISIONS

(Dated: January 21, 2003)

The following terms and modified sections supersede and replace, in their entirety, the referenced sections originally contained in Appendix A, State of California "Maintenance Special Provisions" (dated January 21, 2003).

Contractor's standard commercial service offerings, e.g., maintenance training and professional consulting services, are offered for sale under this agreement. Terms set forth in the State's "Maintenance Special Provisions" below and in this Appendix A are only binding upon the Contractor where such features are offered for sale in the Contractor's standard service plans as an element of the maintenance plan coverage.

Nothing in the State of California's "Maintenance Special Provisions" or this SOW shall be construed to require the Contractor: a) to create, modify or customize Contractor's standard commercial offerings listed under Contractor's then-current U.S. Global Price list notwithstanding any requirement in the State's terms; or b) to provide free of charge any feature offered under Contractor's standard commercial service description unless customer has paid for the enhanced service plan under which such feature is offered.

5. Maintenance Coverage:**a. Period of Maintenance Coverage:**

1) The State may select a period or periods of maintenance coverage offered under the Contractor's standard commercial services plans set forth in Cisco's U.S. Global Price List, as stated in the Statement of Work, in accordance with the following:

(a) A minimum maintenance charge as set forth in the then-current Cisco U.S. Global Price List entitles the State to maintenance coverage during the Principal Period of Maintenance.

(b) The State may select in lieu of the hours available for the minimum monthly maintenance charge, one or more of the optional periods of maintenance coverage for an additional charge as shown in the ordering documents.

2) The hours of maintenance coverage for a Machine on Monday through Friday shall be the same each day; and the hours on Saturday and Sunday shall be the same hours on all Saturdays or Sundays. All Machines covered under this Contract must have a simultaneous span of time within the selected periods of maintenance coverage, at least equal to the shortest period offered for any Machine in the System.

3) [Deleted – N/A]

b. Preventative Maintenance (scheduled) – [Original text remains unchanged.]

c. Remedial Maintenance (unscheduled) - [Original text remains unchanged.]

6. Maintenance Charges

a. The maintenance charges described include all maintenance costs as described in Contractor's standard services description, and the State will pay no additional charges unless specifically set forth in this Contract. Maintenance discounts off then-current Cisco U.S. Global Price List shall be firm for the

Contract period of the Participating Addendum, provided however that Contractor reserves the right to change its U.S. Global Price List for services at any time during the contract term.

Service Orders placed under the Participating Addendum shall not be subject to price escalation during the maintenance term set forth in the Order.

- b. [Original text remains unchanged.]
- c. [Original text remains unchanged.]
- d. [Original text remains unchanged.]

7. Maintenance Credit for Inoperative Machines *[Deleted in its entirety – N/A]*

9. Relocation of Equipment

- a. In the event the Equipment being maintained under the terms and conditions of this Contract is moved to another location within the State of California, the Contractor shall continue to maintain the Equipment at the new location, subject to and in accordance with the terms of Contractor's standard advance move notification process and policies.
- b. The charges of the Contractor to dismantle and pack the Equipment and installation at the new location shall be at the rates set forth in the Statement of Work. The State agrees to pay all costs incidental to any move, including costs for packing, crating, rigging, transportation, unpacking, uncrating, insurance, installation, and State and local sales tax, if any.
- c. If Contractor is responsible for the move, no re-certification charges to confirm continued maintenance eligibility will be applicable. If the move is conducted by other than Contractor, State agrees to pay re-certification charges to Contractor at rates set forth in the Statement of Work.

10. Termination *[Deleted in its entirety – N/A]*

**Part D. Software Special Provisions
(Dated: 01/21/03)**

The following terms and modified sections supersede and replace, in their entirety, the referenced sections originally contained in this Appendix A, State of California "Software Special Provisions (dated January 21, 2003)".

1. License Grant

- a. Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of Contractor's standard commercial license terms, a non-exclusive, non-transferable license to use the Software Products now or hereafter listed in the WSCA Master Agreement (hereinafter referred to as "Software Products").
- b. State may use the Software Products in the conduct of its own business, and any division thereof.
- c. 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 ordering documents. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the ordering documents. Subject to the State's compliance with the Contractor's stated use and notice policies. 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.
- d. By prior written notice and subject to the State's compliance with Contractor's standard license rights and its published use and notice policies, the State may re-designate the CPU in which the Software Products are to be used. The re-designation will be effective upon the date specified in the notice of re-designation subject to compliance with the advance notice requirements.

2. 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 as defined in paragraph 1c. above, 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 (or its Fulfillment Partner) and the change will be processed in accordance with the notification policies set forth at cisco. com. Upon receipt of such notice and where otherwise allowed under Contractor's standard product license terms, 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 a permanent code is assigned.

3. Fees and Charges

Upon acceptance of Software to the State, in accordance with Paragraphs 5 herein and the Statement of Work, State will pay the license fee or recurring charge for the Software Products as set forth in the WSCA Master Agreement. Charges will commence on the Acceptance Date. The Contractor shall render

invoices for recurring charges or single charges in accordance with the payment terms set forth in the WSCA Master Agreement.

4. Maintenance

- a. Software error corrections, if and when made available by the Contractor, will be considered maintenance and will be delivered by Contractor to Customer without additional charge for the duration of a customer's paid maintenance service contract. Suspected errors discovered by the State in the Software Products will be handled by the following procedures:
 - 1) A listing of the output and a copy of the identical input data in machine-readable form will be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.
 - 2) [Deleted – N/A]
 - 3) [Deleted – N/A]
- b. Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular Hardware or Operating System at rates in accordance with the WSCA Master Agreement.
- c. If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original Software Products, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the WSCA Master Agreement.

6. Right To Copy or Modify [Deleted in its entirety – N/A]

7. Future Releases [Deleted in its entirety – N/A.]

E. Personal Services Special Provisions
(Dated: 02/08/07)

The following terms and modified sections supersede and replace, in their entirety, the referenced sections originally contained in this Appendix A, State of California "Personal Services Special Provisions (dated February 08, 2007)."

1. Contract Type

- a. Unless otherwise specified on the ordering document(s), the Statement of Work shall define and authorize work on a Fixed Price basis, with a guarantee of task completion.
- b. To the extent that additional work not foreseen at the time this Contract is executed must be accomplished, Work Authorizations (also referred to as Cisco's "Change Request Process"), as described in the Statement of Work, will be the means for defining and authorizing such work on a Labor Hour basis.

2. Personnel

- a. Contractor personnel shall perform their duties remotely and on the premises of the State in accordance with Cisco's standard commercial offerings, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State in the Statement of Work.
- b. The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Contract. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel within sixty (60) days of the date it receives such notice from the State, the parties agree to proceed with any equitable adjustment in schedule or other terms that may be affected thereby.

Contractor is authorized, without further approvals of the State, to subcontract any or all work under this SOW, and to use subcontractor personnel in fulfillment of its duties, provided that Cisco remains liable as Prime Contractor for its Deliverable.

- c. The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors, the Contractor will make every reasonable effort to provide suitable substitute personnel.
- d. In recognition of the fact that Contractor personnel providing services under this Contract may perform similar services from time to time for others, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract.

3. Responsibilities of the State

- a. The State shall provide normal office working facilities and equipment reasonably necessary for Contractor performance under this Contract. Any special requirements (e.g., reprographic services, computer time, key data entry, etc.) shall be identified in the ordering document.

- b. The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the ordering document.
- c. The Contractor will not be responsible for any delay, cost increase, or other consequence to the extent that it is caused by the State's failure to fulfill responsibilities set forth herein. In the event of any claim for equitable adjustment to price, schedule, or both, the parties will negotiate in good faith regarding execution of a Contract amendment per a Cisco "Change Request" in substantially the form set forth in Appendix C. Should the Contractor determine that a delay exists or is probable due to a failure of the State, the Contractor will promptly notify the State in writing.

4. Unanticipated Tasks

- a. In the event that additional work must be performed which was wholly unanticipated and is not specified in the Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined, the procedures outlined in this Section and Cisco's "Change Request" process will be employed.
- b. For each item of unanticipated work not specified in the Statement of Work, a Work Authorization ("Cisco Change Request") will be prepared in accordance with the sample attached as Appendix C.
- c. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization ("Cisco Change Request"). Such Work Authorization ("Cisco Change Request") shall in no way constitute a Contract other than as provided pursuant to this Contract nor in any way amend or supersede any of the other provisions of this Contract.
- d. Each Work Authorization ("Cisco Change Request") shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by the Contractor, the job classification or approximate skill level of the personnel to be made available by the Contractor, an identification of all significant material to be developed by the Contractor and delivered to the State, an identification of all significant materials to be delivered by the State to the Contractor, an estimated time schedule for the provisions of these services by the Contractor, completion criteria for the work to be performed, the name or identification of the Contractor personnel to be assigned, the Contractor's estimated work hours required to accomplish the purpose, objective or goals, the Contractor's billing rates per work hour, and the Contractor's estimated total cost of the Work Authorization ("Cisco Change Request").
- e. All Work Authorizations ("Cisco Change Request") must be in writing prior to beginning work and signed by the Contractor and the State.
- f. The State may, at any time, by a single written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the consulting work, or any work quoted by hourly performance, called for by this Contract for a maximum period of up to 90 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 90 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.

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 subject to the availability of appropriate personnel. The Parties shall mutually agree to 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 30 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.

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. In such event, the State shall pay Cisco for all work performed and accepted in accordance with the affected terms of the ordering documents up to the effective date of the Stop Work Order at the agreed upon prices, fees and expense reimbursement rates set forth in the affected ordering documents, as follows:

- (i) For any Milestone-based payment obligations, the State shall pay for any amounts owing for: (1) all Milestones completed prior to the effectiveness of termination for which a Milestone/service Completion Certificate in the form substantially as that attached hereto as Appendix C has been executed by the parties, (2) the Services actually performed towards Milestones that have not been completed as a result of such termination (on a prorated basis of the fee associated with such Milestone, taking into account the portion of work actually performed satisfactorily in respect of such terminated Milestone and for which a Milestone/service completion certificate has been executed by the parties), (3) reimbursement for any costs and expenses incurred by Cisco prior to the effective date of the Stop Work Order (as permitted by the applicable order document), and (4) reimbursement for any actual and reasonable costs and expenses committed to by Cisco prior to the effective date of the Stop Work Order (as permitted by the applicable terms of the order).
- (ii) In the event the order provides compensation for the work on a fixed-price basis (including hourly fee basis) and the ordering document does not include Milestones, including but not limited to for subject matter experts and/or consulting services, the State shall pay for (1) a prorated amount of such fixed fee based on the portion of work actually performed satisfactorily in respect of the affected order (taking into consideration the percentage of Services and Deliverables completed satisfactorily in accordance with the affected scope of work as of the effective date of the Stop Work Order and for which the parties have agreed in writing to such satisfactory completion percentage), (2) reimbursement for any costs and expenses incurred by Cisco prior to the effectiveness of termination (as permitted by the applicable order documents), and (3) reimbursement for any actual and reasonable costs and expenses committed to by Cisco prior to the effectiveness of termination (as permitted by the applicable order documents).

There shall be no other charge or penalty for such termination.

The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

- g. Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:

1) If, in the performance of the work, the Contractor determines that a Work Authorization ("Cisco Change Request") to be performed under this Contract cannot be accomplished within the estimated work hours, the Contractor will immediately notify the State in writing of the Contractor's estimate of the work hours which will be required to complete the Work Authorization ("Cisco Change Request") in full. Upon receipt of such notification, the State may:

- (a) Authorize the Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld), or
- (b) [Delete - N/A]
- (c) Alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining estimated work hours.

2) The State will notify the Contractor in writing of its election within seven (7) business days after receipt of the Contractor's notification. If notice of the election is given to proceed, the Contractor may expend the estimated additional work hours or services. The State agrees to reimburse the Contractor for such additional work hours.

5. **Invoicing and Payment for Services**

- a. During the execution of each Milestone (as set forth in the Statement of Work) which involves the delivery to the State of identified Deliverables, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the Milestones, determined on the basis of the lesser of either:
 - 1) The number of Deliverables provided to the State divided by the total number of Deliverables required to be delivered to the State, less a ten percent (10%) withhold, less any amounts previously invoiced; or
 - 2) The number of work-hours expended by the Contractor in the performance of the task divided by the number of work hours scheduled for the task, less a ten percent (10%) withhold, less any amounts previously invoiced; provided that the Statement of Work may specify a withhold of more than ten percent (10%).
- b. For those Milestones which do not involve delivery to the State of identified Deliverables, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Milestone, less a ten percent (10%) withhold, less any amount previously invoiced. Actual progress payment amounts for such Milestones must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.
- c. Upon completion of a Milestone in accordance with the acceptance criteria set forth herein, the full charge for such Milestone, less amounts previously invoiced to the State, may be submitted for payment. Nothing herein will be construed to waive or contradict any requirement of California Public Contract Code Section 12112 or any similar or successor provision.

- d. In the event that work not specified in the Statement of Work is performed with the State's written consent, invoices for services as reflected on Work Authorizations will be submitted to the State for payment.
- e. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.
- f. In the aggregate, invoices reflecting progress payments (vs. separate and distinct tasks) will not exceed ninety percent (90%) of the ceiling amount of the Contract, with the balance to be invoiced upon completion of the Contract, in accordance with the acceptance criteria set forth herein.
- g. [Deleted – N/A]

7. Conflict of Interest

During the performance of this contract, should the Contractor become aware of a financial conflict of interest that may foreseeably allow an individual or organization involved in this Contract to materially benefit from the State's adoption of an action(s) recommended as a result of this contract, the Contractor must inform the State in writing within 10 working days. If, in the State's judgment, the financial interest will jeopardize the objectivity of the recommendations, the State shall have the option of terminating the Contract.

Failure to disclose a relevant financial interest on the part of the Contractor will be deemed grounds for termination of the Contract with all associated costs to be borne by the Contractor and, in addition, the Contractor may be excluded from participating in the State's bid processes for a period of up to 360 calendar days in accordance with Public Contract Code section 12102(j).

State of California Standard Terms

General Provisions for IT ***(GSPD 401-IT dated April 12, 2007)***

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 corporation, limited liability partnership, 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 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.

g) **"Contract"**

means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.

h) **"Custom Software"**

means Software that does not meet the definition of Commercial Software.

i) "Contractor"

means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.

j) "Data Processing Subsystem"

means a complement of Contractor-furnished Individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating 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.

k) "Data Processing System (System)"

means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.

l) "Deliverables"

means Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.

m) "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.

n) "Documentation"

means nonproprietary 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 Documentation only to the extent that such materials are described in or required by the Statement of Work.

o) "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).

p) "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.

q) "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.

r) "Goods"

means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).

s) "Hardware"

usually refers to computer Equipment and is contrasted with Software. See also Equipment.

t) "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.

u) "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.

v) "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.

w) "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.

x) "Maintenance Diagnostic Routines"

means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.

y) "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.

z) "Mean Time Between Failure (MTBF)"

means the average expected or observed time between consecutive failures in a System or component.

aa) "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.

bb) "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.

cc) "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..

dd) "Performance Testing Period"

means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.

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) "Site License".

means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.

ll) "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.

mm) "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.

nn) "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.

oo) "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.

pp) "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, 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 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. 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 and 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 Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c. 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) the State 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 \$500,000, 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, Contractor hereby agrees to respond to and resolve any complaint brought to 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, 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 Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. 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) the State 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. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that 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

- b. paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- c. contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- d. Information technology special provisions;
- e. statement of work, including any specifications incorporated by reference herein; and
- f. 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 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. 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, 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:

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 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 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. 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. 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. 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. Contractor shall permit the State to review procedures.

- practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b. All Deliverables may be subject to inspection and test by the State or its authorized representatives.
 - c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of Inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
 - d. 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 thirty (30) days of delivery, 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.

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 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. 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, 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, 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. 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, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.
- c. Unless otherwise specified in the Statement of Work:
 - a. Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - b. 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 Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
 - c. Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve 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 Contractor's sole obligation will be limited to:
 - a. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - b. 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 Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, 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, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. 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:

When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.

21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

- 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, 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. STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO 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. 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 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.
- d. 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 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 shorter 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. 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.
- f. If, after termination, it is determined by a final ruling in accordance with the Disputes Clause 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. 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:

- a. Acts of God or of the public enemy, and
- b. 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:

- a. 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.
- b. In addition to any other rights and remedies the State may have, the State may require 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.
 - c. 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").
 - d. 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 Contractor or to make a claim against the Contractor therefore.

26. LIMITATION OF LIABILITY:

- a. 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 two times 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 Contractor will have a separate limitation of liability for each purchase order.
- b. The foregoing limitation of liability shall not apply (i) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party Intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) to claims arising under provisions herein calling for Indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by 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 Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. 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.
- b. 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:

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 Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation 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:

- c. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- d. 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) the State 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.

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; 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, 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 pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

36. DOCUMENTATION

- a. The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, 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.

- b. 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 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:

- a. 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 Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
- b. Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product, if 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 Contractor's or its affiliates' ownership of Pre-Existing Materials.
- c. 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.
- d. 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.
- e. 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. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA

- a. State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. 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 under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

39. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- c. 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 39a). 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 39a will be conditional upon the following:

- i. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - ii. 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) the State 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.
- b. Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
 - c. Should the Deliverables or Software, 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 Software, 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 or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software 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 or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
 - d. 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 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 by the State of the Equipment furnished hereunder or of the Software; or
 - iv. The combination or utilization of Software furnished hereunder with non contractor supplied Software.
 - e. 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.

40. EXAMINATION AND AUDIT:

Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Contract. 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. Contractor agrees to allow the auditor(s) access to such records during normal business hours and 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 of the State to audit records and interview staff in any subcontract related to performance of this Contract.

41. DISPUTES:

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the 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, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, 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. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for Information Technology Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
- 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. Contractor's failure to diligently proceed in accordance with the State's instructions 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 Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless 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.

42. 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 90 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 90 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 30 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.
- d. The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

43. FOLLOW-ON CONTRACTS:

- a. If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
 - i. 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
 - ii. will not act as consultant to any person or entity that does receive a Contract described in sub-section (j). 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:
 - i. development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - ii. development or design of test requirements;
 - iii. evaluation of test data;
 - iv. direction or evaluation of another Contractor;
 - v. provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - vi. 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:
 - i. 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
 - ii. 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.

44. 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.

45. 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 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.

46. NONDISCRIMINATION CLAUSE:

- a. During the performance of this Contract, 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. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. 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. 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.

47. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

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.

48. 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 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

- i. the assignee has not been injured thereby, or
- ii. the assignee declines to file a court action for the cause of action.

49. 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:

- a. 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).
- b. Establish a Drug Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's organization's policy of maintaining a drug free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - i. will receive a copy of the company's drug free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

50. 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.

51. SWEATFREE CODE OF CONDUCT:

- a. 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. 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 <http://www.dir.ca.gov/>, and Public Contract Code Section 6109.
- b. 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 Contractor's compliance with the requirements under paragraph (a).

52. RECYCLING:

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 Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).

53. CHILD SUPPORT COMPLIANCE ACT:

For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a. 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

- b. 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.

54. AMERICANS WITH DISABILITIES ACT:

Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

55. ELECTRONIC WASTE RECYCLING ACT OF 2003:

The Contractor certifies that it complies with the 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, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

56. USE TAX COLLECTION:

In accordance with PCC Section 10295.1, 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 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.

57. 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.

58. 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.

IT Purchase Special Provisions 01-21-03

**STATE MODEL
INFORMATION TECHNOLOGY
PURCHASE SPECIAL PROVISIONS
TO BE USED WITH THE GENERAL PROVISIONS - IT. DEVELOP AND
INCLUDE A STATEMENT OF WORK**

1 Liquidated Damages**a. General**

In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

b. Timing of Delivery

I) Contractor will be liable for any liquidated damages for late performance (including late delivery) specified in the Statement of Work if Contractor fails to provide any subject service or deliver any subject Deliverable, ready for use in substantial conformance with its specifications, on or before the Delivery Dates in the Statement of Work. Unless otherwise specified in the Statement of Work: (A) such liquidated damages will stand in lieu of all other damages for such late performance or nonperformance; and (B) if the Contractor fails to provide a software Deliverable listed in the Statement of Work by the specified Delivery Date, but provides suitable substitution of software acceptable to the State, liquidated damages shall not apply to the listed software Deliverable.

II) The State will pay additional monetary compensation for early performance to the extent specifically called for in the Statement of Work.

2 Title to Equipment

Unless otherwise specified in the Statement of Work, title to the Equipment shall remain in 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.

3 Price Decline (Applicable to Third Party Contractors)

Prices quoted shall be the maximum for the contract period subject to any price escalation provisions reflected in the Statement of Work. However, should a price decline be announced by the manufacturer after contract award, but prior to a third party contractor taking title to the Equipment, and should the third party contractor be the recipient of this manufacturer's price decline, it shall be passed on in total to the State by the third party contractor. Any interest, finance, or other charges based on the contract price will be recomputed using the original bid rates and the differences will also be passed to the State in total.

4 Price Decline (Applicable to Manufacturers)

Prices quoted shall be the maximum for the contract period subject to any price escalation provisions reflected in the Statement of Work. However, should a price decline be announced by the manufacturer after contract award, but prior to the State taking title to the Equipment, it shall be passed on in total to the State by the manufacturer. Any interest, finance, or other charges based on the contract price will be recomputed using the original bid rates and the differences will also

be passed to the State in total.

DGS Procurement Division PURCHASE SPECIAL PROVISIONS Page 2 01/21/03

Maintenance Special Provisions 01/21/03

TO BE USED WITH THE GENERAL PROVISIONS - IT, DEVELOP AND
INCLUDE A STATEMENT OF WORK.

The following terms and conditions are superseded and replaced by any alternate or inconsistent terms and conditions in the Statement of Work.

1 Maintenance of Equipment

The Contractor is responsible under this Contract to maintain the Equipment identified in the Statement of Work. The Contractor shall keep the Equipment in good operating condition and shall always be responsive to the maintenance requirements of the State. Equipment maintenance shall be provided in accordance with this Contract, with the maintenance charges, Period of Maintenance Coverage, locations, etc. listed in the Statement of Work.

2 Exclusions

a. Maintenance service does not include:

- 1) Electrical work external to the Machines or maintenance of accessories, alterations, Attachments, or other devices not listed in the Statement of Work.
 - 2) Repair of damage or increase in service time caused by: accident; disaster, which shall include, but not be limited to, fire, flood, water, wind, and lightning; transportation; neglect, misuse, fault or negligence of the State; and alterations, which shall include, but not be limited to, any deviation from Contractor's physical, mechanical, or electrical Machine design, and Attachments.
 - 3) Repair of damage or increase in service time resulting from failure to provide a suitable installation environment with all facilities prescribed by the appropriate Contractor Installation Manual-Physical Planning (including, but not limited to, failure of, or failure to provide adequate electrical power, air conditioning or humidity control).
 - 4) Repair of damage or increase in service time attributable to the use of the Machines for other than the data processing purpose for which it was acquired.
 - 5) Furnishing platens, supplies or accessories; painting or refinishing the Machines or furnishing material therefore; inspecting Machines altered by other than Contractor; making specification changes or performing services connected with the relocation of Machines; or adding or removing accessories, Attachments or other devices.
 - 6) Such service which is impractical for Contractor to render because of alterations or connection by mechanical or electrical means to another Machine.
 - 7) Repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused by the use of supplies or materials not meeting Contractor's specifications for such supplies or materials.
 - 8) Repair of damage or increase in service time caused by conversion from one Contractor model to another or the installation or removal of a Contractor feature whenever any of the foregoing was performed by other than the Contractor.
 - 9) Repair or maintenance by Contractor that is required to restore Equipment to proper operating condition after any person other than Contractor's employee had performed maintenance or otherwise repaired an item of Equipment.
- b. The Contractor may be required to perform repair or maintenance on excluded items in paragraph a, above. An additional charge for such repair or maintenance shall be at the established Contract rates in the Statement of Work, or if not stated, be at Contractor's applicable time and material rates and terms then in effect. The procedures for authorization of such maintenance may be the same as those for Remedial Maintenance outside of the Principle Period of Maintenance.

3 Responsibilities of the Contractor

a. This maintenance service includes the following and may be further described in the Statement of Work:

- 1) Scheduled Preventive Maintenance based upon the specific needs of the individual Machines as determined by manufacturer.
 - 2) Unscheduled, on-call Remedial Maintenance. Such maintenance will include lubrication, adjustments, and replacement of maintenance parts deemed necessary by the Contractor.
- b. Maintenance parts will be furnished by Contractor and will be new or equivalent to new in performance when used in these Machines. Replaced maintenance parts become the property of the Contractor.

c. Preventive maintenance shall be performed on a schedule which is mutually acceptable to the State and the Contractor, which is consistent with the State's operating requirements, and which is based upon the specific needs of the Equipment as determined by the manufacturer. Such schedules shall be in writing and shall specify the frequency and duration of Preventive Maintenance for the Equipment in the Statement of Work.

d. Remedial Maintenance shall be commenced promptly after notification by an authorized State representative that Equipment and/or Software is inoperative.

4 Responsibilities of the State

a. The State shall provide an appropriate operating environment, including temperature, humidity, and electrical power, in accordance with the environmental requirements contained in the Contractor's published specifications for the Equipment listed on the Statement of Work.

b. Unless mutually agreed to by the Contractor and the State, State personnel will not perform maintenance or attempt repairs to the Equipment while such Equipment is governed by the terms of this Contract.

c. Subject to the State's security regulations, the Contractor shall have full and free access to the Machines to provide service thereon.

5 Maintenance Coverage

a. Period of Maintenance Coverage:

1) The State may select a period or periods of maintenance coverage, as stated in the Statement of Work, in accordance with the following:

(a) A minimum monthly maintenance charge entitles the State to maintenance coverage during the Principal Period of Maintenance.

(b) The State may select in lieu of the hours available for the minimum monthly maintenance charge, one or more of the optional periods of maintenance coverage for an additional charge as shown in the Statement of Work.

2) The hours of maintenance coverage for a Machine on Monday through Friday shall be the same each day; and the hours on Saturday and Sunday shall be the same hours on all Saturdays or Sundays. All Machines covered under this Contract must have a simultaneous span of time within the selected periods of maintenance coverage, at least equal to the shortest period offered for any Machine in the System.

3) The State may change its selected Period of Maintenance Coverage by giving Contractor fifteen (15) days prior written notice.

b. Preventive Maintenance (scheduled)

Preventive maintenance can either be performed within or outside of the Principal Period of Maintenance (PPM). An additional charge may be made for Preventive Maintenance to be performed outside of the PPM, as set forth in the Statement of Work. No additional charge shall be made for Preventive Maintenance that is to be performed within the PPM.

c. Remedial Maintenance (unscheduled)

1) Remedial Maintenance shall be performed after notification by authorized State personnel that the Equipment is malfunctioning.

2) The Contractor shall provide the State with a designated point of contact and will initiate the Remedial Maintenance.

3) There shall be no additional maintenance charges for:

(a) Remedial Maintenance during the Period of Maintenance Coverage unless the Remedial Maintenance is due to the fault or negligence of the State.

(b) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has been commenced.

(c) Remedial Maintenance required because the scheduled Preventive Maintenance preceding the malfunction had not been performed, unless the State had failed to provide access to the Equipment.

(d) For time of delay beyond the PPM, Contractor shall continue to perform maintenance for the same amount of time outside the covered period without additional charge to the State.

(e) The first hour of work performed when Remedial Maintenance service is requested during the covered Period of Maintenance and the actual work is begun outside such period.

6 Maintenance Charges

a. The monthly maintenance charges described include all maintenance costs, and the State will pay no additional charges unless specifically set forth in this Contract. Maintenance rates shall be firm for the Contract period subject to any maximum annual maintenance escalation as set forth in the Statement of Work.

b. Maintenance charges for fractions of a calendar month shall be computed at the rate of 1/30 of the applicable Total Monthly Maintenance Charge, for each day maintenance was provided.

c. There will be no charge for travel expense associated with maintenance service or programming service under this Contract except that actual travel expenses will be charged in those instances where the site at which the Machine is located is not normally accessible by private automobile or scheduled public transportation.

d. All maintenance and other service activities (including but not limited to activities relating to pre-installation planning, inspections, relocation of Machines, engineering changes and altered programming) which may be made available by Contractor to the State at no additional charge or at Contractor's then applicable time and material charges, in connection with any Machines or programming supplied under this Contract, shall be subject to the terms and conditions of this Contract, unless such activities are provided under another written agreement signed by the State and the Contractor.

7 Maintenance Credit for Inoperative Machines

The Contractor shall grant a proportionate maintenance credit on a Machine shown in the Statement of Work when the Machine is Inoperative for consecutive scheduled work periods totaling 24 hours from the time the State notifies the Contractor the Machine was inoperative, provided (1) the Machine became inoperative through no fault of the State, and (2) the breakdown was attributable to Equipment Failure. The credits to be granted by the Contractor to the State shall be as reflected in the Statement of Work.

8 Engineering Changes

Engineering changes, determined applicable by Contractor, will be controlled and installed by Contractor on Equipment covered by this contract. The State may elect to have only mandatory changes, as determined by Contractor, installed on Machines so designated. A written notice of this election must be provided to the Contractor for confirmation. There shall be no charge for engineering changes made. Any Contractor-initiated change shall be installed at a time mutually agreeable to the State and the Contractor. Contractor reserves the right to charge, at its then current time and material rates, for additional service time and materials required due to noninstallation of applicable engineering changes after Contractor has made a reasonable effort to secure time to install such changes.

9 Relocation of Equipment

a. In the event the Equipment being maintained under the terms and conditions of this Contract is moved to another location within the State of California, the Contractor shall continue to maintain the Equipment at the new location.
b. The charges of the Contractor to dismantle and pack the Equipment and installation at the new location shall be at the rates set forth in the Statement of Work. The State agrees to pay all costs incidental to any move, including costs for packing, crating, rigging, transportation, unpacking, uncrating, insurance, installation, and State and local sales tax, if any.
c. If Contractor is responsible for the move, no re-certification charges to confirm continued maintenance eligibility will be applicable. If the move is conducted by other than Contractor, State agrees to pay re-certification charges to Contractor at rates set forth in the Statement of Work.

10 Termination

Notwithstanding the Termination for Convenience provisions contained in the General Provisions, upon thirty (30) days' written notification to the Contractor, State may terminate, at no cost to the State, maintenance for all or any portion of the Equipment identified in the Statement of Work.

Software Special Provisions 01/21/03

**STATE MODEL
INFORMATION TECHNOLOGY
SOFTWARE SPECIAL PROVISIONS
TO BE USED WITH THE GENERAL PROVISIONS -- IT. DEVELOP AND
INCLUDE A STATEMENT OF WORK.**

1 License Grant

- a. Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use the Software Products listed in Statement of Work of this Contract (hereinafter referred to as "Software Products").
- b. State may use the Software Products in the conduct of its own business, and any division thereof.
- c. 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.
- d. By prior written notice, the State may redesignate the CPU in which the Software Products are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.

2 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 as defined in paragraph 1c, above, 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, 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 a permanent code is assigned.

3 Fees and Charges

Upon acceptance of Software by State, in accordance with Paragraphs 5 herein and the Statement of Work, State will pay the license fee or recurring charge for the Software Products as set forth in Statement of Work. Charges will commence on the Acceptance Date as established in the Statement of Work. The Contractor shall render invoices for recurring charges or single charges in the month following the month in which the charges accrue.

4 Maintenance

The following terms and conditions are superseded and replaced by any alternate or inconsistent terms and conditions in the Statement of Work.

- a. The correction of any residual errors in any Software Product that may be discovered by Contractor or by the State will be considered maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of this contract. Suspected errors discovered by the State in the Software Products will be handled by the following procedures:
 - 1) A listing of the output and a copy of the identical input data in machine-readable form will be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.
 - 2) Errors in the Software Product as verified by Contractor will be corrected by providing a new copy of said Software Product (or of the affected portions) in machine-readable form.
 - 3) The Contractor shall attempt to correct Software Product errors within a reasonable time.
- b. Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular

Hardware or Operating System at rates in accordance with the Statement of Work.

c. If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original Software Products, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work.

5 Acceptance of Software

a. Commercial Software. Acceptance of Commercial Software will be governed by the terms and conditions of the license agreement governing such Software.

b. Custom Software. Unless otherwise provided in the Statement of Work, acceptance procedures for Custom Software will be as set forth in this subsection (b). The State shall be deemed to have accepted each Custom Software Product (i) upon its issuance of written notice of such acceptance or (ii) sixty (60) days after the Installation Date, unless at or before that time the State gives Contractor written notice of rejection (collectively, "Acceptance"). No payment for Custom Software will be due before Acceptance thereof, except to the extent required by progress payment terms in the Statement of Work. Any notice of rejection will explain how the Custom Software Product fails to substantially conform to the functional and performance specifications of this Contract. Contractor will, upon receipt of such notice, investigate the reported deficiency and exercise reasonable best efforts to remedy it promptly. The State, in its sole discretion, will have the option to re-perform the acceptance test. If the Contractor is unable to remedy the deficiency within (60) days of notice of rejection, the State shall have the option of accepting substitute Software, terminating for default the portion of the Contract that relates to such Custom Software, or terminating this Contract in its entirety for default.

6 Right To Copy or Modify

a. Any Software Product provided by 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 one time without prior written consent from 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 agrees to keep any such copies and the original at a mutually designated State location, except that the State may transport or transmit a copy of the original of any Software Product to another State location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected.

c. 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; provided that nothing in this sub-section c) will be construed to contradict the terms of any separate applicable third party license agreement. 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 this Contract.

7 Future Releases

Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions of any Software Product are developed by Contractor, and are made available to other licensees, they will 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.

Personal Services Special Provisions 02/08/07**STATE MODEL INFORMATION TECHNOLOGY
PERSONAL SERVICES SPECIAL PROVISIONS**

TO BE USED WITH THE GENERAL PROVISIONS --IT. DEVELOP AND INCLUDE A STATEMENT OF WORK.

1. Contract Type

- a. Unless otherwise specified, the Statement of Work shall define and authorize work on a Fixed Price basis, with a guarantee of task completion.
- b. To the extent that additional work not foreseen at the time this Contract is executed must be accomplished, Work Authorizations, as described in the Statement of Work, will be the means for defining and authorizing such work on a Labor Hour basis.

2. Personnel

- a. Contractor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State.
- b. The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Contract. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel, the parties agree to proceed with any equitable adjustment in schedule or other terms that may be affected thereby.
- c. The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.
- d. In recognition of the fact that Contractor personnel providing services under this Contract may perform similar services from time to time for others, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, providing that such use does not conflict with the performance of services under this Contract.

3. Responsibilities of the State

- a. The State shall provide normal office working facilities and equipment reasonably necessary for Contractor performance under this Contract. Any special requirements (e.g., reprographic services, computer time, key data entry, etc.) shall be identified in the Statement of Work.
- b. The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the Statement of Work.
- c. The Contractor will not be responsible for any delay, cost increase, or other consequence to the extent that it is caused by the State's failure to fulfill responsibilities set forth herein. In the event of any claim for equitable adjustment to price, schedule, or both, the parties will negotiate in good faith regarding execution of a Contract amendment. Should the Contractor determine that a delay exists or is probable due to a failure of the State, the Contractor will promptly notify the State in writing.

4. Unanticipated Tasks

- a. In the event that additional work must be performed which was wholly unanticipated and is not specified in the Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined, the procedures outlined in this Section will be employed.
- b. For each item of unanticipated work not specified in the Statement of Work, a Work Authorization will be prepared in accordance with the sample attached as Exhibit A.
- c. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization. Such Work Authorization shall in no way constitute a Contract other than as provided pursuant to this Contract nor in any way amend or supersede any of the other provisions of this Contract.
- d. Each Work Authorization shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by the Contractor, the job classification or approximate skill level of the personnel to be made available by the Contractor, an

identification of all significant material to be developed by the Contractor and delivered to the State, an identification of all significant materials to be delivered by the State to the Contractor, an estimated time schedule for the provisions of these services by the Contractor, completion criteria for the work to be performed, the name or identification of the Contractor personnel to be assigned, the Contractor's estimated work hours required to accomplish the purpose, objective or goals, the Contractor's billing rates per work hour, and the Contractor's estimated total cost of the Work Authorization.

- e. All Work Authorizations must be in writing prior to beginning work and signed by the Contractor and the State.
- f. The State has the right to require the Contractor to stop or suspend work on any Work Authorization pursuant to the "Stop Work" provision of the General Provisions.
- g. Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:

1) If, in the performance of the work, the Contractor determines that a Work Authorization to be performed under this Contract cannot be accomplished within the estimated work hours, the Contractor will immediately notify the State in writing of the Contractor's estimate of the work hours which will be required to complete the Work Authorization in full. Upon receipt of such notification, the State may:

- (a) Authorize the Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld), or
- (b) Terminate the Work Authorization, or
- (c) Alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining estimated work hours.

2) The State will notify the Contractor in writing of its election within seven (7) calendar days after receipt of the Contractor's notification. If notice of the election is given to proceed, the Contractor may expend the estimated additional work hours or services. The State agrees to reimburse the Contractor for such additional work hours.

5. Invoicing and Payment for Services

a. During the execution of each Milestone (as set forth in the Statement of Work) which involves the delivery to the State of Identified Deliverables, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the Milestones, determined on the basis of the lesser of either:

- 1) The number of Deliverables provided to the State divided by the total number of Deliverables required to be delivered to the State, less a ten percent (10%) withhold, less any amounts previously invoiced; or
- 2) The number of work-hours expended by the Contractor in the performance of the task divided by the number of work hours scheduled for the task, less a ten percent (10%) withhold, less any amounts previously invoiced; provided that the Statement of Work may specify a withhold of more than ten percent (10%).

b. For those Milestones which do not involve delivery to the State of Identified Deliverables, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Milestone, less a ten percent (10%) withhold, less any amount previously invoiced. Actual progress payment amounts for such Milestones must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.

c. Upon completion of a Milestone in accordance with the acceptance criteria set forth herein, the full charge for such Milestone, less amounts previously invoiced to the State, may be submitted for payment. Nothing herein will be construed to waive or contradict any requirement of California Public Contract Code section 12112 or any similar or successor provision.

d. In the event that work not specified in the Statement of Work is performed with the State's written consent, invoices for services as reflected on Work Authorizations will be submitted to the State for payment. In no event shall the total amount paid for such work exceed ten percent (10%) of the value of personal services anticipated by this Contract.

e. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.

f. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the ceiling amount of the Contract, with the balance to be invoiced upon completion of the Contract, in accordance with the acceptance criteria set forth herein.

g. In the event of a conflict between the terms of this Section 5 and those of the Section of this Contract entitled "Acceptance of Software," the latter will govern.

6. Contractor Evaluation

In accordance with the California Government Code, Contractor performance evaluation will be completed within the guidelines of the State Contracting Manual Volume 1, Section 3.02.5. The State contracting agency, upon Contract

completion, will complete and forward the Contractor evaluation to the Department of General Services.

7. Conflict of Interest

During the performance of this contract, should the Contractor become aware of a financial conflict of interest that may foreseeably allow an individual or organization involved in this Contract to materially benefit from the State's adoption of an action(s) recommended as a result of this contract, the Contractor must inform the State in writing within 10 working days. If, in the State's judgment, the financial interest will jeopardize the objectivity of the recommendations, the State shall have the option of terminating the Contract.

Failure to disclose a relevant financial interest on the part of the Contractor will be deemed grounds for termination of the Contract with all associated costs to be borne by the Contractor and, in addition, the Contractor may be excluded from participating in the State's bid processes for a period of up to 360 calendar days in accordance with Public Contract Code section 12102(j).

EXHIBIT A**WORK AUTHORIZATION****SAMPLE**

TITLE: 70/752 Output Formatter

Task Summary: Develop program to format and print simulated 70/752 displays using a sequential data set as input.

Schedule Dates:

Start Date: Completion Date:
April 2, 2007 April 30, 2007

Estimated Labor-Hours

Labor	Hour Rate	Estimated Total Cost
100	\$90.00	\$9,000.00

Contractor Personnel to Be Assigned **Job Classification/Skill Level**

Jane Doe Staff Programmer Analyst

Completion Criteria:

Acceptance of program by the State.

This task will be performed in accordance with this Work Authorization and the provisions of Contract No. _____.

Approval

Contract Project Manager

State Project Manager

Appendix B

**WSCA Master Agreement
State Participating Addendum
Primary Points of Contact**

STATE OF CALIFORNIA	
Joyce Griffin Department of General Services, Procurement Division Multiple Award Program 707 Third Street, 2 nd Floor, MS 202 West Sacramento, CA 95605	
Phone: (916) 375-4576 Fax: (916) 375-4663	

CONTRACTOR	
Rob Cassetti Manager, Enterprise Regional Sales Government-Education Northern California Enterprise Cisco Systems Inc. PLEASANTON 1, 4th floor, 476 Mail Stop PLS01/4/ 5890 Owens Drive Pleasanton , CALIFORNIA 94588	
Phone: (408) 894-7191 Email: rcassett@cisco.com	

Appendix C

**MILESTONE COMPLETION CERTIFICATE
CHANGE REQUEST**

(Samples)



APPENDIX C
MILESTONE/SERVICE COMPLETION CERTIFICATE

Pursuant to the above referenced order between Cisco Systems, Inc. ("Cisco") and Customer ("Customer"), Customer hereby certifies, by the signature of an authorized representative, that the Milestone/Service described below has been completed in a satisfactory manner on the date indicated below and in accordance with the terms of the ordering documents:

Milestone/Service

Date

Purchase Order Number: _____
Cisco Sales Order Number: _____
SOW/ Project ID Number: _____
Dollar Amount of Services Completed: _____
Dollar Amount of T&E: _____
Project Complete (Yes/No): _____

Submitted by:

CONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____

Acknowledged and Agreed:

CUSTOMER

By: _____
Name: _____
Title: _____
Date: _____

**Appendix C
CHANGE REQUEST**

In reference to the Section titled Change Management Procedures of the above referenced ordering documents between Cisco Systems, Inc. ("Cisco") and Customer ("Customer"), both parties hereby certify, by the signature of an authorized representative, that this Change Management Request will amend and be fully incorporated into the existing ordering document.

1. Change Request Number: _____

2. Reason for Change Request:

3. Changes to SOW:

4. Schedule Impact:

5. Cost Impact:

SOW/Change Request	SERVICES	T&E	TOTAL
a. Original Value of SOW	\$0.00	\$0.00	\$0.00
b. Value of Change Request No. 1	\$0.00	\$0.00	\$0.00
c. New Value of SOW:	\$0.00	\$0.00	\$0.00

6. Purchase Order Issuance (if applicable): Customer shall issue a written Purchase Order to Contractor, or shall issue an amendment to its original Purchase Order issued under this ordering document, for the total amount of **\$0.00**.

Except as changed herein, all terms and conditions of the ordering document remain in full force and effect.

IN WITNESS THEREOF, the duly authorized representatives of the parties hereto have caused this Change Request to be fully executed.

CONTRACTOR:

CUSTOMER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF UTAH - STATE COOPERATIVE CONTRACT
CONTRACT NUMBER AR-233

1. CONTRACTING PARTIES: This State Cooperative Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, ("State"), with its principle place of business at State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 and the following CONTRACTOR:

Cisco Systems, Inc
Name
170 West Tasman Drive
Address
San Jose CA 95134
City State Zip

LEGAL STATUS OF CONTRACTOR
 Sole Proprietor
 Non-Profit Corporation
 For-Profit Corporation
 Partnership
 Government Agency

Contact Person: Greg Semler, Cisco Acct Team Phone #1-503-598-7172 Fax # 1-503-598-7166
Email gsemler@cisco.com Federal Tax ID# 77-0059951 Vendor # VC0000118462
Commodity Code # 20464, 20623 & 20621 [For WSCA internal purposes]

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:
WSCA Contract to provide Data Communications Equipment Associated OEM Maintenance and Training per RFP #DG7500 as further described in Attachment A.
3. CONTRACT PERIOD: Effective date: 10/1/2007 Termination date: May 31, 2010 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): Maximum of four additional years
4. PRICING AS PER THE ATTACHMENT Discounts
PAYMENT TERMS: Net 30
DAYS REQUIRED FOR DELIVERY: Generally shipped within 30 Days after receipt of order (See Attachment B, Section 20)
MINIMUM ORDER: None
FREIGHT TERMS: F.O.B. Destination - Freight Prepaid
5. CONTRACT NO. AR - 233 - Table of Contents
ATTACHMENT A: Addendum 1
ATTACHMENT B: WSCA Terms and Conditions (Revised)
ATTACHMENT C: Contractor Terms and Conditions
ATTACHMENT D: Cisco Master Services Terms and Conditions
ATTACHMENT E: Redacted Cisco RFP Response to RFP DG 7500

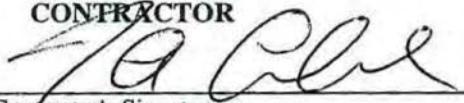
6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

- a. All other governmental laws or regulations applicable to the Products and/or Services authorized for purchasing under this contract.
- b. Utah State Procurement Code, Procurement Rules

This Cover Sheet, including the above-referenced Attachments, constitutes the complete Agreement between the parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the parties. Any contingencies or additional terms contained on a Purchase Order are not binding upon Cisco. The terms and conditions of this final Agreement shall prevail regardless of any conflicting or additional terms on the Purchase Order or elsewhere other than by written amendment to this Agreement.

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

CONTRACTOR



Contractor's Signature

FRANK A. CALDERONI

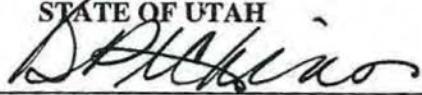
VP, WW SALES FINANCE

Type or Print Name and Title

Sept 27, 2007

Date

STATE OF UTAH



Douglas G. Richins
Director, Div. of Purchasing & General Svcs.

OCT 01 2007

Date



WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT AR-233

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WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT
("WSCA Master Agreement")
[State of Utah Contract Ref. No. AR-233]

Attachment A – Addendum A

This Addendum lists additional terms and conditions of the contract between the State of Utah, acting on behalf of WSCA, referred to as "WSCA" or "State", and Cisco Systems, Inc, referred to as Contractor. The State of Utah is acting as the Lead State for the procurement process resulting in WSCA Contracts for *Data Communications Equipment, associated OEM Maintenance and Training*.

A. Manufacturer Product Line(s)

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

Routers: Cisco
Switches: Cisco
LAN/WAN Wireless: Cisco
CSU/DSU: Cisco
Security: Cisco
Networking Software: Cisco
Optical: Cisco
Storage Area Networking: Cisco
Unified Communications/Telephony: Cisco
Management and Monitoring Software: Cisco
Cisco SmartNet and Advanced Services (e.g., NOS)

B. State of Utah/WSCA Contract Manager

Debbie Gundersen
State of Utah

Division of Purchasing and General Services
State Office Building, Capitol Hill
Room 3150
Salt Lake City, UT 84114-1061

email: dgundersen@utah.gov
Voice: (801) 538-3150
Fax: (801) 538-3882

C. Remittance Address

Remit to Authorized Fulfillment Partner. Under each Participating Addendum, Cisco has authorized certain Cisco resellers to issue, receive and process orders and payments for transactions under each Participating Addendum. Resellers' remittance addresses will be posted at the WSCA website, along with their contact information and "remit to" addresses.

D. Contractor Requirements

1. **Contractor Responsibility**

Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. Without diminishing the foregoing, Contractor may authorize one or more of its Fulfillment Partners, as defined in this Agreement, Attachment B § 1, to directly fulfill any of its responsibilities under this Agreement. The Purchaser will issue purchase orders and make payments to the named Contractors or its authorized Fulfillment Partners as updated on the WSCA website. References in the Contract to the "Contractor" shall be understood to refer to its respective Fulfillment Partners, as authorized by Cisco.

2. **Serving Subcontractors**

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 and listed on the WSCA website 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.

3. **WSCA Administration Fee**

The Contractor must pay a WSCA administration fee of one half of one percent (0.5%) in accordance with the terms and conditions of this Contract. The WSCA administration fee is not negotiable.

The administration fee is calculated by multiplying 0.5% against the "Net Purchase Price" paid by the Customer. The "Net Product Purchase Price" is defined as Contractor's product list price, minus all applicable contract discounts, rebates or value added incentives, and excluding sales, use, or other applicable taxes, surcharges or like fees, to the extent applicable to an Order.

The WSCA Administration Fee shall be made out to WSCA and paid quarterly at the time of submission of each report to the following address:

WSCA
Attn: Debbie Gundersen
State Office Building,
Capitol Hill
Room 3150
Salt Lake City, UT 84114 - 1061

4. Change in Contractor Representatives (Refer to Attachment C, § 6.)
5. Website Development and Maintenance
Contractor must maintain said website and keep the information current and correct on a timely basis.
6. Rollout and Marketing
Contractor may conduct a marketing effort in the Participating States.
7. Right to Publish
Unless release is otherwise required by law or final order of a court of competent jurisdiction, Contractor must secure prior approval from the contract manager for permission to release any confidential information that pertains to the potential work or activities relating to this contract. "Confidential information" shall mean information that is marked confidential upon receipt and not otherwise available in the public domain or otherwise rightfully known or available independent of this contract. Failure to adhere to this requirement may result in termination of the contract for cause.
8. Contractor's Scope of Equipment and Services
Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of Products and related Services described in Section A, above, as now or hereafter updated or amended by the parties, may result in contract termination for cause.
9. E-Rate Requirement
Contractor must participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications

Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the Contractor.

10. Product Revision Requests

Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list product category and its discount.

11. Maintenance of Then-Current Price List with Firm Discount(s) Applied

Manufacturer's price list(s) must be tailored by the Contractor for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the Contractor on an Internet website hosted by the Contractor, at no additional charge(s) to WSCA. This website will be listed as a link from the WSCA website.

E. Contract Scope of Equipment and Related Services

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below may result in contract termination for cause.

1. Discounts off Manufacturers Price List

a. Pricing Discounts

Products and Services sold under the WSCA Master Agreement are subject to the then-current Cisco Global Price List in effect at time of order as posted on Contractor's website at <http://www.cisco.com>, less the applicable contract discounts set forth below.

The following minimum firm pricing discounts apply to purchases made under this WSCA Master Agreement:

<u>Product</u>	<u>35%</u>
<u>Smartnet Maintenance</u>	
1 year:	10%;
3 year prepaid commit:	17%
<u>Professional Services/AS/Training</u> 10%	

The pricing discounts set forth above (and in Attachment A – Addendum 1) apply to purchases made under this WSCA Agreement upon the same terms and conditions set forth herein during the contract term.

To the extent that a Participating State or individual Purchaser proposes additional requirements or a change to the stated terms and conditions set forth in this Agreement, both Contractor and the Purchaser shall mutually agree to such change in writing in the Participating Addendum. However, the Contractor reserves the right, in its sole discretion and judgment, as a condition of giving its consent, to modify the pricing discounts stated herein to reflect potential additional costs, obligations, risks or liabilities associated such additional terms, or to reject the proposed change. In the event of Contractor's agreement, the agreed upon changes shall be set forth in the Participating Addendum.

b. WSCA Member-State Coverage

Cisco will serve all WSCA states.

A list of approved Authorized Resellers under each Participating Addendum will be maintained by Contractor online throughout the term of the Contract.

2. Resolution of Customer Problems

Escalation of outstanding contract issues, including warranty, maintenance or service issues, shall be first resolved in accordance with the Fulfillment Partner's escalation procedures posted and maintained at the Fulfillment Partner's WSCA website.

For all ongoing, transactional issues that cannot be resolved satisfactorily following the Reseller escalation procedures, customers should contact the Contractor's Local designated point of contact named under the Participating Addendum.

With respect to Cisco Smartnet, the most current version of the "*Severity and Escalation Guidelines*" will be posted and maintained online during the life of the contract. The current guidelines are available at:
<http://www.cisco.com/legal/services.html>

3. Escalation Procedures

Refer to Section 2, above.

4. Technical Services (Equipment Warranty, Installation, Training, Maintenance Options, Replacement and other miscellaneous included Services)

Cisco's Technical Services offerings as now or hereafter updated during the Contract term are included under this agreement. The most current version of Cisco's terms of services offerings are available on-line at:

<http://www.cisco.com/legal/services.html>. Customer orders for Technical Services will be subject to standard Cisco terms of service agreement in the form set forth in Attachment D to this Agreement.

5. **Fulfillment Partners (Resellers)**

A list of the Fulfillment Partners authorized under Attachment C, Exhibit C, will be posted on the WSCA Website at www.aboutwsca.org and on the Contractor's network website. This list will be updated as changes are made during the contract term.

Fulfillment Partners must at all times be qualified and authorized by Cisco in order to participate as Resellers under this Contract. Fulfillment Partners are authorized by Cisco to fulfill any requirements under this Contract and are further subject to reasonable approval of the Participating Addendum signatory. At the request of and for the administrative convenience of WSCA, a minimum of two (2) and a maximum of five (5) Servicing Sub-Contractors shall initially be named under each Participating Addendum; provided, however, that additional Sub-Contractors may be added at any time under a Participating Addendum with the Participating Addendum signatory's consent.

Revision Date: September 10, 2007

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WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT
("WSCA Master Agreement")
[State of Utah Contract Ref. No. AR-233]

Attachment B

WSCA Terms and Conditions (Revised)

Standard Contract Terms and Conditions
Western States Contracting Alliance

[Note for WSCA Participants: Changes have been made to the WSCA Standard Contract Terms and Conditions. Attachment B, as mutually revised and approved by both parties, is set forth below in its entirety and supersedes and replaces prior versions.]

1. **Definitions:** This section contains definitions that are used throughout this Agreement.
 - 1.1. "Business Day" and "Business Hours" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Purchaser local time, except for holidays observed by national banks located in the State of California and the Participating State.
 - 1.2. "Contractor" shall mean Cisco Systems, Inc. ("Cisco"), its employees and agents. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Agreement authorized by and on behalf of Contractor. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Agreement.
 - 1.3. "Customer" – See "Purchaser"
 - 1.4. "Effective Date" (WSCA Master Agreement)– shall mean the date of execution and signature by both Cisco and the State of Utah, acting on behalf of and with the intent to bind WSCA pursuant to its authority as the WSCA Contract Manager of this WSCA Master Agreement, whichever occurs last.

- 1.5. "Equipment" shall mean Cisco tangible hardware offerings incorporated within the scope of this Agreement and associated with communications as listed on Attachment A, Section A.
- 1.6. "Fulfillment Partner" (also referred to as "Reseller") shall mean a third party contractor qualified and authorized by Cisco, and approved by the Participating State under a *Participating Addendum*, who may, to the extent authorized by Cisco, fulfill any of the requirements of this Agreement including but not limited to providing Products and Services under this Agreement at the Prices established in this Agreement and billing Purchasers directly for such Products and Services. Cisco 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 Agreement or to bind Cisco to any additional terms and conditions.
- 1.7. "Local Public Body" shall mean a political subdivision of the Participating State, and the agencies, public instrumentalities and institutions thereof, including, without limitation, all cities, towns, counties, courts, special districts, and educational institutions (K-12 or higher education).
- 1.8. "Participating Addendum" shall mean a written, bilateral agreement executed and delivered by and between Cisco and a Participating State that expressly incorporates the terms of this WSCA Master Agreement, and any other mutually agreeable terms set forth in the *Participating Addendum*. Upon execution, the term WSCA Master Agreement will be deemed to incorporate the *Participating Addendum* for Participating States. (For purposes of meeting the foregoing execution requirement, the State of Utah will be deemed to have executed a *Participating Addendum* upon execution of this WSCA Master Agreement.)

A Local Public Body may execute a *Participating Addendum* in its own name (and independent of whether the state in which it is located itself executes a *Participating Addendum*) only with the express, written approval of Cisco and the WSCA Contract Manager. In such event, the Local Public Body will be deemed to have accepted and assumed the rights and obligations of a "Participating State", "Purchaser" and/or "Customer" under its *Participating Addendum*.
- 1.9. "Participating State" shall mean 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*. "Participating State" shall be deemed to refer to the State of Utah when acting as a Participating State in its sovereign capacity (and not in its capacity as the WSCA Contract Manager).

- 1.10. "Price" shall mean charges, costs, rates, and/or fees charged for the Products and Services under this Contract and shall be paid in United States dollars.
- 1.11. "Product(s)" shall mean any Contractor-supplied communications Equipment, Software and documentation within the scope of this Agreement as referenced on Attachment A, Section A, and listed on Cisco's then-current Global Price List.
- 1.12. "Purchase Order," "Order" or "Order Document" shall mean any official document and attachments thereto specifying the Products and/or Services to be purchased from Contractor, the issuance of which document shall be deemed to constitute Purchaser's acceptance of and agreement to be bound by the terms of this Agreement.
- 1.13. "Purchaser" (also referred to as "Customer") shall mean: (a) the State of Utah when acting as a Participating State in its sovereign capacity (and not as the WSCA Contract Manager), (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 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 Agreement, and (iii) has been authorized by the WSCA Contract Manager and Cisco to participate under this WSCA Master Agreement.
- 1.14. "Services" shall mean those services within the scope of Attachment A, Section A, and listed on Cisco'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 Attachment D.
- 1.15. "Servicing subcontractor" shall mean a third party subcontractor of Cisco or a Fulfillment Partner.
- 1.16. "Software" shall mean the object code version of computer programs licensed pursuant to this Agreement. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Equipment that is necessary for the proper operation of the Equipment is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. For purposes of this Agreement, "Software" shall include (and the terms and conditions of this Agreement shall apply to) any upgrades, updates, bug fixes or modified versions (collectively,

- "Upgrades") or backup copies of the Software licensed or provided to Customer by Cisco, or an authorized distributor for which Customer has paid the applicable license fees.
- 1.17. "State" shall mean the State of Utah when acting as the WSCA Contract Manager and not as a Participating State.
 - 1.18. "State Agency" shall mean any state office, department, commission, council, board, committee, institution, legislative body, agency, public authority, public benefit corporation, other government corporation or public educational institution.
 - 1.19. "Subcontractor" shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this Agreement under a separate subcontract with Contractor or its Fulfillment Partners. The term "Subcontractor" means Subcontractor(s) of Cisco or its Fulfillment Partners provided, however, that subcontractor(s) may not receive Orders, invoice, or receive payments directly from Purchasers.
 - 1.20. "Termination Date" shall mean the date of termination of the WSCA Master Agreement on May 31, 2010, or such dates as extended upon mutual agreement of the parties for renewal options.
 - 1.21. "WSCA" shall mean the Western States 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.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Rights and obligations under this contract are limited to those Participating States who execute a *Participating Addendum* with Cisco.
 - 1.22. "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 this WSCA Master Agreement, notices, reports and any other pertinent documentation or information.
 - 1.23. "WSCA Master Agreement" (also referred to as "Agreement" or "Contract") shall mean the underlying purchasing agreement executed by and between the State of Utah ("State"), as WSCA Contract Manager acting on behalf of WSCA, and Cisco, as now or hereafter amended.
2. **QUANTITY ESTIMATES:** Participating States do not guarantee to purchase any amount under this Agreement.
 3. **SPECIFICATIONS:** *Intentionally Omitted.*
 4. **ACCEPTANCE OR REJECTION OF PROPOSALS:** *Intentionally Omitted.*
 5. **SAMPLES:** See the "Demonstration or Evaluation Equipment" Section in Attachment C.

6. **CASH DISCOUNT TERMS:** *Not Applicable.*
7. **TAXES:** See the "Prices; Taxes" in Attachment C, Section 2.
8. **MODIFICATION OR WITHDRAWAL OF PROPOSALS:** *Intentionally Omitted.*
9. **INTELLECTUAL PROPERTY INFRINGEMENT:**
 - 9.1. Cisco will have the obligation and right 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 Agreement infringes Third Party IPR (as defined below). Cisco 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. Cisco's obligations to defend the IPR Claim and indemnify the Purchaser are conditional upon:
 - 9.1.1. Purchaser notifying Cisco promptly in writing of the IPR Claim or threat thereof;
 - 9.1.2. Purchaser giving Cisco full and exclusive authority for the conduct of the defense and settlement of the IPR Claim and any subsequent appeal; and
 - 9.1.3. Purchaser giving Cisco all information and assistance reasonably requested by Cisco in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.
 - 9.2. For the purposes of this Agreement, Third Party IPR means a United States copyright existing as at the date of Purchase or a United States patent issued as at the date of Purchase Order.
 - 9.3. If an IPR Claim has been made, or in Cisco's reasonable opinion is likely to be commenced, Purchaser agrees to permit Cisco, 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 Agreement with regard to the Product, in which case Purchaser will return the Product to Cisco and Cisco will refund to Purchaser the price originally paid by Purchaser to Cisco for the Product, as depreciated or amortized by an equal annual amount over three years from date of original shipment.
 - 9.4. Notwithstanding the foregoing, Cisco has no liability for, and Purchaser will defend and indemnify Cisco against, any IPR Claim arising from:
 - 9.4.1. the combination, operation, or use of a Product supplied under this Agreement with any product, device, or software not supplied by Cisco;

- 9.4.2. 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;
- 9.4.3. the alteration or modification of any Product supplied under this Agreement from and after the date such Product is so supplied and such alteration or modification is not made by Cisco;
- 9.4.4. Cisco's compliance with Purchaser's designs, specifications, or instructions; or
- 9.4.5. Purchaser's use of the Product after Cisco 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 Cisco's recommended modifications or changes.
- 9.5. THIS SECTION STATES THE ENTIRE OBLIGATION OF CISCO 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 CISCO DISCLAIMS, ALL WARRANTIES, CONDITIONS AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO ANY PRODUCT.
10. **AWARD:** *(Intentionally Omitted)*.
11. **NON-COLLUSION:** By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition.
12. **TERM AND CANCELLATION:**
- 12.1. **Term**
- This WSCA Master Agreement shall commence on the Effective Date and continue thereafter through the Termination Date of May 31,2010 (the "Initial Term"), unless sooner terminated, as provided in this WSCA Master Agreement.
- The WSCA Master Agreement may be extended and amended after the Initial Term upon mutual written agreement by the parties prior to the expiration of any then current term. The WSCA Master Agreement is renewable on a bi-annual or annual basis, up to a maximum of four total

renewals years (contract potential is 7 years, including all renewal options).

With respect to the term of any services ordered, the term will be governed by the ordering document subject to the terms of Attachment D.

12.2. Termination for Convenience

12.2.1. WSCA Master Agreement: Either party (State or Cisco) may terminate this WSCA Master Agreement for convenience at any time by providing the other party with at least one hundred twenty (120) calendar days' written notice prior to the effective date of the cancellation. The termination date specified in the notice shall be on or after the first anniversary of the Effective Date of the initial contract term. The WSCA Master Agreement shall automatically terminate at the end of the period for which notice is given.

Any cancellation under this provision shall not affect the rights and obligations of either party attending orders outstanding at the time of cancellation, e.g., any right of Purchasing Entity to indemnification by the Contractor, rights of Contractor payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any prior order.

12.2.2. Participating Addendum: Either party to a *Participating Addendum* may terminate a *Participating Addendum* at any time by providing the other with at least forty-five (45) calendar days' written notice prior to the effective date of cancellation. The *Participating Addendum* shall automatically terminate at the end of the period for which notice is given.

Any cancellation under this provision shall not affect the rights and obligations of either party attending orders outstanding at the time of cancellation, e.g., any right of and Participating State 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 prior order.

12.3. Termination for Non-Appropriation of Funds.

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.

No penalty shall accrue to Participating States or its Purchasers in the event this section shall be exercised. This section shall not be construed to permit Participating States to terminate this agreement, or a Purchaser to terminate its Order(s) as to the period for which appropriations were made and available or as to any future period in order to acquire similar Products or Services from a third party.

Any cancellation under this provision shall not affect the rights and obligations of either party attending orders outstanding up to the time of non-appropriation of funds, e.g., any right of and Participating State 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 prior order.

12.4. Termination for Default:

12.4.1. WSCA Master Agreement: The State or Cisco may terminate this WSCA Master Agreement if either party breaches the terms of the WSCA Master Agreement as follows: (a) immediately upon providing written notice to the breaching party if the breach is not capable of being cured, and (b) sixty (60) calendar days after providing written notice to the breaching party if the breaching party otherwise fails to cure a material breach within such sixty (60) calendar day period or commence cure within such sixty (60) calendar day period or diligently pursue completion of such cure.

Notwithstanding the foregoing, the WSCA Master Agreement may be terminated immediately by Contractor for cause in the event of Purchaser's breach of the following Section in Attachment C, Section 4 (Software License), Section 14 (Export Restrictions), or Section 5 (Confidential Information).

12.4.2. Participating Addendum: If either party to a *Participating Addendum* (including the State of Utah when acting in its sovereign capacity under this 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 following Sections in Attachment C: Section 4 (Software License), Section 14 (Export Restrictions), or Section 5 (Confidential Information).

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

12.5. Rights On Termination or Expiration

- 12.5.1. Upon termination or expiration of this agreement or a *Participating Addendum*, (a) Cisco reserves the right to cease all further delivery of Product or Services, (b) all outstanding invoices become due and payable within thirty (30) days of termination, and (c) all rights and licenses of Customer under this Agreement shall terminate, subject to the terms of this Section. If Cisco 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.
- 12.5.2. Except for a termination of this Agreement resulting from Customer's breach of Attachment C, Section 4 (Proprietary Rights and Software Licensing), Section 5 (Confidential Information), or Section 14 (Export, Re-Export, Transfer & Use Controls), upon termination or expiration of this Agreement, Customer may continue to use, in accordance with the terms and conditions of this Agreement and/or the Participating Addendum, Products provided to it by Cisco prior to the date of termination or expiration provided payment has been made in full for such Products.
- 12.5.3. Upon termination or expiration of this Agreement, Customer shall immediately return to Cisco all Confidential Information (including all copies thereof) then in Customer's possession, custody or control (except that customer may retain one archival copy for records retention purposes only as required by law); provided that, except for a termination resulting from Customer's breach of Attachment C, Section 4 (Proprietary Rights and Software Licensing), Section 5 (Confidential Information), or Section 14 (Export Restrictions), Customer may retain a sufficient amount of such Confidential Information and material to operate its installed base of Products.
- 12.5.4. In the event of any termination pursuant to this section, and unless otherwise required by law or court of competent jurisdiction, Purchaser shall remain obligated to comply in perpetuity with the provisions of Attachment C: Section 4 (Software License), Section 14 (Export Restrictions), or Section 5 (Confidential Information) for purchased product.

12.6. Validity of Orders

The parties agree that if Purchaser places a firm Order prior to the expiration or termination of this Agreement (or a Participating Addendum), which by its terms would extend beyond the expiration or termination of this Agreement (or a Participating Addendum), and

Contractor has accepted such Purchase Order(s) prior to the expiration or termination of the Agreement or a Participating Addendum, then any such Purchase Order(s) (i) shall remain in effect and be governed by the terms and conditions of this Agreement, and (ii) shall survive expiration of this Agreement in accordance with the terms herein but will not be considered an extension of the term of the Agreement nor a renewal thereof.

No orders placed after expiration or termination of this Agreement shall be valid.

13. **DEFAULT AND REMEDIES:** See Section 12, above.

14. **COMPLIANCE WITH LAWS AND REGULATIONS:** The respective party's performance under this Agreement shall comply fully with all applicable Federal and State laws and regulations (including, but not limited to, any hazardous chemical laws and regulations) to the extent they are applicable to the Products and/or Services provided under this Agreement. In the event Cisco fails to comply with such requirements, Customer's sole and exclusive remedy shall be payment by Cisco of any fines imposed on Customer by the party entitled to enforce such laws due to Cisco's failure to comply.

If any law changes after the Effective Date (which such changed law was not reasonably contemplated on the Effective Date) to the material detriment of Cisco (as determined in its sole reasonable discretion), then: (i) the applicable parties may mutually negotiate the up charge to offset the cost of such compliance; (ii) Cisco can unilaterally choose not to ship such Product or perform such Service (a) under an individual Order, or (b) across a like class of all Orders under this Agreement in consultation with the WSCA Contract Manager, or (c) delete such class of Product(s) or Service(s) from the scope of this Agreement in consultation with the WSCA Contract Manager; or (iii) Cisco may unilaterally terminate the applicable Order(s).

15. **CONFLICT OF TERMS:** In the event of any conflict among the terms and conditions in the Agreement, the order of precedence for the contract terms will be as follows:

1. *Participating Addendum*
2. **WSCA Master Agreement:**
 - a. Cover Page
 - b. Attachment B: *WSCA Standard Terms and Conditions (Revised)*
 - c. Attachment A: *Addendum 1*
 - d. Attachment C: *Contractor Terms and Conditions*
 - e. Attachment D: *Cisco Master Service Terms and Conditions*

f. Attachment E: *Redacted Cisco RFP Response to RFP DG 7500*

16. **REPORTS:** Contractor shall submit quarterly reports to the WSCA Contract Manager showing the quantities and dollar volume of purchases of product and services by each Participating State [and its Purchasers]. The due dates of each quarterly contract usage report are April 30, July 31, October 31 and January 31. The State of Utah, as WSCA Contract Manager, represents and warrants to Contractor that it is authorized to collect data on purchases under this Agreement. The Purchaser recognizes that this data is public information. Cisco will use commercially reasonable efforts to provide the information set forth on *Attachment B*, Exhibit D (Form of Quarterly Report) and shall be fully indemnified by the State of Utah from any liability to Purchasers under this Agreement for providing Purchasers' data to the State of Utah. Contractor is obligated to produce the quarterly reports in the format specified by WSCA in *Attachment B, Exhibit D*.
17. **INSURANCE; HOLD HARMLESS; GENERAL INDEMNITY; LIMITATION OF LIABILITY; CONSEQUENTIAL AND OTHER DAMAGES:**
- 17.1. **General Liability Insurance.** Contractor shall maintain Commercial General Liability insurance with bodily injury and property damage limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall (a) provide for contractual liability coverage, (b) provide for cross liability coverage, and (c) name the other party and its subcontractors, as well as the directors, officers, employees, agents, successors and assigns of all of them, as additional insureds, but only to the extent of liabilities falling within the indemnity obligations of the other party pursuant to the terms of Subsection 17.2. Nothing in this section shall prohibit any applicable party from providing any or all of the insurance coverages required on a self-insured basis.
- 17.2. **General Indemnity**
- Subject to governmental immunities of the Participating States, each party to this Agreement and to each *Participating Addendum*, as the case may be, 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.

- 17.3. **Limitation of Liability.** EXCEPT FOR THOSE OBLIGATIONS UNDER SECTIONS 9 (INTELLECTUAL PROPERTY INFRINGEMENT) AND 17.2 (GENERAL INDEMNITY), NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF CONTRACTOR AND ITS SUPPLIERS TO ANY PURCHASER FOR CLAIMS ARISING UNDER THIS AGREEMENT, THE APPLICABLE PARTICIPATING ADDENDUM, OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID TO CONTRACTOR FOR PRODUCTS OR FOR SERVICES WITH RESPECT TO SUCH PURCHASER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.
- 17.4. **Waiver of Consequential and Other Damages.** IN NO EVENT SHALL CONTRACTOR OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF CONTRACTOR OR ITS SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF.
18. **ORDER NUMBERS:** Contractor or each Fulfillment Partner shall utilize its standard method for generating acknowledgments, shipping labels, packing slips,

invoices, and correspondence. Every Purchase Order or Ordering Document issued under this agreement will bear on the face of it the WSCA Master Agreement Number AR-233 and the Participating State's unique contract identifier associated assigned to its *Participating Addendum*.

19. **GOVERNING LAWS:**

- 19.1. **WSCA Master Agreement**: This WSCA Agreement and disputes hereunder solely between State acting on behalf of WSCA and Cisco shall be construed in accordance with the laws of the State of Utah. Venue for any claim, dispute or action concerning this Agreement shall be in Utah.
- 19.2. **Participating Addendum**: To the extent that both parties have mutually agreed to be bound by such laws under the terms of the *Participating Addendum*, each *Participating Addendum* and any dispute under the **WSCA Master Agreement** based upon a performance under a *Participating Addendum* shall be governed by the laws of the Participating State. Venue for any claim, dispute or action concerning an order placed against a *Participating Addendum* or the effect of a *Participating Addendum* shall be in the Participating State.

20. **SHIPPING AND DELIVERY - Products**

- 20.1. After receipt and acceptance by Cisco of Customer's Purchase Order(s), Cisco will use commercially reasonable efforts to ship all direct purchase 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 Cisco's then current published lead-times, (ii) third-party stand-alone products which are not a component of equipment resold by Cisco, (iii) end-of-life products where the termination of the product has been announced by Cisco, (iv) products which have been line-stopped due to software discrepancies, reconfiguration, industry-wide product shortages, or alleged infringement claims, or (vi) situations where government rated orders create delays in lead-times.

Notwithstanding the foregoing, at any time when Customer states "expedite" on a Purchase Order or otherwise communicates to Cisco that a purchase order is to be expedited, Cisco shall use all commercially reasonable efforts to ensure the earliest possible delivery of such products.

- 20.2. Cisco will communicate scheduled shipping dates in the order acknowledgement and/or on Cisco.com within three (3) business days after receipt of an electronic Purchase Order on Cisco.com, provided, however, that in the event such notification is not received in this time period, Customer shall notify Cisco of the non-receipt, and Cisco's sole

- obligation with respect to such non-receipt shall be to promptly provide the information to the Customer after such notification.
- 20.3. If Cisco has reason to believe that the actual shipment date will occur later than the original shipment date acknowledged by Cisco for reasons caused by Cisco, Cisco 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.
 - 20.4. 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. Acceptance by Purchaser shall be deemed to have occurred upon delivery of the applicable Products to the applicable Purchaser. Title and risk of loss shall pass to Purchaser upon delivery.
 - 20.5. If Purchaser requests delivery of Products to Purchaser's forwarding agent or other representative, Purchaser assumes responsibility for compliance with applicable export laws and regulations.
 - 20.6. 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 20.
 - 20.7. All sales are final. Except as provided in Cisco's Limited Warranty (see below), Cisco only permits the return of un-opened products due to Cisco's shipping or order processing error, or damage in transit. No other returns are authorized under this Agreement. Warranty returns will not be subject to any restocking charges.
21. **LIMITED WARRANTY:** All Products are sold with Cisco's standard limited warranty listed below:
- 21.1. Hardware. Cisco warrants that from the date of shipment by Cisco 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 Cisco and its suppliers under this limited warranty will be, at Cisco'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 Cisco, freight and

insurance prepaid. Cisco replacement parts, used in Hardware repair, may be new or equivalent to new. Cisco's obligations hereunder are conditioned upon the returned of affected Products, in accordance with Cisco's then-current Return Material Authorization (RMA) procedures.

- 21.2. **Software.** Cisco warrants that from the date of delivery by Cisco to Customer (but in case of resale by a Cisco reseller, commencing not more than ninety (90) days after original shipment by Cisco), 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 Cisco 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 Cisco and its suppliers under this limited warranty will be, at Cisco 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 Cisco. In no event, does Cisco 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, Cisco 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.
- 21.3. **Restrictions.** This warranty does not apply if the Product (a) has been altered, except by Cisco, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (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 Cisco does not receive a payment of purchase price or license fee.
- 21.4. **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.
- 21.5. 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 Cisco does not receive a license fee. All such software is provided AS IS without any warranty whatsoever.”
22. **AMENDMENTS:** The terms of this WSCA Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of both the State and Cisco.
23. **ASSIGNMENT/SUBCONTRACT:**
- 23.1. Neither party shall not assign, sell, or transfer its rights and responsibilities under this Agreement (other than the right to receive any amount due, which shall be freely assignable upon written notice to customer), in whole or in part, without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, Cisco shall have the right to assign all or part of this Agreement as part of a merger, corporate reorganization, or sale of assets or to a majority-owned or majority-controlled subsidiary or affiliate and to subcontract Services to third parties provided that Cisco remains responsible for the performance of such Services by subcontractors done in the normal course of their business obligations and duties to Cisco. However, in all cases notwithstanding subcontracting, the customer will deal only with invoices and payment through either Cisco or the Fulfillment Partners listed on the individual *Participating Addendum*. Any allowed assignee or merged entity shall be subject to all the terms of this Agreement.
- 23.2. 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 Agreement at the Price Discounts established in this Agreement and bill Purchasers directly for such Products and Services.
- Fulfillment Partners, where directed by Cisco, are required to report to the WSCA Contract Manager, account for and submit the WSCA Contract Administration Fee, along with Contract Activity Reports.
- 23.3. Cisco as well as Fulfillment Partners participate in the Federal Communication Commission’s E-rate discount program established under the authority of the Federal Telecommunications Commission Act of 1996 and may accept and process E-Rate transactions under their own E-rate registration numbers.

24. **NONDISCRIMINATION:** Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. This Section only applies to the extent applicable to the provision of Products and Services under this Agreement. Contractor shall include this provision in every subcontract with its Fulfillment Partners relating to purchases of Product and Services by Purchasers.
25. **SEVERABILITY:** If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or otherwise unenforceable, such provision shall be null and void and shall be deemed deleted from this Agreement. The remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the provision that is deemed deleted. Notwithstanding the foregoing, if this paragraph becomes applicable, and, as a result, the value of this Agreement is materially impaired for either party, as determined by the affected party in its reasonable discretion, then the affected party may declare the Agreement terminated upon thirty (30) days written notice to the other party.
26. **INSPECTIONS:** See the "Demonstration or Evaluation Equipment" Section in Attachment C.
27. **PAYMENT:** Upon and subject to credit approval by Contractor, payment is net thirty (30) days from invoice date and shall be made in U.S. currency. 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 Agreement, Cisco 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% per month (12% per annum) or the maximum legal rate, whichever is less. Purchaser grants Contractor a security interest in Products purchased under this Agreement 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 Agreement.

Where permitted by the law of the Participating State, Cisco Capital lease financing is an allowable payment option under the contract. The terms and conditions of the capital lease financing arrangement with Cisco will be set forth in writing between the Purchaser and Cisco.

28. **FORCE MAJEURE:** Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including, without limitation, acts of God, earthquake, labor disputes, shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers. 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.
29. **HAZARDOUS CHEMICAL INFORMATION:** See "Laws And Regulations" Section.
30. **FIRM PRICE DISCOUNT:** The pricing discounts set forth in Attachment A apply to purchases made under the terms and conditions set forth in this document (WSCA Master Agreement), and are firm for the stated contract term. The pricing discounts will be applied against Contractor's then-current, Global Price List at the time of acceptance of the Purchase Order by Contractor to determine the net price to be paid by Purchasers for Products and Services under this Agreement. Fulfillment Partners are required to sell Products or Services at not less than the stated pricing discounts set forth in this Agreement, and may offer additional incremental discounts, in their sole discretion.
To the extent that a Participating State or individual Purchaser proposes additional requirements or a change to the stated terms and conditions set forth in this Agreement, both Contractor and the Purchaser shall mutually agree to such change in writing in the Participating Addendum. However, the Contractor reserves the right, as a condition of giving its consent, to require a modification of the pricing discounts stated herein to reflect potential additional costs, obligations, risks or liabilities associated such additional terms for Contractor.
31. **EXTENSION OF PRICES:** *Intentionally Omitted.*
32. **PROPOSAL PREPARATION COSTS:** *Intentionally Omitted.*

33. **CONFLICT OF INTEREST:** The contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to entering into this Agreement.
34. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor. 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 has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
35. **POLITICAL SUBDIVISION PARTICIPATION:** See "Definitions" Section.
36. **DEBARMENT:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any governmental department or agency.
37. **RECORDS ADMINISTRATION:** See "Audit of Records" Section below.
38. **AUDIT OF RECORDS:**

Contractor shall maintain complete, accurate and truthful records of purchases and amounts billable to and payments made by Purchaser hereunder directly through Contractor in accordance with generally accepted accounting principles and practices for audit purposes only. Contractor shall retain such records for at least a period of four (4) years from the date of termination of this Agreement, or longer if expressly required by the law of the applicable Participating State.

The Participating State will give Contractor thirty (30) days advance written notice to perform an audit of Contractor's records, identified above, as it pertains only to such Participating State's Purchaser(s). Except for compelling circumstances, Participating State's audits are limited to a commercially reasonable frequency per Participating State, and such audit will be conducted during Contractor's normal business hours and shall not unduly interrupt or interfere with Contractor's normal business operations, and provided further that in the event that such audit is conducted by a third party, such third party shall, prior to conducting such audit, to the extent permitted by law, execute a

confidentiality agreement for the benefit of Contractor in a form reasonably satisfactory to Contractor.

In the event that the audit discovers an overpayment in excess of 5% (five percent) of the amount actually paid, Contractor shall pay the costs of the audit. In all other circumstances, the audit fees shall be paid by the Participating State. Contractor shall require that any Subcontractor will also maintain their records and agree to abide by this Section.

Revision Date: September 10, 2007

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WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT
("WSCA Master Agreement")
[State of Utah Contract Ref. No. AR-233]

Attachment C
Contractor Terms and Conditions

1. **DEMONSTRATION OR EVALUATION EQUIPMENT:** Contractor agrees to provide demonstration or evaluation Equipment to Purchaser upon request pursuant to a separately executed "*Cisco Demo Loaner Agreement*" and "*Try and Buy Agreement*", in substantially the same form as that attached to this Attachment C, Exhibit B.
2. **PRICES; TAXES:** Notwithstanding anything contained in the Agreement to the contrary:
 - 2.1. Prices for Products are those specified in Cisco's then-current Global Price List, less the applicable discounts ("Price Discounts") specified in this Attachment C, Exhibit A.
 - 2.2. **Firm Price.** Percentage discount depth from list is not subject to a "price increase request" that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper percentage discount(s). The discount is being applied to Contractor's then-current published list price schedule(s).
 - 2.3. Cisco may change its U.S. List prices for the Products or for Services at any time and shall announce such price changes by issuance of a revised Price List (including via electronic posting) or other announcement of price change. Purchase Orders received before the date of price change announcement(s) to Cisco's Global Price List and those received within thirty (30) days thereafter, which specify a delivery date within ninety (90) days of the date of announcement, will be invoiced to Purchaser without regard to the price change, provided however, price decreases will be effective for all Purchase Orders accepted by Cisco after the date of issuance or announcement of revised prices.

2.4. 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 Agreement. Purchaser will pay sales and use taxes, if any, imposed on the Products and Services acquired under this 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.

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

- 3.1. Cisco reserves the right to require that purchases be made through Fulfillment Partners. Where so required by Cisco, Purchasers shall not order Products or Services directly from Cisco 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.
- 3.2. Any contingencies on Purchaser's Purchase Orders are not binding upon Contractor. The terms and conditions of this Agreement 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 Cisco 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.
- 3.3. 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.
- 3.4. 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 Cisco 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 Cisco 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.

- 3.5. **Services.** Purchaser may place Purchase Orders for the various Services offered by Cisco. The provision of any such Services, if accepted by Cisco, shall be subject to the terms and conditions set forth in this Agreement, Attachment D, as well as the then-current terms of service offerings set forth on Cisco's website at <http://www.cisco.com/legal/services.html>. Cisco reserves the right to subcontract services to a third party maintenance organization to provision Services for Purchaser.

4. SOFTWARE LICENSE:

- 4.1. **License.** Conditioned upon compliance with the terms and conditions of the license granted herein, Cisco 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.

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 Cisco and for which Customer has paid to Cisco 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-Cisco equipment) for communication with Cisco equipment owned or leased by Customer and used for Customer's internal business purposes. NOTE: For evaluation or beta copies for which Cisco does not charge a license fee, the above requirement to pay license fees does not apply.

- 4.2. **General Limitations.** This is a license, not a transfer of title, to the Software and Documentation, and Cisco retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Cisco, 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:

- 4.2.1. transfer, assign or sublicense its license rights to any other person or entity, or use the Software on unauthorized or secondhand Cisco equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
- 4.2.2. except as approved in writing by Cisco, 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;
- 4.2.3. 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;
- 4.2.4. 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 Cisco; or
- 4.2.5. 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 Cisco 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 Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by law, and at Customer's written request, Cisco shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Cisco'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 Cisco makes such information available.

4.3. Software, upgrades/updates and Additional Copies.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS 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 CISCO 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.

- 4.4. **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 Cisco.
 - 4.5. **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 Cisco will give Customer notice of such non-compliance. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control.
 - 4.6. **Customer Records.** Customer grants to Cisco 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 Cisco the appropriate license fees, plus the reasonable cost of conducting the audit. In all other circumstances, the audit fees shall be paid by Cisco.
5. **CONFIDENTIAL INFORMATION.** Notwithstanding anything contained in the Agreement to the contrary, the following shall govern the obligations with respect to Confidential Information under this Agreement.
- 5.1. **Definitions.**
 - 5.1.1. Customer "Confidential Information" includes information regarding Customer's network operations, technical architecture, operations and plans and security data.
 - 5.1.2. Cisco "Confidential Information" includes information regarding Cisco's hardware, software and service products, technical, financial and marketing data, and information posted on password protected areas on Cisco.com.
 - 5.1.3. Information (other than that on Cisco.com) disclosed by the disclosing party in written or other tangible form will be considered Confidential Information only if it is clearly marked

"Confidential," "Proprietary" or with a similar legend, which wording the parties hereby agree constitutes acceptable and equivalent marking and protective notice to satisfy and invoke initial protection of the local Freedom of Information Laws applicable to a Purchaser under a Participating Addendum.

- 5.1.4. Information disclosed orally shall only be considered Confidential Information if: (i) identified as confidential, proprietary or the like at the time of disclosure, and (ii) confirmed in writing within thirty (30) days of disclosure.
- 5.1.5. Confidential Information disclosed to the receiving party by any Affiliate or agent of the disclosing party is subject to this Agreement.
- 5.2. The receiving party may use the Confidential Information solely in furtherance of the objectives of this Agreement.
- 5.3. Except as set forth in subsection 4 below, neither party shall disclose the Confidential Information to any third party.
- 5.4. 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 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.
- 5.5. Notwithstanding any other provision in this Agreement, the receiving party shall have no obligation with respect to information which:
 - 5.5.1. was rightfully in possession of or known to the receiving party without any obligation of confidentiality prior to receiving it from the disclosing party;
 - 5.5.2. is, or subsequently becomes, legally and publicly available without breach of this Agreement;
 - 5.5.3. is rightfully obtained by the receiving party from a source other than the Disclosing Party without any obligation of confidentiality;
 - 5.5.4. is developed by or for the receiving party without use of the Confidential Information and such independent development can be shown by documentary evidence;
 - 5.5.5. is disclosed by the receiving party pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (1) prior written notice to the disclosing party of such obligation and (2) the opportunity to oppose such disclosure.
- 5.6. Upon written notification by the disclosing party, the receiving party shall (i) cease using the Confidential Information and (ii) if requested to do so, and to the extent permitted by Customer's applicable records laws, either return it to the disclosing party or destroy it, along with all copies, notes or

extracts thereof and certify to its destruction within fifteen (15) days of receipt of such notice.

- 5.7. Each party shall retain all right, title and interest to its own Confidential Information. By conveying Confidential Information, the disclosing party does not grant any license under any trademark, patent or copyright, or application for same, which is now or thereafter may be obtained by such party.
- 5.8. The receiving party shall not reverse-engineer, decompile, or disassemble any software or remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information disclosed to it.
- 5.9. EXCEPT AS TO THE EXPRESS WARRANTIES PROVIDED ELSEWHERE IN THIS AGREEMENT, CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" WITH ALL FAULTS AND IN NO EVENT, SHALL THE DISCLOSING PARTY BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION.
- 5.10. Notwithstanding termination of this Agreement as described in Section 12 of Attachment B, 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.
- 5.11. In the event of any threatened or actual breach of any of the obligations hereunder, a disclosing party may seek injunctive relief, in addition to any other available legal or equitable remedies.
- 5.12. 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 Cisco. Customer shall not: disclose, provide, or otherwise make available, such trade secrets or copyrighted material, in any form to any third party, without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets and copyrighted material. Title to Software and documentation shall remain solely with Cisco.
- 5.13. Accordingly, the Software and Associated documentation shall not be disclosed to any third party without first notifying Cisco and affording Cisco the opportunity, as allowed by law, to seek judicial protection from disclosure of such confidential, trade secret and proprietary information to a third party.
- 5.14. The parties mutually agree that the following documents do not constitute "Confidential Information" pursuant to this Section 5:
 - WSCA Master Agreement, including Attachments A-E
 - Exhibit A - Pricing & Discounts

- Information expressly required to be contained on an Ordering Document as detailed in Section 3.1, above
- 6. CONTRACTOR ACCOUNT MANAGER.** Contractor shall appoint an Account Manager for the State of Utah under this Agreement who will provide oversight of Contractor activities conducted hereunder. Contractor's Account Manager will be the principal point of contact for the State concerning Contractor's performance under this Agreement. Contractor shall notify the WSCA Contract Manager, in writing, when there is a new Contractor Account Manager assigned to this Agreement.
- WSCA reserves the right to request a change in Contractor Account Manager or contractor's representatives if the assigned Account Manager is not, in the reasonable opinion of WSCA's Contract Manager, meeting its needs adequately as defined by the terms of this Agreement. Contractor and WSCA shall discuss and take mutually acceptable actions to help resolve any issues with the assigned Account Manager. The Contractor Account Manager information is listed on the Agreement Cover Sheet.
- 7. ENTIRE AGREEMENT.** Notwithstanding anything contained in the Agreement to the contrary, this Agreement is the complete agreement between the parties and replaces any and all prior oral or written communications between the parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. This Agreement shall only be modified by a written document executed by the parties' authorized representative.
- 8. COUNTERPARTS:** Notwithstanding anything contained in the Agreement to the contrary, this Agreement may be executed in several counterparts (and is enforceable if and when executed and delivered by facsimile and/or email transmission), each of which will be deemed to be an original, and all of which, when taken together, will constitute one and the same instrument.
- 9. SURVIVAL:** Notwithstanding anything contained in the Agreement to the contrary, the following shall govern the survival of terms under this Agreement. All purchase transactions executed pursuant to the authority of this Agreement shall be bound by all of the terms, conditions, Price Discounts set forth herein, notwithstanding the expiration of the Initial Term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.
- 10. PRODUCT CHANGES:** Notwithstanding anything contained in the Agreement to the contrary, modifications which Cisco 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 Cisco without prior notice to or consent of Purchaser or WSCA and such altered Product shall be deemed fully conforming. Cisco 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 Cisco's End of Life Policy which is found at the following URL: http://www.cisco.com/en/US/products/products_end-of-life_policy.html. Purchaser may make a last-time purchase of such Products as set forth in such policy.

11. **NO WAIVER.** No waiver of rights under this Agreement or any Participating Addendum by any party hereunder or thereunder shall constitute a subsequent waiver of this or any other right under such agreement.
12. **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 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 e-mail or fax.
13. **ATTORNEYS' FEES.** Notwithstanding anything contained in the Agreement to the contrary, in any suit or proceeding related to this Agreement, the prevailing party will have the right to recover from the other its reasonable costs, fees and expenses of attorneys incurred in connection with the suit or proceeding, including any reasonable appeal costs, fees and expenses. This provision shall be severable from other provisions of this Agreement, and shall survive and not be merged into any such judgment unless such fees are expressly merged into such judgment.
14. **EXPORT RESTRICTIONS:** Notwithstanding anything contained in the Agreement to the contrary, the Products and technology or direct products thereof (hereafter referred to as "Products and Technology"), supplied by Contractor under this Agreement are subject to export controls under the laws and regulations of the United States. Purchaser 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. Cisco, and each Participating State

and each Purchaser each agree to provide the other information, support documents, and assistance, as may reasonably be required by the other, in connection with securing such authorizations or licenses. WSCA's, each Participating State's and each Purchaser's obligations under this clause shall survive the expiration or termination of the Agreement. Detailed information regarding compliance with U.S. use, export, re-export, and transfer laws may be located at the following URL: http://www.cisco.com/wwl/export/compliance_provision.html.

15. HEADINGS. Headings of sections have been added only for convenience and are not part of this Agreement.

WSCA AR-233

EXHIBIT A

WSCA MASTER AGREEMENT LIST PRICE & WSCA DISCOUNT

Products and Services sold under the WSCA Master Agreement are subject to the then-current Cisco Global Price List in effect at time of order as posted on Contractor's website at <http://www.cisco.com>, less the applicable contract discounts set forth below.

The following minimum pricing discounts apply to purchases made under this WSCA Master Agreement:

<u>Product</u>	<u>35%</u>
<u>Smartnet Maintenance</u>	
1 year:	<u>10%</u> ;
3 year prepaid commit:	<u>17%</u>
<u>Professional Services/AS/Training</u>	<u>10%</u>

The pricing discounts set forth above (and in Attachment A – Addendum 1) apply to purchases made under this WSCA Agreement upon the same terms and conditions set forth herein during the contract term.

EXHIBIT B

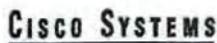


® (1) Demo Equipment Loaner Agreement

(2) Master Agreement for Demo / Evaluation
(Try and Buy)

The following modifications to Exhibit B are applicable to purchases made under the WSCA Master Agreement:

1. "List Price" shall be deemed to refer to the net price payable after applying the WSCA Master Agreement Firm Discount set forth in Exhibit A to Cisco's Global Price List.
2. "Governing Law" shall be deemed to refer to the laws of the state in which the Purchaser is located.



® Demo Equipment Loaner Agreement

Date _____

Cisco Quote No. _____

Customer Contact Name _____

Marketplace No.: MP _____

Company Name _____

Street Address _____

City, State, Zip Code _____

Contact Phone No. _____

Cisco Systems, Inc. is pleased to offer to you for demonstration purposes the Cisco products (and the associated documentation/materials) listed in Exhibit A ("Products") in exchange for your agreement to the terms set forth herein. The demonstration period begins on the date the Products are shipped by Cisco and expires no more than ___, ___ [ESO=45 days; SP and Federal=90 days] days after that date. This period will be referred to in this agreement as the "Demonstration Period."

Cisco will ship the Products to you at no charge. You shall return the Products *prior to* the end of the last day of the Demonstration Period to the Cisco Systems Demo Depot (at the address shown below). Return of the Products will be at Cisco's expense using the pre-paid shipping waybill(s) provided with the Products. The shipping waybill(s) must reference the "sales order number" which is contained in the "return shipping documents" provided with the products. If you fail to return the Products to the Cisco Systems Demo Depot within five (5) days of the end of the Demonstration Period and in accordance with the aforementioned process, you will be invoiced for the full WSCA Master Agreement price of the Products which shall be paid in full upon receipt of the invoice. Cisco shall at all times retain all right, title and interest to all Products provided under this Agreement. You agree that you will not pledge, mortgage, grant a security interest in, or otherwise encumber the Products (or any component thereof) while they are in your possession. You further agree that, upon Cisco's request, you will affix a label to the Products identifying Cisco as the owner of the Products. Notwithstanding the foregoing, Cisco is granting you a limited, royalty-free, non-exclusive, non-transferable license to use, but not to redistribute, the Products solely for purposes of demonstration and solely during the Demonstration Period. Any right not granted hereunder is specifically reserved by Cisco, including, but not limited to the right to copy, modify, embed, or sell the Products or any parts thereof. Unless you have first received Cisco's written permission to do so, you may not export the Products.

In connection with any demonstration of the Products, you may receive proprietary and confidential Cisco information ("Confidential Information") and you agree to use this Confidential Information solely for the purpose of evaluating the Products, to not disclose any Confidential Information to third parties, and to use the same means to protect against unauthorized use and disclosure of the Confidential Information that you use to protect your own confidential information, but in no event less than a reasonable degree of care. You also agree that all use of the Products during any Demonstration Period will be consistent with and in accordance with the provisions of the Software License supplied with the Products. In no event shall Products be used in a production network or environment. You further agree that Products will not be sold, transferred altered, de-compiled, disassembled or reverse-engineered in any way during any Demonstration Period. Products are provided on an *As-Is* basis. Cisco expressly disclaims all warranties, express or implied, to the greatest extent permitted by applicable law. Except for liability arising out of your breach of

Cisco's proprietary rights or software license, in no event shall either party or their respective suppliers be liable for any direct, indirect, special or consequential damages, lost profits, or lost data, even if either party or its suppliers have been informed of the possibility thereof.

This agreement shall be governed by the laws of the State of the Purchaser's location, excluding its conflict of laws provisions.

Please indicate your agreement with the terms in this letter by signing and returning it to the address shown on this letter to the following Account Manager/Channel Account Manager:

TYPE IN Account Manager/Channel Account Manager Name HERE

Address

City, State, Zip Code

Telephone No.

If you have any questions, please feel free to contact your Account Manager.

**AGREED TO AND ACCEPTED
THIS**

DAY OF

By:

Type in Name of Authorized Manager HERE & have them sign above
Type in RM/MCO or Director Title HERE
CISCO SYSTEMS, INC.

Type in Customer Contact Name HERE & have them sign above
Type in Contact Title HERE
Type in Company Name HERE



Master Agreement for Demo / Evaluation (Try and Buy)

This Master Agreement (the "Agreement") by and between Cisco Systems, Inc., a California corporation ("Cisco"), having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134, and _____, a _____ corporation ("Customer") having its principal place of business at _____, is entered into and effective as of the date last written below upon signature by both parties below (the "Effective Date").

This Agreement consists of the terms printed herein and the terms and conditions governing the purchase and license of Cisco Products directly from Cisco (the "Contract Terms") in the form of either: (i) an existing written agreement between Cisco and Customer, or (ii) if no such agreement is currently in place, then Cisco's standard U.S. Terms and Conditions of Sale (a copy of which is available at: www.cisco.com/legal or by email request sent to termsrequest@cisco.com), which are incorporated in this Agreement by this reference. In the event of a conflict between this Agreement and the Contract Terms, this Agreement shall prevail.

TERMS AND CONDITIONS

Cisco shall provide to Customer the Cisco products, including Cisco software, hardware and documentation (the "Products"), identified in a written communication between Cisco and Customer including, as applicable, either an order (electronic or otherwise) for such Products placed by Customer and accepted by Cisco, or a transmittal letter or other correspondence presented by Cisco and accepted by Customer (the "Trial Order"). The Trial Order will also contain information as to the characterization of the usage (Demo or Try-and-Buy Evaluation purposes) and the duration of such usage commencing on the date of initial shipment from Cisco (the "Trial Period"), and any other information deemed necessary between the parties.

A) DEMO DEPOT - For Products used for demonstration purposes from Cisco's Demo Program (the "Demo Program"), the following terms shall apply:

- 1) Delivery; Return. Cisco will ship the Products to Customer at no charge. Customer shall return the Products *prior to* the end of the last day of the Trial Period to the Cisco Demo Depot (at the address provided). The standard Trial Period for the Demo Program, during which the Customer can test the Products before being required to return the Products, is forty-five (45) days. Return of the Products will be at Cisco's expense using the pre-paid shipping waybill(s) provided with the Products. The shipping waybill(s) must reference the "sales order number" which is contained in the "return shipping documents" provided with the Products. If Customer fails to return the Products to the Cisco Demo Depot within five (5) days of the end of the Trial Period and in accordance with the aforementioned process, Customer will be invoiced for the WSCA discounted price of the Products established under the WSCA Master Agreement which shall be paid in full upon 30 days of receipt of the invoice.

- 2) License; Warranty. Cisco is granting Customer a limited, royalty-free, non-exclusive, non-transferable license to use, but not to redistribute, the Products solely for purposes of demonstration and solely during the Trial Period. Any right not granted hereunder is specifically reserved by Cisco, including, but not limited to the right to copy, modify, embed, or sell the Products or any parts thereof. Customer also agrees that all use of

the Products during any Trial Period will be consistent with and in accordance with the provisions of the Software License supplied with the Products. In no event shall Products be used in a production network or environment. Demo Products are provided on an **As-Is** basis and Cisco expressly disclaims all warranties, express or implied, to the greatest extent permitted by applicable law.

B) TRY AND BUY - For Products ordered for evaluation purposes under Cisco's Try and Buy Program (the "TAB Program"), the following terms shall apply:

- 1) **TAB Assumptions; Ordering; Returns.** The TAB Program allows certain qualified end-user customers to (i) submit a Trial Order to Cisco for any Cisco Product, (ii) receive shipment of the Products from Cisco and (iii) defer payment for a limited period of time while the Customer tests the Products in a non-production environment ("Trial"). The standard Trial Period for the TAB Program during which the Customer can test the Products before being invoiced is ninety (90) days. A fundamental assumption of the TAB Program is that the Customer will retain the Product upon the conclusion of the Trial Period, thereby converting the transaction into a sale. If, however, during the Trial Period Customer decides to return the Products to Cisco, it must do so at its own expense with an RMA number and RMA instructions obtained from the appropriate Cisco Account Manager. If the Product has not been returned before conclusion of the Trial Period, then, upon the conclusion of the Trial Period, Cisco will automatically invoice Customer for the Product. For all Products ordered by Customer under this TAB Program, the shipping terms shall be Ex Works per Incoterms 2000 at Cisco's site, San Jose, California, or other Cisco-designated shipping location. Risk of loss shall pass from Cisco to Customer upon delivery to the common carrier or Customer's representative at the delivery point per the applicable shipping term. Cisco will retain title to the Products until expiration of the Trial Period.
- 2) **CRS Special Provisions.** For Trials of Cisco's CRS-1 Router(s) (the "CRS") in particular, there is an additional fundamental assumption of the TAB Program applicable only to Trials of the CRS. For CRS Trials, at the same time that Customer submits its Trial Order for the Trial of the CRS, Customer will also submit a purchase order for Cisco Support Services for the CRS Pilot Program (the "CRS Services") for the CRS, which CRS Services term shall begin on the date of receipt of the CRS and continue for the Trial Period. A description of, and terms pertaining to, the CRS Services may be found at: <http://www.cisco.com/legal/services.html>. Customer shall be invoiced for such CRS Services upon conclusion of the Trial Period or after ninety (90) days from initial shipment of the CRS from Cisco, whichever is sooner. For Trials of the CRS only, Cisco shall, during the applicable Trial Period, provide installation services as per the Services described at <http://www.cisco.com>.
- 3) **License; Warranty.** Customer's use of the Products shall be governed by the terms contained in Cisco's Standard End User License Agreement, as set forth in the Contract Terms. Notwithstanding anything to the contrary herein, this remainder of this Section shall apply during the Trial Period to all Products other than the CRS ordered by Customer via the TAB Program. During the Trial Period, the Products shall be covered by Cisco's standard limited warranty for such Product (set forth in the Warranty Statement accompanying the Product), except that Customer's sole and exclusive remedies, and Cisco's entire liability, for a warranty claim during the Trial Period shall be limited to repair of the Product or shipment of a replacement. Upon expiration of the Trial Period for a particular Product, Cisco's standard limited warranty for such

Product (set forth in the Warranty Statement accompanying the Product) shall commence on the date immediately following expiration of the Trial Period. Customer's sole and exclusive remedies under warranty for the Product(s) previously subject to the Trial, and Cisco's entire liability for those Products, shall be the remedies set forth in Cisco's Limited Warranty Statement originally delivered with the Product and also set forth at <http://www.cisco.com/warp/public/cc/serv/mkt/sup/tssv/wnty/>.

C) General – The following provisions shall apply to Customer's participation in any of the Programs hereunder and generally to the Agreement as a whole:

- 1) **Rights.** Cisco shall at all times during the Trial Period retain all right, title and interest to all Products provided hereunder. Customer agrees that Customer will not pledge, mortgage, grant a security interest in, or otherwise encumber the Products (or any component thereof) while they are in Customer's possession. Customer further agrees that, upon Cisco's request, Customer will affix a label to the Products identifying Cisco as the owner of the Products. Customer further agrees not to (i) alter, modify, copy, or in any way reverse engineer, decompile or disassemble the Product hardware or software or design, make derivative works based upon the Product, or use the Product to develop any products, or (ii) sell, license, rent, or transfer the Product to any third party.
- 2) **Invoicing.** Customer agrees that a Cisco invoice may be the only documentation provided by Cisco regarding Customer's purchase of and payment for the Products ordered via the Programs referenced herein. Customer understands that it may receive multiple invoices at different times in connection with one Trial Order because Products may be shipped at different times.
- 3) **Exports.** Customer hereby acknowledges that Products supplied by Cisco under this Agreement may be subject to export or import controls under the laws and regulations of the United States (U.S.) and Customer agrees that it shall comply with such laws and regulations and will indemnify and hold Cisco harmless for any damages and/or claim brought by any third party against Cisco, including by any governmental authority of any country, arising in connection with the use, import and export of the Products.
- 4) **Confidentiality.** In connection with Customer's participation in the Demo and/or TAB Programs hereunder, Customer may receive proprietary and confidential Cisco information ("Confidential Information") and Customer agrees to use this Confidential Information solely for the purposes set forth herein, to not disclose any Confidential Information to third parties, and to use the same means to protect against unauthorized use and disclosure of the Confidential Information that Customer uses to protect its own confidential information, but in no event less than a reasonable degree of care.
- 5) **Termination.** Cisco reserves the right to accept or decline any Trial Order and Cisco shall have no liability whatsoever in the event that it decides to decline any Trial Order. If Cisco, in its sole discretion, detects misuse of the Demo or TAB Programs, Cisco may terminate this Agreement upon written notice to Customer. Upon cancellation or termination of this Agreement, Customer shall immediately cease using the Products and shall return the Products and any Confidential Information of Cisco then in Customer's possession, custody or control.
- 6) **Limitation.** Except for liability arising out of Customer's breach of Cisco's proprietary rights or software license, in no event shall either party or their respective suppliers be liable for any direct, indirect, incidental, punitive, special or consequential damages, lost profits, or lost data, even if either party or its suppliers have been informed of the possibility thereof. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY

OF CISCO OR ITS SUPPLIERS UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO TWENTY FIVE THOUSAND DOLLARS (\$25,000).

- 7) Complete Agreement; Assignment; Governing Law. This Agreement, together with the Contract Terms, is the complete agreement between the parties hereto concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, that are not specified herein (including, without limitation, contingencies or additional or conflicting terms contained on any Trial Order submitted by Customer, which shall not be binding upon Cisco). This Agreement may only be modified by a written document executed by authorized representatives of the parties hereto. Customer shall not assign, in any manner, its right, obligation or interest in or under this Agreement without the prior written consent of Cisco. This agreement shall be governed by the laws of the Participating State, excluding its conflict of laws provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below have been and are, on the date of signature, duly authorized to execute this Agreement.

("Customer")

CISCO SYSTEMS, INC. ("Cisco")

Authorized Signature

Name

Title

Date

Authorized Signature

Name

Title

Date

WSCA AR-233

EXHIBIT C

Fulfillment Partners

[To be named in accordance with the WSCA Master Agreement]

Fulfillment Partner	Contact Person and Information	Service Area/States	Equipment and Services

WSCA AR-233

EXHIBIT D

REQUIRED FORMAT OF QUARTERLY REPORT

ATTACHMENT C, EXHIBIT D

Western States Contracting Alliance (WSCA) - (Ref. WSCA Master Agreement No. AR-233)

Quarterly Contract Sales Volume and Administrative Fee Reporting Form - Exhibit D

Authorized Signature (see 'Certification' below) and Date

Sales Volume Report for the State of: _____, Participating Addendum # / State Contract #: _____

Partner or Reseller Company Name and Address: _____

Small, Disadvantaged, Women, Minority or Veteran Owned Business Status (check one below) otherwise enter 'N/A' here: _____

Small Business	Small Disadvantaged Business	Woman Owned - Small Business	Minority Owned - Small Business	Veteran Owned - Small Business
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Reporting Period:	Calendar Year YYYY	Q1 Jan-Mar	Q2 Apr-Jun	Q3 Jul-Sep	X	Q4 Oct-Dec
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Name of BUYING ENTITY (Customer) and AGENCY CODE NO. Authorized to Purchase under Participating Addendum or State Contract	Buyer's Contact Name & E-mail	Buyer's Purchase Order (PO) Number	PO Date	Channel Purchase Order No. and Cisco Sales Order No.	Description of Items Purchased			Net Purchase Price			Revenue recognized for this reporting period			Total Fee Due to State (applicable fee rate 0.5%)
					Product Part No.	Services	Training	Product Part No.	Services	Training	Product	Services	Training	
					0.00	0.00	0.00							

CERTIFICATION: Partner or Reseller by execution and submittal of this report certifies to the following: the information contained herein is complete and accurate, 2) a copy of this signed report and fee remittance in the form of a check has been delivered to the contract designated WSCA Contract Manager for payment of the WSCA Administrative Fee equal to the total dollar amount stated in the far right column of this report and, 3) a copy of this signed report has been provided to the Cisco Systems designated Channel Account Manager and Contracts Compliance Administrator.	Sub-Totals:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Fee	\$0.00	\$0.00



WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT
("WSCA Master Agreement")
[State of Utah Contract Ref. No. AR-233]

Attachment D

Cisco Master Services Agreements

June, 2007

This Attachment D governs all Orders for Services placed under the WSCA Master Agreement.

While the Contractor reserves the unilateral right to modify, add or delete any scope of service or other program offerings under the WSCA Master Agreement at any time, the contract terms set forth in this Attachment D may only be modified during the Contract Term by the mutual written agreement of the State of Utah, acting as Contract Manager on behalf of WSCA, and Cisco.

MASTER SERVICES AGREEMENT
Cisco Systems, Inc.

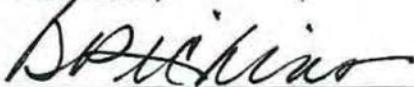
This Agreement is entered into between Cisco Systems, Inc. ("Cisco"), a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134 and the State of Utah, acting as the Contract Manager for the Western States Contracting Alliance ("WSCA"), on behalf 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 of the date of last signature below (the "Effective Date").

This Master Services Agreement consists of (i) this signature page, (ii) the Master Services Agreement Terms and Conditions (including the Exhibits) 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.

The parties have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below are on the date of signature authorized to execute this Agreement.

**State of Utah, Acting as Contract
Manager for WSCA**

(“Customer”)



Authorized Signature

Print Name

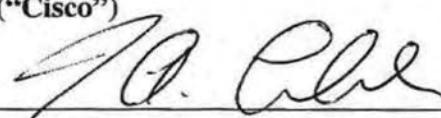
Title

Date

OCT 01 2007

Cisco Systems, Inc.

(“Cisco”)



Authorized Signature

FRANK A. CALDERONI

Print Name

VP, WW SALES FINANCE

Title

Sept 27, 2007

Date

MASTER SERVICES AGREEMENT - TERMS AND CONDITIONS

1. **Definitions** are those set out in the Glossary of Terms at the end of the Agreement.
2. **Scope.** This Agreement describes the terms and conditions for (a) Purchases by Customer of Services, and (b) delivery by Cisco of the Services according to the options ordered by Customer or otherwise provided by Cisco to Customer. Cisco will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid, (ii) a valid Software license has been granted, and (iii) Customer provides information requested by Cisco such as valid serial numbers, site location, contract number, and Product type.
3. **Orders.** Where payment is directly to Cisco or its Fulfillment Partners, Customer shall, upon and subject to credit approval by Cisco, purchase Services by issuing a Purchase Order. Each Purchase Order must be signed, if requested by Cisco, or (in the case of electronic transmission) sent, by an authorized representative, indicating the specific Services, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference if any, and any other special instructions. No contingency contained on any Purchase Order shall be binding upon Cisco. The terms of this Agreement shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms are deemed rejected by Cisco.
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.** For Purchases of Services, upon and subject to credit approval by Cisco, payment terms shall be net thirty (30) days from the date of invoice. Unless otherwise agreed by Cisco, all payments shall be made in U.S. currency. Any sum not paid by Customer when due shall bear interest from the due date in accordance with the terms for interest on late payments under the WSCA Master Agreement.
6. **Invoicing.** Fees for Services, other than those for which a SOW is required, shall be invoiced in advance of delivery of Services. The timing of invoices for Services provided pursuant to a SOW shall be set forth in the respective SOW.
7. **Term and Termination.**
 - (a) The term of any service order shall commence on the Effective Date of the Order and shall continue for a period of one 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 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

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

- (c) 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, Attachment B. Any Equipment List or SOW may be terminated immediately by either party upon written notice:

- (i) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching party if the breaching party fails to cure such breach within such period.
- (ii) if: (a) the other party ceases to carry on business as a going concern; or (b) the other party becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation; or (c) a receiver or similar officer is appointed with respect to the whole or a substantial part of the other party's assets; or (d) an event similar to any of the foregoing occurs under applicable law with respect to the other party.
- (iii) if the other party assigns or transfers any of the rights or responsibilities granted under this Agreement or any Equipment List or SOW in breach of Section 16.

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.

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 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.

Each Equipment List and SOW hereunder shall terminate immediately upon termination of the Agreement.

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.

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.

- 8. Confidentiality.** Customer and Cisco agree that in connection with this Agreement and their relationship, they may obtain Confidential Information. The receiving party shall at all times keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, Cisco shall be authorized to disclose Customer's Confidential Information to contractors or employees of a Cisco entity who have a legitimate business need to have access to such information. Except to the extent retention is otherwise required by law for records retention purposes, the receiving party shall immediately return to the disclosing

party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration at any time and for any reason of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure.

Neither party shall disclose, advertise, or publish the detailed terms and conditions of an SOW or detailed ordering document or deliverables in conjunction therewith under this Agreement without the prior written consent of the other party. Any press release or publication regarding such documents or deliverables under this Agreement are presumed by the parties to contain confidential information and is subject to prior review and written approval of the parties. In such event, only the invoice will be presumed public information. Notwithstanding confidentiality of the detailed ordering documents and deliverables, the parties shall be deemed to have given their consent to release of this Attachment D.

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, NONINFRINGEMENT, 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.

Except for the general indemnity provision set forth in the WSCA Master Agreement, Attachment B, Clause 17, ALL LIABILITY OF CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER ARISING SHALL BE LIMITED TO THE GREATER OF (I) THE MONEY PAID TO CISCO FOR SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY OR (II) ONE HUNDRED THOUSAND (\$100,000) US DOLLARS. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

IN THE CASE OF TRANSACTIONAL ADVANCED SERVICES PERFORMED UNDER A SOW, THE LIABILITY OF CISCO SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO CISCO PURSUANT TO THE RELEVANT SOW DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY.

SUBJECT TO CUSTOMER'S BREACH OF SECTION 11 (LICENSE), IN NO EVENT SHALL EITHER PARTY, ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES,

OR LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

11. License. Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business use (a) Software provided as a result of Services (b) the Deliverables specified in each SOW (in object code form if software), and (c) Data Collection Tools. This license grant does not include the right to sublicense and is nontransferable.

This license shall be governed by (i) the terms and conditions attached to the Software or, in the absence of such terms, by the license posted at http://www.cisco.com/en/US/products/prod_warranties_item09186a008025c927.html and (ii) the Agreement.

Customer agrees that it is licensed to use Software: (1) only on Hardware covered under this Agreement; or (2) in the case of Application Software, on third party hardware, (except as otherwise authorized in the Software documentation); or (3) in the case of Data Collection Tools, in object code form only, on the Data Collection Tool on which such Software is provided.

The license is perpetual, provided Customer is not otherwise in breach of this license. Notwithstanding the above, for Data Collection Tools the license is valid until the earlier of: (i) the expiration or termination of the Service under which the Data Collection Tool was provided; or (ii) Cisco's request to Customer that the Data Collection Tool(s) be returned to Cisco.

Except as expressly authorized, Customer shall not (and shall not permit a third party to): download more than one copy of the Software, copy, in whole or in part, any Software, Deliverable or Data Collection Tool, make error corrections or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Software, Deliverable or Data Collection Tool which is software to human-readable form; or transfer, sublicense, rent, lease, distribute, sell, or create derivative works of any Deliverables.

When Customer updates or upgrades a copy of Software to a new release, Customer shall not use (except for a limited period of parallel testing) the new Software release and the corresponding copy of the previous Software release concurrently. Under no circumstances shall the previous release be re-used or transferred to any other device(s).

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. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, industry wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

14. Applicable law and Jurisdiction. Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.

a. **WSCA Master Services Agreement:** This WSCA Agreement Attachment D and disputes hereunder solely between State acting on behalf of WSCA and Cisco shall be construed in accordance with the laws of the State of Utah. Venue for any claim, dispute or action concerning this Agreement shall be in Utah.

b. Participating Addendum & Service Orders Placed Under the Participating Addendum: To the extent that both parties have mutually agreed to be bound by such laws under the terms of the *Participating Addendum*, each *Participating Addendum* and any dispute under this Attachment D based upon a performance under a *Participating Addendum* shall be governed by the laws of the Participating State. Venue for any claim, dispute or action concerning an order placed against a *Participating Addendum* or the effect of a *Participating Addendum* shall be in the Participating State.

c. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

15. Export Control. Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of Cisco Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses. Information regarding compliance with U.S. use, export, re-export, and transfer laws may be found at:

http://www.cisco.com/wwl/export/compliance_provision.html.

16. Assignment. Neither party may assign or delegate its rights or obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that any such assignment shall not relieve the assigning entity of any obligation to pay monies that were owed prior to the date of the assignment. Notwithstanding the foregoing, (a) either party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to its parent or majority-owned subsidiary company of sufficient net worth to meet any potential liability under this Agreement, and (b) Cisco may, without Customer's consent, assign the right to receive any amount due.

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, Attachment B) to provide Services to Customer; provided that invoicing and/or payments will only be handled by and through Cisco and its authorized Fulfilment 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% 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 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 e-mail 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), 18 (Inventory Review), 19 (Notices), 20 (Entire Agreement), 21 (No Waiver), 22 (Severability), 23 (Attorneys' Fees), 24 (No Agency), 27 (Survival), the Glossary of Terms and the Services-Not-Covered exhibits 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, Attachment B, 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, Attachment A.
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, Attachment A, 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, Attachment A, 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, Attachment B, means the entity purchasing Services for its own internal use either directly or through an 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.

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.

Fulfillment Partner means a system integrator, distributor or reseller authorized by Cisco to sell Services under the WSCA Master Agreement, Attachments A- D 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 an Fulfillment Partner.

Intellectual Property means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout

the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

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

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

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

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

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

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

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

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

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.

"**Participating State**" shall be deemed to refer to the State of Utah when acting as a Participating State in its sovereign capacity (and not in its capacity as the WSCA Contract Manager).

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 Western States 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.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. 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 this 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 the State of Utah ("State"), as WSCA Contract Manager acting on behalf of WSCA, and Cisco, as now or hereafter amended.

EXHIBIT B
CISCO SEVERITY AND ESCALATION GUIDELINES

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

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

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

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

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

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

Cisco Escalation Guideline

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

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

EXHIBIT C SERVICES NOT COVERED

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

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

The non-entitlement policies posted at

http://www.cisco.com/en/US/products/prod_warranties_listing.html are hereby incorporated into this Agreement by this reference.

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

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ADVANCED SERVICES AGREEMENT (U.S.)
Cisco Systems, Inc.

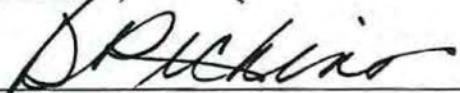
This Advanced Services Agreement ("Agreement") is entered into between Cisco Systems, Inc. ("Cisco"), a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134 and the State of Utah, acting as the Contract Manager for the Western States Contracting Alliance ("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 of the date of last signature below (the "Effective Date").

This Agreement consists of: (i) this signature page and (ii) the Advanced Services Agreement Terms and Conditions (including Appendix A (Glossary of Terms), and any other Appendices and Exhibits thereto).

The parties have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below are on the date of signature authorized to execute this Agreement.

**State of Utah, Acting as Contract
Manager for WSCA**

(“Customer”)



Authorized Signature

Douglas G. Richins
Print Name

DIRECTOR OF PURCHASING
Title

OCT 01 2007
Date

Cisco Systems, Inc.

(“Cisco”)



Authorized Signature

FRANK A. CALDERONI
Print Name

VP, WW SALES FINANCE

Title

Sept 27, 2007
Date

ADVANCED SERVICES AGREEMENT TERMS AND CONDITIONS

1. **Definitions** are those in Appendix A (Glossary of Terms) at the end of this Agreement.
 2. **Scope.** This Advanced Services Agreement is for the purchase of Advanced Services directly from Cisco, or where authorized by Cisco, its Fulfillment Partners.
 3. **Orders.** Customer shall, upon and subject to approval by Cisco, purchase Advanced Services by issuing a Purchase Order. Each Purchase Order must be signed, if requested by Cisco, or (in the case of electronic transmission) sent, by an authorized representative, indicating the SOW project identification (if applicable), specific Advanced Services, quantity, price, total purchase price, bill-to and ship-to addresses, tax exempt certifications, if applicable, reference to this Agreement, and any other special instructions. No contingency contained on any Purchase Order shall be binding upon Cisco. The terms of this Advanced Services Agreement, including the general terms applicable to all Services Orders under the WSCA Master Agreement, shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms are deemed rejected by Cisco.
 4. **Advanced Services – AS Service Descriptions and Statements of Work.**
 - a. Unless otherwise authorized by Cisco to be fulfilled through Fulfillment Partners, the Advanced Services will be provided by Cisco. Cisco may use subcontractors (under separate contract to Cisco) to perform the Advanced Services, or portion(s) thereof.
 - b. Cisco will not proceed with performing SOW-based Advanced Services until both Customer and Cisco have signed the applicable SOW. Each SOW, once signed by both parties, shall incorporate the terms of this Agreement. Each SOW shall at least include:
 - A description of each party's obligations;
 - An estimated performance schedule, including Milestones, when applicable;
 - Completion criteria that Cisco will meet to fulfill its obligations under the SOW; and
 - Identification of primary contacts for Cisco and Customer.
 - c. SOWs may only be amended by a written document signed by each party's authorized representative, and per the change management procedures set forth therein.
 - d. The applicable SOW(s) and/or AS Service Description(s) exclusively define the scope of the Advanced Services that Cisco shall provide to Customer. To the extent there is a conflict between the terms of a SOW or AS Service Description and this Agreement, the terms of this Advanced Services Agreement, incorporating the applicable general terms of the WSCA Master Agreement (to the extent applicable to Services) shall control, unless explicitly stated otherwise in the SOW.
5. **Pricing.**
 - a. Prices for Advanced Services shall be one of the following, as applicable to the Advanced Services to be provided:
 - (i) 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 Cisco's acceptance of Customer's Purchase Order;
 - (ii) those specified in a written price quotation submitted by Cisco; or
 - (iii) those specified in the SOW.
 - b. All prices are exclusive of any taxes, fees, duties or other applicable amounts in accordance with the WSCA Master Agreement. Customer shall pay the taxes related to Advanced Services purchased pursuant to this Agreement, or Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes, if any, shall be billed as a separate item on the invoice. Cisco reserves the right to increase the Advanced Service fee in the event Customer determines any withholding tax obligation prevents Cisco from receiving the specified prices for such Advanced Services pursuant to Section 5(a) above.
 6. **Payment and Invoicing.**

- a. **Payment.** All Purchase Orders are subject to credit approval and, subject thereto, payment terms are net thirty (30) days from the date of invoice. Unless otherwise agreed by Cisco, all payments shall be made in tUS currency. Any sum not paid by Customer when due shall bear interest for late payments in accordance with the terms of the WSCA Master Agreement.
- b. **Invoicing.** As set forth below, Cisco will invoice Customer depending on the type of Advanced Services:
 - (i) AS Service Description-based Advanced Services Invoicing. Unless otherwise agreed by the parties, Cisco will invoice Advanced Services performed under an AS Service Description in advance of performance of such Advanced Services.
 - (ii) SOW-based Advanced Services Invoicing. Cisco will invoice Customer upon completion of each Milestone as defined in the SOW, per the SOW's Milestone schedule. Invoices may contain multiple Milestones. The SOW Milestone schedule supersedes any Milestones identified in a Purchase Order; nevertheless, unless otherwise mutually agreed upon via a change management procedure, the total invoiced amounts for SOW Milestones shall not exceed the total amount of Customer's Purchase Order. If a SOW does not contain a Milestone schedule, Cisco will invoice Advanced Services performed under such SOW as set forth in such SOW.

7. Term and Termination.

- a. The term of any Advanced Service order under this Agreement shall commence on the Effective Date of the Order and shall continue for a period of one (1) year. 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 year term.
- b. The term of each non-SOW based Advance Service shall commence on the date specified in the associated Purchase Order and continue: (i) until completion of the specified Advanced Service in the event a MCC is not required; or (ii) until the MCC has been signed off by Customer in the event a MCC is required.
- c. The term of each SOW shall commence on last date of signature of the SOW and continue until last Milestone completion, unless otherwise specified in the SOW.
- d. Cisco shall have a lead-time of up to thirty (30) days from acceptance of Purchase Order for scheduling of Advanced Services.
- e. This WSCA Advanced Services Agreement may be terminated in accordance with the provisions for termination of the WSCA Master Agreement. Any Advanced Services being performed hereunder, may be terminated immediately by either party upon written notice:
 - (iv) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching party if the breaching party fails to cure such breach within such period;
 - (v) if the other party: (w) ceases, or threatens to cease to carry on business as a going concern; or (x) becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or (y) a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets; or (z) an event similar to any of the foregoing occurs under applicable law; or
 - (vi) if, except as provided in Section 16 (Assignment) below, either party assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under this Agreement, any AS Service Description or any SOW, without the prior written consent of the other party, or in the event of a sale of all or substantially all of such party's assets, or transfer of a controlling interest in such party to an unaffiliated third party. Notwithstanding the foregoing: (y) Cisco reserves the right to subcontract Advanced Services to any Affiliate or third party organization to provide Advanced Services to Customer, and (z) Cisco may assign this Agreement or all or any portion of its rights and obligations hereunder, to any Affiliate of Cisco.
- f. If Advanced 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 Advanced Services until all amounts past due are paid in full, and/or immediately terminate this

Agreement or any Advanced Services provided hereunder.

- g. Cisco reserves the right to change the scope and content of any of the Advanced Services offering upon ninety (90) days prior notice provided that such changed scope falls within the scope of the WSCA Agreement. Such changes will become effective upon Customer's renewal of the applicable Advanced Services.
- h. Each Advanced Service provided hereunder shall terminate immediately upon termination of this Agreement, unless otherwise agreed by the parties. Notwithstanding the foregoing, the parties' ongoing obligations under any non-terminated SOWs will continue through the end of their defined term, unless otherwise agreed by the parties in writing.
- j. Upon termination of this Agreement or any Advanced Services, Customer shall pay Cisco for all work Cisco has performed up to the effective date of termination at the agreed upon prices, fees and expense reimbursement rates.

8. Confidentiality.

- a. Customer and Cisco agree that in connection with this Agreement and their relationship, they may obtain Confidential Information. The receiving party shall at all times keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, Cisco shall be authorized to disclose Customer's Confidential Information to subcontractors, contractors or employees of a Cisco entity who have a legitimate business need to have access to such information. The receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration at any time and for any reason of this Agreement subject to retention solely for purpose of compliance with state open records laws. The obligations of confidentiality shall not apply to information which: (i) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (ii) prior to disclosure hereunder was already rightfully in the receiving party's possession; or (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis

from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court, government agency or relevant regulatory authority (including a stock exchange), provided that the receiving party provides where practicable: (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure.

- b. Neither party shall disclose, advertise, or publish the detailed terms and conditions of an SOW or detailed ordering document or deliverables in conjunction therewith under this Agreement without the prior written consent of the other party. Any press release or publication regarding such documents or deliverables under this Agreement are presumed by the parties to contain confidential information and is subject to prior review and written approval of the parties. In such event, only the invoice will be presumed public information. Notwithstanding confidentiality of the detailed ordering documents and deliverables, the parties shall be deemed to have given their consent to release of this Attachment D.

9. Warranty.

- a. ALL ADVANCED SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER, 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: (I) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, OR ACCURACY, OR (II) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY.
- b. 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 ADVANCED SERVICES; OR TERMINATION OF THIS AGREEMENT OR THE APPLICABLE ADVANCED SERVICES AND RETURN OF THE PORTION OF THE ADVANCED SERVICE FEES

PAID TO CISCO BY CUSTOMER FOR SUCH NON-CONFORMING ADVANCED SERVICES.

10. Limitation of Liability and Consequential Damages Waiver.

- a. Except for the general indemnity provision set forth in the WSCA Master Agreement, Attachment B, Clause 17, ALL LIABILITY OF CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER ARISING SHALL BE LIMITED TO THE GREATER OF: (I) THE MONEY PAID TO CISCO FOR ADVANCED SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY OR (II) ONE HUNDRED THOUSAND US DOLLARS (\$100,000.00). THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).
- b. IN THE CASE OF TRANSACTIONAL ADVANCED SERVICES PERFORMED UNDER A SOW, THE LIABILITY OF CISCO SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO CISCO PURSUANT TO THE RELEVANT SOW DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY.
- c. SUBJECT TO CUSTOMER'S BREACH OF SECTION 11, IN NO EVENT SHALL EITHER PARTY, ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOST REVENUE, LOST PROFITS, LOST BUSINESS OPPORTUNITY, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

11. License.

- a. Nothing in any AS Service Description and/or any SOW shall amend the licenses provided with any Cisco hardware or software products. The provisions in this Section 11 apply only to those Advanced Services, Deliverables and other

Intellectual Property detailed in any AS Service Description and/or any SOW.

- b. Cisco grants to Customer a worldwide, non-exclusive and non-transferable license to use for Customer's internal business use only: (i) Software provided as a result of Advanced Services, if any, (ii) the Deliverables specified in each AS Service Description and/or SOW (in object code form if Software), if any, and (iii) Data Collection Tools, if any. This license grant does not include the right to sublicense.
- c. This license shall be governed by: (i) the terms and conditions attached to the Software or in the absence of such terms by the license posted at http://www.cisco.com/en/US/products/prod_warranties_item09186a008025c927.html and (ii) this Agreement.
- d. Customer agrees that it is licensed to use Software: (1) only on Hardware; or (2) in the case of Application Software, on third party hardware, (except as otherwise authorized in the Software Documentation); or (3) in the case of Data Collection Tools, in object code form only, on the Data Collection Tool on which such Software is provided.
- e. The license is perpetual, provided Customer is not in breach of this Agreement. Notwithstanding the above, the license for Data Collection Tools is valid until the earlier of: (i) the expiration or termination of the Advanced Services under which the Data Collection Tool was provided; or (ii) Cisco's request to Customer that the Data Collection Tool(s) be returned to Cisco.
- f. Except as expressly authorized, Customer shall not (and shall not permit a third party to): download more than one copy of the Software, copy, in whole or in part, any Software, Deliverable or Data Collection Tool, make error corrections or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Software, Deliverable or Data Collection Tool which is software to human-readable form; or transfer, sublicense, rent, lease, distribute, sell, or create derivative works of any Deliverables. There are no implied licenses and all rights not expressly granted herein are reserved to Cisco.
- g. When Customer updates or upgrades a copy of Software to a new release, Customer shall not use (except for a limited period of parallel testing) the new Software release and the corresponding copy of the previous Software release concurrently.

Under no circumstances shall the previous release be re-used or transferred to any other device(s).

12. Ownership. As between Customer and Cisco, 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 Advanced Services, Products, Deliverables and Data Collection Tools or other Intellectual Property provided or developed by Cisco or a third party on Cisco's behalf thereafter. As between Customer and Cisco, 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. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, industry wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

14. Applicable Law and Jurisdiction.

- a. **WSCA Master Services Agreement:** This WSCA Agreement Attachment D and disputes hereunder solely between State acting on behalf of WSCA and Cisco shall be construed in accordance with the laws of the State of Utah. Venue for any claim, dispute or action concerning this Agreement shall be in Utah.
- b. **Participating Addendum & Service Orders Placed Under the Participating Addendum:** To the extent that both parties have mutually agreed to be bound by such laws under the terms of the Participating Addendum, each Participating Addendum and any dispute under this Attachment D based upon a performance under a Participating Addendum shall be governed by the laws of the Participating State. Venue for any claim, dispute or action concerning an order placed against a Participating Addendum or the effect of a Participating Addendum shall be in the Participating State.

c. Notwithstanding the foregoing, either party shall at all times have the right to commence proceedings in any other court of its choice for interim injunctive relief in the event of threatened or actual breach of Intellectual Property rights or provisions regarding protection and non-disclosure of Confidential Information.

d. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

15. Export Control. Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses. Information regarding compliance with U.S. use, export, re-export, and transfer laws may be found at: http://www.cisco.com/wwl/export/compliance_provision.html.

16. Assignment. Except as provided below, neither party may assign or delegate its rights or obligations under this Agreement (other than: (i) the right to receive any amount due, which shall be freely assignable, or (ii) to Customer's parent or majority-owned subsidiary company of sufficient net worth to meet any potential liability under this Agreement) without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that any such assignment shall not relieve the assigning entity of any obligation to pay monies that were owed prior to the date of the assignment. Notwithstanding the foregoing: (a) Cisco reserves the right to subcontract Advanced Services to any Affiliate or third party organization to provide Advanced Services to Customer, and (b) Cisco may assign this Agreement or all or any portion of its rights and obligations hereunder, to any Affiliate of Cisco.

17. 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 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 e-mail or fax.

(Entire Agreement), 19 (No Waiver), 20 (Severability), 21 (Attorneys' Fees), 22 (Survival) and the Glossary of Terms shall survive the termination or expiration of this Agreement.

[Appendix A, Glossary of Terms, Follows]

- 18. Entire Agreement.** This Agreement, including the general provisions of the WSCA Master Agreement applicable 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.
- 19. 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.
- 20. 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.
- 21. 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, 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 expressly precluded by such judgment.
- 22. Survival.** Sections 6 (Payment and Invoicing), 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), 17 (Notices), 18

APPENDIX A GLOSSARY OF TERMS

In addition to the Definitions set forth in the WSCA Master Agreement, Attachment B, the following definitions shall apply to this Services Agreement:

Advanced Services means the proactive services otherwise within the scope of the WSCA Master Agreement, Attachment A as set forth in the AS Service Description(s) found at <http://www.cisco.com/go/servicedescriptions> and/or SOW(s) selected by the Customer.

Advanced Services does not include Cisco's core maintenance services, such as Smartnet or Software Application Services, nor does it apply to the purchase, support or maintenance of any Products.

Affiliate with respect to a party, means any corporation, firm, partnership, limited liability company or other entity, whether *de jure* or *de facto*, that directly or indirectly owns, is owned by, or is under common ownership with such party to the extent of at least fifty percent (50%) of the equity having the power to vote on or direct the affairs of such party, and any person, firm, partnership, corporation, limited liability company or other entity actually controlled by, controlling, or under common control with such party.

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

AS Service Descriptions mean the detailed description of the Advanced Service identified at <http://www.cisco.com/go/servicedescriptions> purchased by Customer which are otherwise within the scope of the WSCA Master Agreement, Attachment A and incorporated in the Agreement by reference.

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 means the entity purchasing Advanced Services for its own internal use as defined in the WSCA Master Agreement, Attachment B

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.

Deliverable(s) means, with respect to each AS Service Description and/or SOW, the items specified as deliverables in the AS Service Description and/or SOW, if any.

Documentation is 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 Cisco, whether distributed in print, electronic, CD-ROM or video format.

Feature Set Upgrade means a separately licensed and priced Software release that

contains an enhanced configuration or feature set.

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

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

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).

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].

Milestone means a specific goal, objective or event pertaining to Advanced Services described under the terms of the SOW or AS Service Description, as applicable.

Milestone Certification of Completion (MCC) means the document provided by Cisco to obtain Customer acceptance of Advanced Services performed. MCCs are

required for all SOW-based Advanced Services.

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

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

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

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

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. "Participating State" shall be deemed to refer to the State of Utah when acting as a Participating State in its sovereign capacity (and not in its capacity as the WSCA Contract Manager).

Price List means the price list for services applicable in the country where the Advanced 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 Advanced Services to be provided by Cisco under this Agreement.

Statement of Work or SOW means the documents agreed upon by the parties that define the Advanced Services and Deliverables, if any, to be provided thereunder.

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

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; and
- (ii) Cisco support of the Application Software.

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

Update means Cisco Software Maintenance Releases, Minor Releases and Major Releases containing the same configuration or feature set as originally acquired, unless the amended.

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 Western States 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.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. 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 this 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 the State of Utah (“State”), as WSCA Contract Manager acting on behalf of WSCA, and Cisco, as now or hereafter



Appendix 3 - Letter of Agency

DATE

To Whom It May Concern

Subject: Letter of Agency

The undersigned, **CUSTOMER NAME**, appoints Cisco Systems, Inc. as agent (the "Agent") with respect to the following (check all that apply):

- To order changes in and maintenance on frame relay PVCs provided (or to be provided) by you between our location and Cisco's Network Operations Center, including, without limitation, removing, adding to, or rearranging such PVCs.
- To order changes in and maintenance on frame relay PVCs provided (or to be provided) by you between your Cisco Remote Management Services managed locations, to allow Cisco to restore Service or improve performance problems with carriers.
- Dispatching field maintenance technicians to service equipment, if any, under maintenance agreements we have purchased from you.
- Other: _____

You may deal directly with the Agent on all matters pertaining to the issues set out above and should follow the Agent's instructions with reference thereto. This authorization will remain in effect until further notice.

Sincerely,

Customer Signature

Customer Name/Title (Please Print)



WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT
("WSCA Master Agreement")
[State of Utah Contract Ref. No. AR-233]

Attachment E

CISCO BID PROPOSAL

This Addendum incorporates the redacted Cisco Bid Proposal in response on October 12, 2006 to the Western States Contracting Alliance Cisco Networking Communications & Maintenance solicitation.

Revision Date: September 10, 2007

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AMENDMENT No. 1 TO
WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE AGREEMENT

This Amendment #1 to the Western States Contracting Alliance (WSCA) Cisco Networking Communications & Maintenance Master Agreement ("Agreement") is entered into by Cisco Systems, Inc., with its principal place of business at 170 Tasman Drive, San Jose, CA 95134 ("Contractor") and the Division of Purchasing and General Services, an agency of the State of Utah ("State"), with its principal place of business at State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 (collectively, the "Parties") for good and valuable consideration, the mutual receipt of which is hereby acknowledged by the Parties, on the terms and conditions set forth below as of the date of last signature below (the "Effective Date" of this Amendment).

This Amendment modifies Attachment A to the Agreement, to provide that the .5% Administration Fee applies to all purchases within the scope of Agreement, both products and services.

1. Section 3 of Attachment A is hereby modified to read in full as follows:

3. WSCA Administration Fee

The Contractor must pay a WSCA administration fee of one half of one percent (0.5%) in accordance with the terms and conditions of this Contract. The WSCA administration fee is not negotiable.

The administration fee is calculated by multiplying 0.5% against the "Net Purchase Price" paid by the Customer. The "Net Purchase Price" is defined as Contractor's list price for all deliverables authorized for sale under this Agreement (whether they be products or services or any other deliverables), minus all applicable contract discounts, rebates or value added incentives, and excluding sales, use, or other applicable taxes, surcharges or like fees, to the extent applicable to an Order.

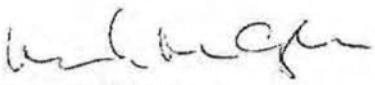
Page 2 of 2
Amendment No. 1 to WSCA Master Agreement.

The WSCA Administration Fee shall be made out to WSCA and paid quarterly at the time of submission of each report to the following address:

WSCA % Utah Division of Purchasing
Attn: Debbie Gundersen
3150 State Office Building, Capitol Hill
Salt Lake City, UT 84114 - 1061

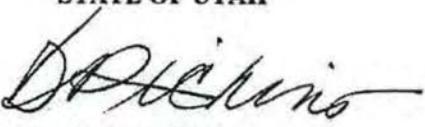
2. In all other respects, the Agreement remains unchanged.

CONTRACTOR
CISCO SYSTEMS, INC.


Contractor's Signature
brian richins
VP C-SF Ops.
Type or Print Name and Title

Date 9/16/08

STATE OF UTAH


Signature for State of Utah
Douglas G. Richins
Director, Div. of Purchasing & General Svcs.

Date 7/28/08



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #

2

CONTRACT #

AR233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT ("Contract")

Original Starting Date:

10/01/07

Original Expiration Date :

05/31/2010

TO BE ATTACHED AND MADE PART OF the specified Contract by and between the State of Utah Division of Purchasing and

CISCO SYSTEMS INC

(Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Amended Expiration Date: **05/31/2012**

Effective Date of Amendment: Date of last signature

Potential Renewal Options Remaining: One (2) yr or Two additional One (1) yr term(s)

The contract is amended to:

Modify the Contract, Appendix B, Clauses 1.20 and 12.1 "Termination Date" of May 31, 2010, to extend the Contract term through close of business on May 31, 2012. This Amendment shall be deemed effective and binding as of the date of last signature of the parties below.

Please provide the following contact information.

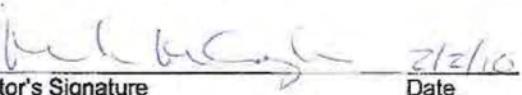
	Name	Phone Number	Email Address
General Contact	Mimi Nguyen	1 408 527 2627	mimnguye@cisco.com
Sales Contact	Greg Semler	1.408.894.7116	gsemler@cisco.com
Quarterly Report Contact	Phyllis Brown	1.408.894.7856	phbrown@cisco.com

All other terms and conditions in the original contract remain the same.

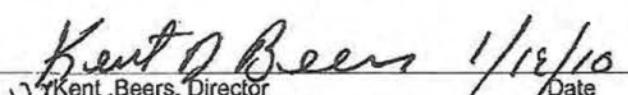
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH


Contractor's Signature

3/2/10
Date


Kent Beers, Director
State of Utah Division of Purchasing

Date


Contractor's Name (Print)


Title (Print)

Purchasing Agent

Phone #

e-mail

Fax #

Debbie Gundersen

(801) 538-3150

dgundersen@utah.gov

(801) 538-3882

10/27/2008



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT # 3
CONTRACT # AR233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT ("Contract")
Original Starting Date: 10/01/07
Amended Expiration Date : 05/31/2012

TO BE ATTACHED AND MADE PART OF the specified Contract by and between the State of Utah Division of Purchasing and

CISCO SYSTEMS INC
(Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Effective Date of Amendment: Date of last signature of the Parties

The contract is amended to:

Delete the Contract, Attachment B, Section 16 In its entirety and replace it for the purpose of modifying the due dates for quarterly contract usage reporting, and delete the reporting format at Attachment C, Exhibit D and replace it in its entirety. See Attached Changes.

Please provide the following contact information.

	Name	Phone Number	Email Address
General Contact	Mimi Nguyen	1 408 527 2627	mimnguye@cisco.com
Sales Contact	Greg Semler	1.408.894.7116	gsemler@cisco.com
Quarterly Report Contact	Phyllis Brown	1.408.894.7856	phbrown@cisco.com

All other terms and conditions in the original contract remain the same.

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

Dana G. Hampton **CONTRACTOR** *3/18/2010* **STATE OF UTAH**
Contractor's Signature Date *Kent Beers, Director* Date
Dana G. Hampton **STATE OF UTAH** *3-22-10*
Contractor's Name (Print) State of Utah Division of Purchasing

Dana G. Hampton
Contractor's Name (Print)
Director of Finance
Title (Print)

Purchasing Agent	Phone #	e-mail	Fax #
Debbie Gundersen	(801) 538-3150	dgundersen@utah.gov	(801) 538- 3882

AMENDMENT #3

To

AR-233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA) CISCO NETWORKING COMMUNICATIONS & MAINTENANCE MASTER AGREEMENT ("AR-233" or "Prime Contract")

(Modifying the Quarterly Contract Usage Reporting Deadlines and modifying the Report Format)

This Amendment # 3 ("Amendment") is entered into between Cisco Systems, Inc. with its principal place of business at 170 Tasman Drive, San Jose, CA 95134 ("Cisco" or "Contractor") and the Division of Purchasing and General Services, an agency of the State of Utah ("State"), with its principal place of business at State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061, and acting on its own behalf and as the lead state for the Prime Contract on behalf of the *Western States Contracting Alliance* ("WSCA"), (collectively, the "Parties"). This Amendment is effective as of the date of last signature of the Parties, below. ("Effective Date").

This Amendment modifies the reporting deadlines for submission of the Prime Contract quarterly contract usage report ("Report Deadlines") and the format for the quarterly contract usage report ("Report Form"), as follows:

1. Report Deadlines. The Prime Contract, Attachment B, Section 16 is deleted and replaced in its entirety with the following:

"16. **REPORTS:** Contractor shall submit quarterly reports to the WSCA Contract Manager showing the quantities and dollar volume of purchases of product and services by each Participating State [and its Purchasers]. Contractor shall also remit the WSCA Administration Fee at the time of submission of each quarterly contract usage report in accordance with Section D(3) in Attachment A of the WSCA Master Agreement. The due dates for the quarterly contract usage report along with the WSCA Administration Fees are as follows:

CY Quarter	Activity Period	Due Dates (For Reports & Admin. Fees)
Q1:	January 1 – March 31 st	May 31 st
Q2:	April 1 – June 30 th	August 31 st
Q3:	July 1 – September 30 th	November 30 th
Q4:	October 1– December 31 st	February 28 th

The State, as WSCA Contract Manager, represents and warrants to Contractor that it is authorized to collect data on purchases under this Agreement. The Purchaser recognizes that this data is public information. Cisco will use commercially reasonable efforts to provide the information set forth on Attachment C, Exhibit D (Form of Quarterly Report) and shall be fully indemnified by the State. Notwithstanding the foregoing, the Parties hereto agree that that the Form of the Quarterly Report may be updated from time to time subject to the mutual agreement between Contractor and the State as WSCA Contract Manager."

2. Report Format. The required format for the Quarterly Report as set forth in Prime Contract, Attachment C, Exhibit D, is deleted in its entirety and replaced with the updated reporting template attached in Appendix A to this document.

3. In all other respects, the Prime Contract remains unchanged.

This Amendment represents the entire understanding of the Parties and merges, supersedes and replaces any prior oral, electronic or other written communications or understandings with respect to the subject matter herein, and may only be modified by a written document executed by the Parties. Each Party warrants and represents that its respective signatory appearing below is, as of the date of signature, duly authorized to execute this Amendment on behalf of and with the intent to legally bind their respective principal first identified above.

[Affix signatures as required by State Statutes, Rules or Policies below.]

CISCO SYSTEMS, INC.

Signature: Dana Giannini
Print Name: Dana Giannini
Title: Director Finance
Date: 3/18/2010

STATE OF UTAH, ON ITS OWN BEHALF AND ON
BEHALF OF WSCA

Name: Nancy Orton
Signature: Nancy Orton
Print Name: Nancy Orton
Title: Assistant Director
Date: 3-22-10

APPENDIX A
FORM OF QUARTERLY REPORT
State Summary Sales Volume Report Template

WESTERN STATES CONTRACTING ALLIANCE (WSCA)
PARTNER REPORTED SALES, REVENUE AND FEE REMITTANCE TEMPLATE
FOR
STATE OF XXXXX

Quarterly Reporting Period Ending: XX-XX-20XX

WSCA	This Reporting Period
State	Name of State

Sum of Total	Partner Name			
Product Type	Partner A	Partner B	Partner C	Grand Total
Product	0	0	0	0
Service	0	0	0	0
Basic Install And Config Services	0	0	0	0
Grand Total	0	0	0	0
% of Sales In State	0%	0%	0%	0%

UT 0.5% Admin Fee PARTNER Fee Remittance	0	0	0	0
State Admin Fee PARTNER Fee Remittance (if Any)	0	0	0	0

		% of Total Sales
Reported Product Sales - Total:	\$0.00	0.00%
Reported Services Sales - Total:	\$0.00	0.00%
Basic Install And Config Services Sales - Total:	\$0.00	0.00%
Grand Total:	\$0.00	0.00%
WSCA-UT Administrative Fee - Grand Total:	\$0.00	0.00%
WSCA State Administrative Fee Remittances Grand Total:	\$0.00	0.00%

APPENDIX A
FORM OF QUARTERLY REPORT
Partner Sales Volume Reporting Template



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT # **4**
CONTRACT # **AR233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT ("Contract")**
Original Starting Date: **10/01/07**
Amended Expiration Date: **05/31/2012**

TO BE ATTACHED AND MADE PART OF the specified Contract by and between the State of Utah Division of Purchasing and

CISCO SYSTEMS INC
(Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Effective Date of Amendment: Date of last signature

The contract is amended to:

Incorporate Cisco IronPort Systems Products and Services offerings, the sale of which is solely governed by the terms set forth in this
Amendment #4, attached hereto and incorporated by reference.

Please provide the following contact information.

	Name	Phone Number	Email Address
General Contact	Mimi Nguyen	1 408 527 2627	mimnguye@cisco.com
Sales Contact	Greg Semler	1.408.894.7116	gsemller@cisco.com
Quarterly Report Contact	Angeline Feril (Gigi)	1.408.424.0712	aferil@cisco.com

All other terms and conditions in the original contract remain the same.

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

CONTRACTOR

STATE OF UTAH

Mark Cole
Contractor's Signature

6/24/10
Date

Kent Beers
Director
State of Utah Division of Purchasing

7/6/10
Date

Mark Cole
Contractor's Name (Print)

VPGlobal Fin Ops
Title (Print)

Purchasing Agent	Phone #	e-mail	Fax #
Debbie Gundersen	(801) 538-3150	dgundersen@utah.gov	(801) 538-3882

AMENDMENT #4

TO

**AR-233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT ("AR-233" or "Prime Contract")**

IronPort Products and Services Add

This Amendment #4 ("Amendment") is entered into between Cisco Systems, Inc. with its principal place of business at 170 Tasman Drive, San Jose, CA 95134 ("Cisco" or "Contractor") and the Division of Purchasing and General Services, an agency of the State of Utah ("State"), acting for itself and as the lead state on behalf of the *Western States Contracting Alliance* ("WSCA"), with its principal place of business at 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 (collectively, the "Parties") and is effective as of the date of last signature below ("Effective Date").

1. Scope

The Parties hereby modify the scope and permitted offerings under the Prime Contract referenced above to incorporate Cisco IronPort Systems LLC ("IP") U.S. Product and Services Offerings as listed in the *Cisco IronPort North American Price Book* ("IP Pricebook", and collectively "IP Products"). The sale of IP Products by Authorized Purchasers under AR-233 is governed solely by this Amendment.

2. Prime Contract Incorporation

The WSCA Prime Contract governs sales under this Amendment and supersedes any conflicting terms in the Exhibits, subject to the following additions, modifications and exclusions:

- a. All stated references in the Prime Contract scope of permissible product and services offerings is amended to add IP Products offered under the then-current IP Pricebook during the Prime Contract term. For Orders under this Amendment, all Prime Contract references to the "Cisco Global Price List" shall be deemed to refer solely to the IP Pricebook.
- b. Orders for IP Products may only be accepted by "Fulfillment Partners" who hold a specific manufacturer's authorization for resale of IP Products. For purposes of Orders placed under this Amendment, Prime Contract references to "Fulfillment Partners", shall be deemed to refer to only those resellers holding a specific manufacturer's authorization to resell IP Products.
- c. Attachment A, Section E, Paragraph 1 (a) (Discounts off Manufacturer's Price List): Price list and discounts are to be applied against the then-current IP Pricebook as further detailed in this Amendment, Exhibit #6.
- d. Attachment A, Section E, Paragraph 2 (Resolution of Customer Problems): Escalation contacts for IP Orders will be posted on the Cisco WSCA homepage.
- e. Attachment A, Section E, Paragraph 4 (Technical Services): The URL listed in this paragraph 4 applies only to Cisco Products.
- f. Attachment B, Section 15 (Conflict of Terms) is not applicable to IP Orders placed under this Amendment. In the event of any conflict, the order of precedence for IP Orders placed under this Amendment shall be resolved as follows:

1. WSCA *Participating Addendum* (for the State in which the Order is placed)
 2. Amendment #4 (Main body text of this document, and Exhibit #6)
 3. WSCA Prime Contract
 4. Amendment #4 (Exhibits)
- g. Attachment B, Section 20 (Shipping and Delivery - Products): Governs IP Orders under this Amendment, including Section 20.4 (shipping FOB destination).
 - h. Attachment B, Section 21 (Limited Warranty – Hardware - Software): Governs IP Orders under this Amendment, except that the longer 1 year warranty period stated in Exhibit #1 supersedes the 90 day warranty set forth in the Prime Contract.
 - i. Attachment C, Section 1 (Demonstration and Evaluation Equipment) is not applicable to IP Orders placed under this Amendment.
 - j. Attachment C, Section 3.5 (Services): For Orders placed under this Amendment, Prime Contract references to service descriptions or offerings shall be deemed to solely refer to the IP terms of service offerings as set forth on www.ironport.com/products.
 - k. Attachment C, Section 4 (Software License) is applicable to IP Orders placed under this Amendment. Additionally, each of IronPort's licensors shall be entitled to enforce the rights of IronPort under this Agreement and those rights under this Agreement that are for the benefit of such licensor as if such licensor was a party to this Agreement.
 - l. Attachment C, Exhibit A (WSCA Master Agreement List & Discount) is not applicable to IP Orders placed under this Amendment.
 - m. Attachment C, Exhibit B (Demo Depot and Try and Buy Terms) is not applicable to IP Orders placed under this Amendment.
 - n. Attachment D (Cisco Master Services Agreement and Advanced Services Agreement) is not applicable to IP Orders placed under this Amendment.
 - o. Attachment E (Cisco Redacted Bid Proposal) is not applicable to IP Orders placed under this Amendment.

3. IP Exhibits ("IP Agreements")

This Amendment expressly incorporates the following IronPort Exhibits and documentation ("IP Agreements") and govern Orders of IP Product under this Amendment:

Exhibit #1	Product & Services Sales Agreement (PSSA)
Exhibit #2	Hosted Email Master Services Agreement
Exhibit #3	Hybrid Email Master Services Agreement
Exhibit #4	Evaluation Agreement
Exhibit #5	User License Agreement (EULA)
Exhibit #6	Product/Services Offering and Price Schedule

References in the Exhibit to "Cisco IronPort LLC" or "IronPort" shall be deemed to refer to Contractor.

Order of Precedence with Prime Contract

Purchasers may be separately required to indicate their acceptance of applicable IP Agreements in substantially the form set forth in the Exhibits as a condition of access, e.g., via "click through accept" as part of key access code log-in activations, or via other electronic "click accept" tools. All Orders under this Amendment are subject to and governed by Purchaser's acceptance of the End User

License Agreement (EULA) set forth in Exhibit #5. Notwithstanding anything to the contrary in the Exhibits, the IP Agreements are subject to the order of precedence set forth in this Amendment, Section 2 (f), above.

(*All Section references, below, refer to the original Section number as shown on the marked-up document.)

Exhibit #1

Sections 2- 6, 10, 11 (b), 12-16, 18 and 19 are expressly superseded and deleted in their entirety pursuant to the order of precedence stated in Section 2 (f), above.

***Section 9 (Support and Maintenance Term):** The reference to "Effective Date" shall be deemed to refer to the effective date of an individual Customer Order, and the reference to "current unit list price" shall be deemed to refer to the net discounted price payable after application of the IP U.S. List Price discount set forth in this Amendment.

Exhibit #2

Sections 3, 4, 6 (a) and (d), 7, 8, 14-24 are expressly superseded and deleted in their entirety pursuant to the order of precedence stated in Section 2 (f), above.

Exhibit #3

Section Numbers: 3-5, 7 (a), (d) and (g), 8, 12-16, 18-23 are expressly superseded and deleted in their entirety pursuant to the order of precedence stated in this main document, Section 2 (f), above.

Exhibit #5

Section Number 8 is deleted in its entirety is expressly superseded and deleted in its entirety pursuant to the order of precedence stated in Section 2 (f), above. (*The preceding section references are to the original Section numbers that are shown as redline deletions in the attached Exhibit.)

4. Separation of Orders

IP Product Orders under this Amendment will be kept separate from Orders otherwise placed under the Prime Contract and separately submitted through IP authorized Resellers to Cisco IP Sales Operations in San Bruno, California. Rights and obligations under IP Orders shall not have any co-dependencies or contingencies, e.g., In acceptance, technical performance, payment or refund terms, for obligations otherwise under Cisco Systems, Inc. Product Orders under the Prime Contract.

5. Term

This Amendment term begins on the Effective date and ends co-terminously with the Prime Contract.

6. Definitions

Capitalized terms used in this Amendment not otherwise defined herein are defined in the Prime Contract.

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This Amendment represents the entire understanding of the parties and supersedes any prior oral, electronic or other written communications or understandings with respect to the subject matter herein. This Amendment #4 may only be modified by a written document executed by both parties. Each party warrants and represents that its respective signatory whose signature appears below is, as of the date of signature, duly authorized to execute this Amendment #4 on behalf of and with the intent to legally bind their respective principal first identified above.

CISCO SYSTEMS, INC.

STATE OF UTAH ON ITS OWN BEHALF, AND AS
THE LEAD STATE ON BEHALF OF THE WESTERN
STATES CONTRACTING ALLIANCE

Signature: Mark Cope
Print Name: Mark Cope
Title: VP Global Fin Ops
Date: 6/24/10

Name: Kent D Beers State Purchasing
Signature: Kent D Beers
Print Name: Kent D Beers
Title: Director State Purchasing
Date: 7/6/10

Exhibit #1
IronPort Product & Services Sales Agreement (PSSA)



PRODUCT AND SERVICES SALES AGREEMENT

This Product and Services Sales Agreement (this "Agreement") is entered into as the date of the last signature of the parties hereto set forth below (the "Effective Date") by and between Cisco IronPort Systems, LLC, a Delaware limited liability company with its principal place of business at 950 Elm Avenue, San Bruno, CA 94066 USA ("IronPort"), and _____, a _____ corporation, with its principal place of business at _____ ("Customer"). For good and valuable consideration, the parties hereby agree as follows:

PRODUCTS, PRICING & QUOTATION INFORMATION

Category	Part Number	Quantity/ Seats	Description	Unit List		Discount Rate	Total
				Price	Quantity		
Appliances							
Software Modules							
Spares & Accessories							
Support							
Professional Services							
Misc.						\$ -	
IronPort Corporate Address Cisco IronPort Systems, LLC 950 Elm Ave. San Bruno, California 94066	IronPort Sales Representative Information Name: _____ Phone: _____ Fax: _____ Email: _____					Subtotal: Freight: Pre-Sales Tax Total: \$ -	
Customer Shipping Address	Customer Technical Contact Information Name: _____ Phone: _____ Fax: _____ Email: customer@customer.com			Customer Accounts Payable Information Name: _____ Phone: _____ Fax: _____ Email: customer@customer.com			

Special Terms & Conditions

(To be specified for the individual transaction on approval of Customer and Contractor.)

Any provision set forth herein shall control in the event of a conflict with any term set forth in the General Terms & Conditions below.

General Terms & Conditions

- 1. General.** The terms and conditions of this Agreement apply to the purchase of the products (the "Products") and services set forth above by Customer from IronPort. Customer acknowledges that any Product(s) listed above that were previously delivered for evaluation purposes, or that are spare units or demonstration units may be used and/or refurbished units, provided that the warranties set forth herein apply fully to such used and/or refurbished units. No terms, provisions or conditions of any purchase order, invoice or other business form or written authorization used by either party will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of either party to object to such terms, provisions, or conditions. Notwithstanding anything to the contrary contained herein, Sections 3, 4, 5 and 9 of this Agreement shall not apply to any Products or services purchased by Customer directly from any party other than IronPort. The remaining sections of this Agreement shall apply to all Products and services purchased by Customer from authorized IronPort resellers.
- 2. Embedded Software; Intellectual Property Rights.** IronPort hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use the software contained on the Products (the "Software") in object code format solely for the internal business purposes of Customer. Except as otherwise agreed by the parties hereto in writing, Customer will not use the Software as a service provider or as part of a product or service offering to third parties without IronPort's prior written consent. Customer will not (i) transfer, assign, copy, modify or distribute the Software or (ii) attempt to, or authorize any third party to, decompile, reverse engineer or otherwise attempt to gain access to the Software source code or unbundle any software embedded within or contained on the Products. Customer will not remove any copyright or trademark notices on the Software. Except as provided in Section 16 below, Customer will not sell or transfer the Products containing Software to any third party. Customer acknowledges that IronPort and its licensors retain, at all times, all right, title and interest in and to the Software, including any improvements or modifications thereto and all copyright, patent, trade secret, trademark and other intellectual property rights embodied in the Products, and the user manuals and other written materials for the Products (the "Documentation"). Each of IronPort's licensors shall be entitled to enforce the rights of IronPort under this Agreement and those rights under this Agreement that are for the benefit of such licensor as if such licensor was a party to this Agreement. Notwithstanding anything herein to the contrary, all references in this Agreement to the "purchase" or "sale" of Software will mean, with respect to all parts of such Software, the acquiring or granting, respectively, of a license to use such parts, and to exercise any other rights pertaining to such parts which are expressly set forth herein.
- 3. Additional Orders.** Unless otherwise mutually agreed in writing, the terms of this Agreement shall govern the purchase by Customer of additional Products and services after the Effective Date. To order additional Products and services, Customer shall submit a purchase order to IronPort containing substantially the same information required by the *Products, Pricing and Quotation Information* table above.
- 4. Payment.** Customer agrees to purchase the Products and, if applicable, the Support and Maintenance (as defined in Section 7) for the prices set forth above, and such price quote shall remain valid for a period of thirty (30) days from the receipt by Customer of this Agreement. All payments will be made in U.S. Dollars net thirty (30) days from the date of invoice. If payment is more than thirty (30) days late, IronPort may, without limiting any remedies available to IronPort, terminate this Agreement or suspend performance until payment is made current. All prices are exclusive of all sales, use, excise, value added, withholding and other taxes, and all customs duties and tariffs now or hereafter claimed or imposed by any governmental authority upon the sale of the Product, which will be invoiced to and paid by the Customer. For any renewal term, the terms of this Agreement will govern and all fees shall be payable within thirty (30) days of the invoice date and payable in advance of the applicable term.
- 5. Title and Risk of Loss.** All sales are made F.O.B. point of shipment at IronPort's designated manufacturing facility, and IronPort's title to the Products and the risk of loss or damage to the Products ordered by the Customer will pass to Customer at time of IronPort's delivery of Products to the carrier. The carrier shall be deemed Customer's agent, and any claims for damages in shipment must be filed with the carrier. IronPort is authorized to designate a carrier pursuant to IronPort's standard shipping practices unless otherwise specified in writing by Customer.
- 6. Force Majeure.** Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including, without limitation, acts of God, earthquakes, labor disputes, industry wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.
- 7.2. Support and Maintenance.** So long as Customer has paid in full all associated fees for IronPort's Platinum and/or Platinum Plus support programs, IronPort shall provide support and maintenance for the Products (the "Support and Maintenance"), as more fully set forth in Sections 7-9 and the *Support & Maintenance Table* set forth below. Support and Maintenance shall include (i) telephone and email support services for diagnosis of problems or performance deficiencies of the Software, and (ii) the use of commercially reasonable efforts to cure reported and reproducible Errors in the Software. An "Error" in the Software means a failure of the Software to perform materially in accordance with the Documentation. So long as Customer has met all of its obligations hereunder and has paid in full all associated fees for IronPort's Platinum and/or Platinum Plus support programs, IronPort will provide Customer with such patches, updates, releases and new versions of the Software that are commercially released by IronPort at no additional charge to IronPort's other customers receiving Support and Maintenance. All patches, updates, release and new versions provided hereunder will be considered part of the Software and subject to this Agreement. Notwithstanding anything herein to the contrary, the Support and Maintenance set forth herein, including patches, bug fixes and corrections, will be provided only for (i) the most current release version of the Software currently shipping to new customers, and (ii) any other versions of the Software released in the last year. From time to time, IronPort may provide to certain of its customers free of charge modifications or enhancements that represent a new product as an accommodation. Any such

accommodations shall not waive, diminish or abrogate IronPort's right to determine in its sole discretion whether or not an enhancement constitutes an update or a new product. Customer acknowledges that all reported Errors may not be corrected. IronPort shall have no obligation to provide Support and Maintenance if: (A) the Product was not used in accordance with IronPort's then current published specifications and such use caused the Error in the reasonable opinion of IronPort; (B) the Product or Software was altered, modified or corrected by Customer without IronPort's prior written consent; (C) Customer's computer(s) malfunctioned and the malfunction caused an error or defect in the Software; or (D) any other cause within the control of Customer that caused an error or defect in the Product or Software.

83. Customer Maintenance Obligations. Customer agrees to: (i) use reasonable efforts to resolve internally any support questions prior to requesting Support and Maintenance services; (ii) report Errors promptly in writing in English; (iii) provide sufficient information to IronPort for IronPort to duplicate the circumstances indicating a reported Software defect or Error; (iv) promptly incorporate the bug fixes, patches, updates, upgrades, releases and new versions provided hereunder; and (v) provide all reasonable cooperation access and full information to IronPort with respect to IronPort's furnishing of Support and Maintenance hereunder. During the term of this Agreement, IronPort may obtain information regarding Customer's email communication and web traffic and Customer agrees that, as a condition to entering into this Agreement and IronPort's commitment to providing Support and Maintenance, IronPort may use statistical data generated regarding Customer's email and web traffic so long as neither the source nor content of the information underlying the data is being disclosed. IronPort hereby reserves the right to deny any emergency on-site service requests if, in IronPort's good faith discretion, such emergency on-site service is not required to resolve Customer's technical problem or if Customer has violated any of its obligations hereunder.

94. Support and Maintenance Term. The initial term for the Support and Maintenance set forth hereinOrder will commence on the Order Effective Date and remain in effect for the time period set forth in the Products, Pricing and Quotation Information Section above. Provided that the renewal date start occurs during the WSCA Master Agreement term and not on or after the termination/expiration date of the WSCA Master Agreement, Support and Maintenance will automatically renew for additional one (1) year periods on each anniversary of the Effective Date, unless either party provides written notice of termination within thirty (30) days prior to such anniversary date. For each renewal term, Customer shall pay the current unit list price set forth above for the applicable Support and Maintenance program. Fees are payable within thirty (30) days of the invoice date and are payable in advance of the applicable term. In the event that Customer desires to reinstate Support and Maintenance after allowing its Support and Maintenance to lapse, Customer will be required to pay IronPort's then-current standard fee for reinstating lapsed Support and Maintenance. Support and Maintenance Fees are non-refundable unless IronPort has materially breached the maintenance terms and has failed to cure the breach after thirty (30) days written notice, in which case the prorated portion of any prepaid unused Support and Maintenance Fees are refundable.

10. Indemnity.

(a) IronPort will have the obligation and right to defend any claim, action, suit or proceeding ("IPR Claim") brought against Customer so far as it is based on a claim that any Product supplied under this Agreement infringes Third Party IPR (as defined below). IronPort will indemnify Customer 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. IronPort's obligations to defend the IPR Claim and indemnify Customer are conditional upon: (i) Customer notifying IronPort promptly in writing of the IPR Claim or threat thereof; (ii) Customer giving IronPort full

and exclusive authority for the conduct of the defense and settlement of the IPR Claim and any subsequent appeal; and (iii) Customer giving IronPort all information and assistance reasonably requested by IronPort in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.

(b) "Third Party IPR" means a United States copyright existing as of the Effective Date or a United States patent issued as of the Effective Date.

(c) If an IPR Claim has been made, or in IronPort's opinion is likely to be made, Customer agrees to permit IronPort, at IronPort's option and expense, either to: (i) procure for Customer the right to continue using the Product; (ii) replace or modify the Product so that there is no longer an infringement; or (iii) immediately terminate both parties' respective rights and obligations under this Agreement with regard to the Product, in which case Customer will promptly return the Product to IronPort and IronPort will refund to Customer the price originally paid by Customer to IronPort for the Product, as depreciated or amortized by an equal annual amount on a straight-line basis over three years from date of original shipment.

(d) Notwithstanding the foregoing, IronPort has no obligation or liability for, and Customer will defend and indemnify IronPort against, any IPR Claim arising from: (i) the combination, operation, or use of a Product supplied under this Agreement with any product, device, or software not supplied by IronPort; (ii) the amount or duration of use which Customer makes of the Product, revenue earned by Customer from services it provides that use the Product, or services offered by Customer to external or internal customers; (iii) the alteration or modification of any Product supplied under this Agreement; (iv) IronPort's compliance with Customer's design, specifications, requests, or instructions; or (v) Customer's use of the Product after IronPort has recommended to Customer modifications or changes in or to the Product required to avoid such an IPR Claim.

(e) This Section 10 states the entire obligation of IronPort and its suppliers, and the exclusive remedy of Customer, in respect of any infringement or alleged infringement of any intellectual property rights or proprietary rights. This indemnity obligation and remedy are given to Customer solely for its benefit and in lieu of, and IronPort disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any Product.

11.2. Warranty.

(a) **Warranty.** IronPort warrants that, for a period of one (1) year from the date of shipment of the Products (the "Warranty Period"), the Products sold hereunder will materially conform to IronPort's published specifications in effect as of the date of manufacture.

(b) The foregoing warranty will not apply if the Product: (a) has been altered, except by IronPort; (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by IronPort; (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 IronPort does not receive a payment or purchase price or license fee.

(b) If during the Warranty Period: (i) IronPort is notified promptly in writing upon discovery of any defect in the Product, including a detailed description of such alleged defect, (ii) such Product is returned, transportation charges prepaid, to IronPort's designated manufacturing facility in accordance with IronPort's then-current return procedures, as set forth by IronPort from time to time, and (iii) IronPort's inspections and tests determine that the Product is indeed defective and has not been subjected to any of the conditions set forth in Section 11(b) above WSCA Master Agreement, Attachment B Section 21.3, then, as Customer's sole remedy and IronPort's sole obligation under the foregoing warranty, IronPort will, at IronPort's option, repair or replace without charge the defective Product or

refund a pro-rata portion of the purchase price of the Product based on a three (3) year straight-line amortization. Any Product that has either been repaired or replaced under this warranty will have warranty coverage for the longer of ninety (90) days or the remaining warranty period. Replacement parts used in the repair of Product may be new or equivalent to new.

(d) 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, NON-INFRINGEMENT, 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. ALL SUPPORT AND MAINTENANCE IS PROVIDED "AS IS."

42. Limitation of Liability. IN NO EVENT SHALL IRONPORT OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF IRONPORT OR ITS SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF IRONPORT AND ITS SUPPLIERS FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID TO IRONPORT UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

43. Compliance with all Applicable Laws; Export Control. Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures including requirements applicable to the use of Products under the laws and regulations of any government where the Products are to be used (collectively "Applicable Laws"). Customer will indemnify and hold harmless IronPort, for any violation or alleged violation of any Applicable Laws. Customer hereby acknowledges that the Products and technology or direct products thereof ("Products and Technology"), supplied by IronPort under this Agreement are subject to export controls under the laws and regulations of the United States (U.S.). Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of IronPort Products and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. IronPort and Customer each agree to provide the other such information and assistance as may reasonably be required by the other in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents. Customer agrees to maintain full, true, and accurate records of exports, re-exports, and transfers of the Products and Technology, purchased and deployed or distributed, according to U.S. and local laws (minimum 5 years). Customer acknowledges that detailed information regarding compliance with U.S. use, export, re-export, and transfer laws may be found at:

http://www.cisa.comAvail/export/compliance_provision.html.

44. Confidentiality.

Each party agrees to refrain from using the other party's Confidential Information (as defined below) except as contemplated herein and preserve and protect the confidentiality of the other party's

Confidential Information using the same measures that such party uses to protect its own confidential information, which in no event will be less than commercially reasonable measures. Customer shall not disclose to any third-party the results of any evaluation or testing of the Product by Customer. Neither party shall disclose any of the terms of this Agreement to any third-party without the prior written consent of the other party, provided that either party may disclose Confidential Information, and the terms or conditions of this Agreement, to such party's agents, attorneys and other representatives or any court of competent jurisdiction. "Confidential Information" means all non-public information that is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential.

45. Termination. If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party will have the right to terminate this Agreement, including all licenses granted to Customer hereunder, at any time. Customer's breach of a payment obligation constitutes a default the date the payment is due and IronPort will have the right to terminate this Agreement immediately. The provisions of Sections 12, 13, 14, 15 and 16, and all accrued payment obligations, shall survive the termination of this Agreement.

46. Assignment; Entire Agreement; Modification. Neither party may assign or delegate its rights or obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that any such assignment shall not relieve the assigning entity of any obligation to pay monies that were owed prior to the date of the assignment. Notwithstanding the foregoing, (i) either party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to its parent or majority owned subsidiary company of sufficient net worth to meet any potential liability under this Agreement, and (ii) IronPort may, without Customer's consent, assign the right to receive any amount due. This Agreement supersedes all prior communications, transactions, and understandings, whether oral or written, and, together with any applicable click-through agreements for third party software contained on the Products, constitutes the sole and entire agreement between the parties pertaining to the referenced quotation or purchase order. No modification, addition or deletion, or waiver of any of the terms and conditions of this Agreement will be binding on either party unless made in a non-procedural agreement clearly understood by both parties to be a modification or waiver, and signed by a duly authorized representative of each party.

47. U.S. Government Restricted Rights. The Software and Documentation are "commercial items," "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

48. Governing Law and Venue. This Agreement will be governed by the laws of the State of California, U.S.A., without regard to provisions on the conflicts of laws. The parties consent to the exclusive jurisdiction of, and venue in, the state and federal courts within Santa Clara County, California, U.S.A. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT.

49. Severability. If any portion of this Agreement is held invalid, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement.

SUPPORT & MAINTENANCE TABLE (refer to online service description for then-current terms at time of order)

	IronPort Platinum Support	IronPort Platinum Plus Support*
Support Requests		
Phone, Email & Web	24/7	24/7
Technical Support		
Office hours (critical and non-critical issues)	M-F 6am-6pm PST (excluding US holidays)	M-F 6am-6pm PST (excluding US holidays)
Availability for critical issues	24/7	24/7
Response time	1 hr	Next Available Engineer / 1 hr
Hardware & Software Support		
Upgrade notifications	Yes	Yes
Field upgrades	Yes	Yes
Remote diagnostics	Yes	Yes
Hardware support **	Yes	Yes
Emergency on-site support ***	Best efforts next business day based on necessity on Hardware issues only	Best efforts next business day based on necessity on Hardware and Software issues
Online Resources		
Documentation	Yes	Yes
FAQ	Yes	Yes

* In addition, the following services are included in IronPort Platinum Plus Support: Two Designated Support Engineers; Major Software Release Reviews; and Periodic System Analysis and Appliance Monitoring.

** Shipments delivered to Customer's site the next business day by 10:30 am local time (second business day if shipped on Sunday or US holiday). This may vary for international shipments.

*** Emergency on-site support may vary or be limited for non-US customers.

Wherefore, the parties have caused this Product and Services Sales Agreement to be executed effective as of the Effective Date.

CISCO IRONPORT SYSTEMS, LLC	CUSTOMER
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit #2
IronPort Hosted Email Master Services Agreement

MASTER SERVICES AGREEMENT
Cisco IronPort Systems LLC

This Agreement is entered into between Cisco IronPort Systems LLC ("IronPort"), a Delaware limited liability company, having its principal place of business at 990 Elm Ave, San Bruno, California, 94066 and _____, a _____ corporation ("Customer") having its principal place of business at _____, United States, and is entered into as of the date of last signature below (the "Effective Date").

This Agreement consists of (i) this signature page, (ii) the Master Services Agreement Terms and Conditions (including the Exhibits) and (iii) the Product and Services Descriptions of the Products and/or Services Customer has elected to purchase, which are incorporated in this Agreement by this reference.

Customer may purchase the Services from an authorized IronPort Reseller. In the event that Customer purchases the Services from an authorized IronPort Reseller, Sections 2(a), 3, 4-5, and 6 and 7(b) will not apply.

The parties have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below are on the date of signature authorized to execute this Agreement.

Cisco IronPort Systems LLC

(“Customer”)

(“IronPort”)

Authorized Signature

Authorized Signature

Print Name

Print Name

Title

Title

Date

Date

MASTER SERVICES AGREEMENT - TERMS AND CONDITIONS

1. **Definitions** are those set out in the Glossary of Terms at the end of the Agreement.

2. **Scope.** This Agreement describes the terms and conditions for (a) Purchases from IronPort by Customer of Services, and (b) delivery by IronPort of the Services according to the options ordered by Customer or otherwise provided by IronPort to Customer. IronPort will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid (ii) a valid Software license has been granted and (iii) Customer provides information reasonably requested by IronPort including, but not limited to, site location(s), contract number, and Product/Service requested.

3. **Orders.** Customer shall, upon and subject to credit approval by IronPort, purchase Services by issuing a Purchase Order. Each Purchase Order must be signed, if requested by IronPort, or (in the case of electronic transmission) sent, by an authorized representative, indicating the specific Services, quantity, price, total purchase price, bill to address, tax exempt certifications, if applicable, contract reference if any, and any other special instructions. No contingency contained on any Purchase Order shall be binding upon IronPort. The terms of this Agreement shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to IronPort, and any such additional or conflicting terms are deemed rejected by IronPort.

4. **Payment.** Upon and subject to credit approval by IronPort, payment terms shall be net thirty (30) days from the date of invoice. Unless otherwise agreed by IronPort, all payments shall be made in the currency used by the IronPort entity with which Customer has placed its Purchase Order. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (a) ten (10) per cent per annum, or (b) the maximum rate permitted by law, whichever is less.

5. **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.

6. **Term and Termination.**

The term of this Agreement shall commence on the Effective Date and shall continue for a period of one year. Such term will be renewed automatically for successive one year terms unless either party notifies

the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.

(a) The term of the Services shall commence on the date set forth on the Purchase Order, which may be up to sixty (60) days following the date of Purchase Order acceptance by IronPort. Upon the expiration of the initial Services term, the Services shall be renewed automatically for successive one year terms provided that the starting date for the renewal term is on or before the termination or expiration of the WSCA Master Agreement, unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.

(b) The term of each SOW, if any, shall be stated in the SOW.

(d) This Agreement and the Services or SOW may be terminated immediately by either party upon written notice:

(i) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching party if the breaching party fails to cure such breach within such period.

(ii) if: (a) the other party ceases to carry on business as a going concern; or (b) the other party becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation; or (c) a receiver or similar officer is appointed with respect to the whole or a substantial part of the other party's assets; or (d) an event similar to any of the foregoing occurs under applicable law with respect to the other party.

(iii) if the other party assigns or transfers any of the rights or responsibilities granted under this Agreement or SOW in breach of Section

(ec) If Services undisputed fees are not paid when due and payment has not been received within thirty (30) days after notice from IronPort of such past due payment, IronPort may withhold the provision of Services until all amounts past due are paid in full, and/or terminate immediately this Agreement, the Services and SOW.

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(g) IronPort 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 Services and SOWs. If Customer does not agree to a change of scope or content, Customer may terminate any Services or SOW by notifying IronPort at least sixty (60) days prior to the expiration of the then current one year term of the Services or SOW. In such case, IronPort shall continue to provide Services until the next expiration date (see Section 7(b), above) of the affected Services or SOW.

(e) (g) In the event that, following termination or expiration of this Agreement, Customer places Purchase Orders and IronPort accepts such Purchase Orders, then any such Purchase Orders shall be governed by the terms and conditions of this Agreement notwithstanding the earlier expiration or termination of this Agreement; provided, however, that acceptance by IronPort of any such Purchase Order will not be considered to be an extension of the term of the Agreement nor a renewal thereof. The Services and any SOW hereunder shall terminate immediately upon termination of the Agreement to the extent they remain executory as of the date of termination, unless otherwise agreed by IronPort.

(f) Upon termination of the Agreement, any Services or SOWs, Customer shall pay IronPort for all work performed under the affected Purchase Order or SOWs up to the effective date of termination at the agreed upon prices, fees and expense reimbursement rates.

7. **Confidentiality.** Customer and IronPort agree that in connection with this Agreement and their relationship, they may obtain Confidential Information. The receiving party shall at all times keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, IronPort shall be authorized to disclose Customer's Confidential Information to contractors or employees of an IronPort entity or Affiliate who have a legitimate business need to have access to such information. The receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration at any time and for any reason of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the

public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure. For the purposes of this Section 8, an "Affiliate" is an entity controlling, controlled by or under common control with IronPort.

8. Neither party shall disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other party. Any press release or publication regarding this Agreement is subject to prior review and written approval of the parties.

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9. **Warranty.**

9.1 ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, IRONPORT 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, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, 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 IRONPORT'S OPTION, RE-PERFORMANCE OF THE SERVICES; OR TERMINATION OF THIS AGREEMENT OR SOW AND RETURN OF THE PORTION OF THE SERVICE FEES PAID TO IRONPORT BY CUSTOMER FOR SUCH NON-COMFORMING SERVICES.

9.2 **GENERAL DISCLAIMER FOR ALL SERVICES.**

ANY WARRANTIES AND RELATED REMEDIES IN THIS SECTION 9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING

WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 9 SHALL APPLY EVEN IF THE EXPRESS WARRANTIES AND LIMITED REMEDIES SET FORTH IN THIS SECTION 9 FAIL OF THEIR ESSENTIAL PURPOSE. IN ANY EVENT, THE WARRANTIES PROVIDED UNDER THIS AGREEMENT ARE SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

| 95.3 BECAUSE OF THE CONTINUOUS EVOLUTION OF THE SOPHISTICATION OF NETWORK THREATS AND INFRASTRUCTURE TECHNOLOGIES, IRONPORT DOES NOT MAKE, AND IT IS ACKNOWLEDGED THAT IRONPORT CANNOT MAKE ANY WARRANTY OR REPRESENTATION THAT ANY SYSTEM ATTACK OR IMPACTING INCIDENT WILL BE DETECTED OR PREVENTED.

| 95.4 CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT DESIGNED OR INTENDED BY IRONPORT FOR USE OR RESALE IN, OR FOR INCORPORATION INTO PRODUCTS OR SERVICES USED IN HIGH RISK ACTIVITIES. IRONPORT SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND WITH RESPECT TO THE USE OF THE SERVICES IN CONNECTION WITH ANY HIGH RISK ACTIVITY.

| 10. 6. Limitation of Liability and Consequential Damages Waiver.

ALL LIABILITY OF IRONPORT, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER ARISING SHALL BE LIMITED TO THE GREATER OF (I) THE MONEY PAID TO IRONPORT FOR SERVICES UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY OR (II) THE AMOUNT OF FEES EQUAL TO THE UNEXPIRED REMAINDER OF THE PRE-PAID SERVICE TERM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

SUBJECT TO CUSTOMER'S BREACH OF SECTION (LICENSE), IN NO EVENT SHALL EITHER PARTY, ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL,

INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

| 11. 7. Licenses. Subject to Customer's compliance with the terms of this Agreement, any applicable AS Service Description or SOW, and the End User Agreement, IronPort grants to Customer a worldwide, non-exclusive and non-transferable license to use, for Customer's internal business use only: (i) the Services; (ii) other Deliverables specified in an applicable AS Service Description or SOW, if any, and (iii) Data Collection Tools, if any (collectively and individually, the "*Licensed Materials*"). In addition, IronPort grants to Customer a right to modify and create derivative works of any Scripts provided by IronPort to Customer pursuant to this Agreement, solely for Customer's internal business use. These license grants do not include the right to sublicense; provided that Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials solely on Customer's behalf for Customer's benefit, provided that Customer ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of IronPort's rights in such Licensed Materials as are specified in this Agreement.

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Nothing in this Agreement, any AS Service Description or any SOW shall alter or affect the Intellectual Property rights and/or licenses provided with any IronPort Products. The terms and conditions provided with the Services ("*End User Agreement*"), are hereby incorporated into this Agreement by this reference. To the extent there is a conflict between the terms of the attached *End User Agreement* and the *remainder of this Agreement*, the terms of the *End User Agreement* shall apply, unless explicitly stated otherwise in this Agreement. The provisions in this Section apply only to those Services and Deliverables and other Intellectual Property provided by IronPort to Customer.

Except as otherwise expressly set forth in this Agreement or an applicable SOW, Customer shall not (and shall not permit a third party to): make error corrections or derivative works of, or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Deliverable, Data Collection Tool or the Services to human-readable form or transfer, sublicense, rent, lease, distribute, or sell, any Services, Deliverables or Data Collection Tools. Customer agrees that it receives no implied licenses under this Agreement,

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and all rights not expressly granted herein are reserved to IronPort.

Customer hereby grants to IronPort a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback (as defined below) to use and incorporate Customer Feedback into any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute and create derivative works of such Customer Feedback for any and all purposes whatsoever, and Customer acknowledges and agrees that it will obtain no rights in or to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology as a result of IronPort's use of any such Customer Feedback. For purposes of this Agreement, "Customer Feedback" means all oral or written communications regarding improvements or changes to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology that Customer provides to IronPort.

12. 8. Customer Responsibilities.

In performing the Services, IronPort may instruct the Customer to perform certain tasks or checks relating to Customer's Network. Customer shall, at its expense, perform all such checks and tests. Customer will also provide IronPort, or its authorized representative, reasonable and free access to Customer's networking equipment. Customer shall not be required to furnish specialized equipment or know-how. Customer agrees to pay IronPort, at IronPort's then-current discounted contract rates, plus any reasonable actual out-of-pocket expenses, for any rework or additional work resulting from modification of the Services requested by Customer (and accepted by IronPort) or any act or omission of Customer, including providing inaccurate information to IronPort. IronPort shall seek Customer's approval in advance of incurring such costs if it knows costs will be incurred as a result of such act or omission of Customer.

Customer is responsible for obtaining all approvals required by any third parties in order for IronPort to perform any Service under this Agreement. IronPort shall not be in default of this Agreement to the extent it cannot perform the Services either because such approvals have not been obtained or any third party otherwise prevents IronPort from performing such Services.

Customer agrees that it shall not resell the Product and/or Services or create or offer derivative versions of the Services either directly or through a third party.

CUSTOMER ASSUMES FULL RESPONSIBILITY FOR THE CONTROL AND USE OF THE DATA

CONTAINED IN ANY REPORTS PROVIDED BY IRONPORT HEREUNDER. CUSTOMER ACKNOWLEDGES THE POTENTIAL PRIVACY AND OTHER ISSUES ASSOCIATED WITH THE COLLECTION AND USE OF THIS DATA.

CUSTOMER ASSUMES FULL RESPONSIBILITY TO BACK-UP AND/OR OTHERWISE PROTECT ALL DATA AGAINST LOSS, DAMAGE, OR DESTRUCTION. CUSTOMER ACKNOWLEDGES THAT IT HAS BEEN ADVISED TO BACK-UP AND/OR OTHERWISE PROTECT ALL DATA AGAINST LOSS, DAMAGE OR DESTRUCTION.

THE FAILURE OF CUSTOMER TO COMPLY WITH THIS SECTION 12.8 MAY BE DEEMED A MATERIAL BREACH OF THIS AGREEMENT.

13. 9. Ownership. Each party will retain the exclusive ownership of all its pre-existing intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to commencement of any Services hereunder, or that are otherwise developed by or for such party outside the scope of this Agreement ("Pre-Existing Technology").

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Except as otherwise expressly set forth in this Agreement or an applicable SOW, IronPort owns and will continue to own all right, title and interest in and to the Hardware, Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by IronPort (or a third party acting on IronPort's behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing (collectively, "IronPort Intellectual Property").

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As between Customer and IronPort, Customer shall at all times retain all right, title and interest in and to all of Customer's Pre-Existing Technology and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter, other than IronPort Intellectual Property. Third Party Products shall at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

14. Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, industry wide shortages of supplies, actions of governmental entities, riot, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

15. Applicable Law and Jurisdiction. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal Courts of California shall have exclusive jurisdiction over any claim arising under this Agreement. Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.

The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

16. Export Control. Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of IronPort Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses.

17. Assignment. Neither party may assign or delegate its rights or obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed; provided that any such assignment shall not relieve the assigning entity of any obligation to pay monies that were owed prior to the date of the assignment. Notwithstanding the foregoing, (a) either party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to its parent or majority owned subsidiary company of sufficient net worth to meet any potential liability under this Agreement, and (b) IronPort may, without Customer's consent, assign the right to receive any amount due.

18.2. IronPort reserves the right to subcontract Services to a third party organization to provide Services to Customer. Any such subcontract shall not relieve

IronPort of any of its obligations under this Agreement.

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19. Inventory Review. From time-to-time, IronPort may perform an inventory review of Customer's infrastructure. IronPort 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, attorneys' and audit fees. IronPort 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. Timewill be in writing and will be deemed given one 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 IronPort.com or by e-mail or fax.

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20. Entire Agreement. This Agreement 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.

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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.

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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, such 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, and other professionals 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.~~

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. **11. 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. **12. Headings.** Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.

27. **13. Survival.** Sections—Terms set forth or incorporated in this Exhibit, including: (Payment), (Term and Termination), (Confidentiality), (Warranty), (Limitation of Liability and Consequential Damages Waiver), (License), 13—(Ownership), 14—(Force Majeure), 15—(Applicable Law and Jurisdiction), 16—(Export Control), 19—(Inventory Review), 20—(Notices), 21—(Entire Agreement), 22—(No Waiver), 23—(Severability), 24—(Attorneys' Fees), 25—(No Agency), 28—(Survival), the Glossary of Terms and the Services-Not-Covered exhibits shall survive the termination or expiration of this Agreement.

EXHIBIT A
GLOSSARY OF TERMS

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

Advanced Services means the Services set forth in the AS Service Description(s) found at and/or SOW(s) selected by the Customer. Advanced Services does not include IronPort's core maintenance services, nor does it apply to the purchase, support or maintenance of any Products.

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

AS Service Descriptions mean the description of the Advanced Services available from IronPort, which are attached hereto.

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

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

IronPort.com () is the IronPort Website for its suite of online services and information.

Confidential Information means proprietary and confidential Information received by IronPort or Customer from the other party in connection with this 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 IronPort, any information posted on IronPort.com.

Customer means the entity purchasing Services for its own internal use.

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

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

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

Direct Purchases means purchases of Services by Customer directly from IronPort.

Documentation means user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials and other

information relating to Products or Services offered by IronPort, whether distributed in print, electronic, CD-ROM or video format.

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.

Four-hour Response means:

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

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

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

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

Level 1 means support that is defined as having the necessary technical staff (IronPort or IronPort-authorized Reseller) with appropriate skill, perform installations, Remedial Hardware Maintenance, and basic Hardware and Software configuration on IronPort 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 IronPort Product(s). Customer shall not report Software bugs to IronPort 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 IronPort shall cooperate in attempting to replicate and resolve related Software bugs in either Customer's or IronPort'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 IronPort before seeking further resolution with IronPort'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. IronPort designates Maintenance Releases as a change in the digits to the right of the tenth 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. IronPort 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. IronPort designates Minor releases as a change in the tenths digit of the Software version number [x.(x).x].

Network means a set of interconnected and interworking IronPort supported Hardware and Software that is implemented, operated, and supported by Customer from a single security operations center (SOC).

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

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

Product means IronPort Hardware and Software products that are made generally available.

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

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

RMA means Return Material Authorization.

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

Services means one or more of the services options selected by the Customer in its Purchase Order and described at:

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 provided to Customer by IronPort, including any copies, Updates, upgrades, modifications, enhancements, and any derivative works thereof.

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, on Business Days for case handling of calls.

Statement of Work or SOW means the documents agreed upon by the parties that define the Services and Deliverables, if any, to be provided by IronPort to Customer.

Technical Support Services means Services that provide both essential proactive and reactive operation and maintenance support Services identified as Technical Support Services at:

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

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

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

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

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

Exhibit #3
**IRONPORT HYBRID EMAIL MASTER SERVICES
AGREEMENT**

MASTER SERVICES AGREEMENT
Cisco IronPort Systems LLC

This Agreement is entered into between Cisco IronPort Systems LLC ("IronPort"), a Delaware limited liability company, having its principal place of business at 950 Elm Ave., San Bruno, California, 94066 and _____, a _____ corporation ("Customer") having its principal place of business at _____, United States, and is entered into as of the date of last signature below (the "Effective Date").

This Agreement consists of (i) this signature page, (ii) the Master Services Agreement Terms and Conditions (including the Exhibits) and (iii) the Product and Services Descriptions of the Products and/or Services Customer has elected to purchase, which are incorporated in this Agreement by this reference.

Customer may purchase the Services from an authorized IronPort Reseller. In the event that Customer purchases the Services from an authorized IronPort Reseller, Sections 2(a), 3, 4, 5-6 and 7(b) will not apply.

The parties have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below are on the date of signature authorized to execute this Agreement.

Cisco IronPort Systems LLC	
("Customer")	("IronPort")
Authorized Signature	Authorized Signature
Print Name	Print Name
Title	Title
Date	Date

MASTER SERVICES AGREEMENT - TERMS AND CONDITIONS

1. **Definitions** are those set out in the Glossary of Terms at the end of the Agreement.
2. **Scope.** This Agreement describes the terms and conditions for (a) Purchases from IronPort by Customer of Services, and (b) delivery by IronPort of the Services according to the options ordered by Customer or otherwise provided by IronPort to Customer. IronPort will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid (ii) a valid Software license has been granted and (iii) Customer provides information reasonably requested by IronPort including, but not limited to, site location(s), contract number, and Product/Service requested.
3. **Orders.** Customer shall, upon and subject to credit approval by IronPort, purchase Services by issuing a Purchase Order. Each Purchase Order must be signed, if requested by IronPort, or (in the case of electronic transmission) sent, by an authorized representative, indicating the specific Services, quantity, price, total purchase price, bill-to address, tax-exempt certifications, if applicable, contract reference if any, and any other special instructions. No contingency contained on any Purchase Order shall be binding upon IronPort. The terms of this Agreement shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to IronPort, and any such additional or conflicting terms are deemed rejected by IronPort.
4. **Pricing.** Prices for Services shall be (a) those specified in IronPort's then current Price List less any applicable then-current discount at the time of acceptance of the Purchase Order by IronPort, or (b) those set forth in a written price quotation submitted by IronPort. All stated prices are exclusive of any taxes, fees and duties or other amounts. 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. IronPort reserves the right to gross up any Service fee in the event a withholding prevents IronPort from receiving the amount of the Price List less the applicable discount.
5. **Payment.** Upon and subject to credit approval by IronPort, payment terms shall be net thirty (30) days from the date of invoice. Unless otherwise agreed by IronPort, all payments shall be made in the currency used by the IronPort entity with which Customer has placed its Purchase Order. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of

(a) ten (10) per cent per annum, or (b) the maximum rate permitted by law, whichever is less.

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

7. Term and Termination.

(a) The term of this Agreement shall commence on the Effective Date and shall continue for a period of one year. Such term will be renewed automatically for successive one year terms unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.

(b) (a) The term of the Services shall commence on the date set forth on the Purchase Order, which may be up to sixty (60) days following the date of Purchase Order acceptance by IronPort. Upon the expiration of the initial Services term, the Services shall be renewed automatically for successive one year terms provided that the start date for the renewal term occurs prior to the termination or expiration of the WSCA Master Agreement, unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.

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(c) (b) The term of each SOW, if any, shall be stated in the SOW.

(d) This Agreement and the Services or SOW may be terminated immediately by either party upon written notice:

- (i) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching party if the breaching party fails to cure such breach within such period.
- (ii) if: (a) the other party ceases to carry on business as a going concern; or (b) the other party becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation; or (c) a receiver or similar officer is appointed with respect to the whole or a substantial part of the other party's assets; or (d) an event similar to any of the foregoing occurs under

- applicable law with respect to the other party.
- (ii) if the other party assigns or transfers any of the rights or responsibilities granted under this Agreement or SOW in breach of Section
- (e) If Services undisputed fees are not paid when due and payment has not been received within thirty (30) days after notice from IronPort of such past due payment, IronPort may withhold the provision of Services until all amounts past due are paid in full, and/or terminate immediately this Agreement, the Services and SOW.
- (f) IronPort 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 Services and SOWs. If Customer does not agree to a change of scope or content, Customer may terminate any Services or SOW by notifying IronPort at least sixty (60) days prior to the expiration of the then current one year term of the Services or SOW. In such case, IronPort shall continue to provide Services until the next expiration date (see Section 7(b), above) of the affected Services or SOW.
- (g) In the event that, following termination or expiration of this Agreement, Customer places Purchase Orders and IronPort accepts such Purchase Orders, then any such Purchase Orders shall be governed by the terms and conditions of this Agreement notwithstanding the earlier expiration or termination of this Agreement; provided, however, that acceptance by IronPort of any such Purchase Order will not be considered to be an extension of the term of the Agreement nor a renewal thereof. The Services and any SOW hereunder, to the extent the work performed is executory on the date of termination, shall terminate immediately upon termination of the Agreement, unless otherwise agreed by IronPort.
- (h) Upon termination of the Agreement, any Services or SOWs, Customer shall pay IronPort for all work performed under the affected Purchase Order or SOWs up to the effective date of termination at the agreed upon prices, fees and expense reimbursement rates.

8. Confidentiality. Customer

and IronPort agree that in connection with this Agreement and their relationship, they may obtain Confidential Information. The receiving party shall at all times keep in trust and confidence all such

Confidential Information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, IronPort shall be authorized to disclose Customer's Confidential Information to contractors or employees of an IronPort entity or Affiliate who have a legitimate business need to have access to such information. The receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration at any time and for any reason of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure. For the purposes of this Section 8, an "Affiliate" is an entity controlling, controlled by or under common control with IronPort.

Neither party shall disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other party. Any press release or publication regarding this Agreement is subject to prior review and written approval of the parties.

9.5. Warranty.

9.5.1 ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, IRONPORT 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, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, 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 IRONPORT'S OPTION, RE-PERFORMANCE OF THE SERVICES; OR TERMINATION OF THIS AGREEMENT OR SOW AND RETURN OF THE PORTION OF THE SERVICE FEES PAID TO IRONPORT BY CUSTOMER FOR SUCH NON-COMFORMING SERVICES.

9.2 GENERAL DISCLAIMER FOR ALL SERVICES.

ANY WARRANTIES AND RELATED REMEDIES IN THIS SECTION 9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 9 SHALL APPLY EVEN IF THE EXPRESS WARRANTIES AND LIMITED REMEDIES SET FORTH IN THIS SECTION 9 FAIL OF THEIR ESSENTIAL PURPOSE. IN ANY EVENT, THE WARRANTIES PROVIDED UNDER THIS AGREEMENT ARE SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

9.3 BECAUSE OF THE CONTINUOUS EVOLUTION OF THE SOPHISTICATION OF NETWORK THREATS AND INFRASTRUCTURE TECHNOLOGIES, IRONPORT DOES NOT MAKE, AND IT IS ACKNOWLEDGED THAT IRONPORT CANNOT MAKE ANY WARRANTY OR REPRESENTATION THAT ANY SYSTEM ATTACK OR IMPACTING INCIDENT WILL BE DETECTED OR PREVENTED.

9.4 CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT DESIGNED OR INTENDED BY IRONPORT FOR USE OR RESALE IN, OR FOR INCORPORATION INTO PRODUCTS OR SERVICES USED IN HIGH RISK ACTIVITIES. IRONPORT SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND WITH RESPECT TO THE USE OF THE SERVICES IN CONNECTION WITH ANY HIGH RISK ACTIVITY.

8. Limitation of Liability and Consequential Damages Waiver.

ALL LIABILITY OF IRONPORT, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER ARISING SHALL BE

LIMITED TO THE GREATER OF (I) THE MONEY PAID TO IRONPORT FOR SERVICES UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY OR (II) THE AMOUNT OF FEES EQUAL TO THE UNEXPIRED REMAINDER OF THE PRE-PAID SERVICE TERM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

SUBJECT TO CUSTOMER'S BREACH OF SECTION (LICENSE), IN NO EVENT SHALL EITHER PARTY, ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

9. Lenses. Subject to Customer's compliance with the terms of this Agreement, any applicable AS Service Description or SOW, and the End User Agreement, attached to this Agreement, IronPort grants to Customer a worldwide, non-exclusive and non-transferable license to use, for Customer's internal business use only: (i) the Services; (ii) other Deliverables specified in an applicable AS Service Description or SOW, if any, and (iii) Data Collection Tools, if any (collectively and individually, the "*Licensed Materials*"). In addition, IronPort grants to Customer a right to modify and create derivative works of any Scripts provided by IronPort to Customer pursuant to this Agreement, solely for Customer's internal business use. These license grants do not include the right to sublicense; provided that Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials solely on Customer's behalf for Customer's benefit, provided that Customer ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of IronPort's rights in such Licensed Materials as are specified in this Agreement.

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Nothing in this Agreement, any AS Service Description or any SOW shall alter or affect the Intellectual Property rights and/or licenses provided with any IronPort Products. The terms and conditions provided with the Services ("End User Agreement"), are hereby incorporated into this Agreement by this reference. To the extent there is a conflict between the terms of the End User Agreement attached to this Agreement and the remaining body of this Agreement, the terms of the End User Agreement shall apply, unless explicitly stated otherwise in the remaining

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body of this Agreement. The provisions in this Section apply only to those Services and Deliverables and other Intellectual Property provided by IronPort to Customer.

Except as otherwise expressly set forth in this Agreement or an applicable SOW, Customer shall not (and shall not permit a third party to): make error corrections or derivative works of, or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Deliverable, Data Collection Tool or the Services to human-readable form; or transfer, sublicense, rent, lease, distribute, or sell, any Services, Deliverables or Data Collection Tools. Customer agrees that it receives no implied licenses under this Agreement, and all rights not expressly granted herein are reserved to IronPort.

Customer hereby grants to IronPort a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback (as defined below) to use and incorporate Customer Feedback into any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute and create derivative works of such Customer Feedback for any and all purposes whatsoever, and Customer acknowledges and agrees that it will obtain no rights in or to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology as a result of IronPort's use of any such Customer Feedback. For purposes of this Agreement, "Customer Feedback" means all oral or written communications regarding improvements or changes to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology that Customer provides to IronPort.

10. Customer Responsibilities.

In performing the Services, IronPort may instruct the Customer to perform certain tasks or checks relating to Customer's Network. Customer shall, at its expense, perform all such checks and tests. Customer will also provide IronPort, or its authorized representative, reasonable and free access to Customer's networking equipment. Customer shall not be required to furnish specialized equipment or know-how. Customer agrees to pay IronPort, at IronPort's then-current discounted contract rates, plus any reasonable actual out-of-pocket expenses, for any rework or additional work resulting from modification of the Services requested by Customer (and accepted by IronPort) or any act or omission of Customer, including providing inaccurate information to IronPort. IronPort shall seek Customer's approval in advance of incurring such costs if it knows costs will be incurred as a result of such act or omission of Customer.

Customer is responsible for obtaining all approvals required by any third parties in order for IronPort to

perform any Service under this Agreement. IronPort shall not be in default of this Agreement to the extent it cannot perform the Services either because such approvals have not been obtained or any third party otherwise prevents IronPort from performing such Services.

Customer agrees that it shall not resell the Product and/or Services or create or offer derivative versions of the Services either directly or through a third party.

CUSTOMER ASSUMES FULL RESPONSIBILITY FOR THE CONTROL AND USE OF THE DATA CONTAINED IN ANY REPORTS PROVIDED BY IRONPORT HEREUNDER. CUSTOMER ACKNOWLEDGES THE POTENTIAL PRIVACY AND OTHER ISSUES ASSOCIATED WITH THE COLLECTION AND USE OF THIS DATA.

CUSTOMER ASSUMES FULL RESPONSIBILITY TO BACK-UP AND/OR OTHERWISE PROTECT ALL DATA AGAINST LOSS, DAMAGE, OR DESTRUCTION. CUSTOMER ACKNOWLEDGES THAT IT HAS BEEN ADVISED TO BACK-UP AND/OR OTHERWISE PROTECT ALL DATA AGAINST LOSS, DAMAGE OR DESTRUCTION.

THE FAILURE OF CUSTOMER TO COMPLY WITH THIS SECTION 10.8 MAY BE DEEMED A MATERIAL BREACH OF THIS AGREEMENT.

11. Ownership. Each party will retain the exclusive ownership of all its pre-existing Intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to commencement of any Services hereunder, or that are otherwise developed by or for such party outside the scope of this Agreement ("Pre-Existing Technology").

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Except as otherwise expressly set forth in this Agreement or an applicable SOW, IronPort owns and will continue to own all right, title and interest in and to the Hardware, Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by IronPort (or a third party acting on IronPort's behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing (collectively, "IronPort Intellectual Property").

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As between Customer and IronPort, Customer shall at all times retain all right, title and interest in and to all of Customer's Pre-Existing Technology and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter, other than IronPort Intellectual Property. Third Party Products shall at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

12. Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, industry wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

13. Applicable Law and Jurisdiction. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal Courts of California shall have exclusive jurisdiction over any claim arising under this Agreement. Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.

The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

14. Export Control. Customer shall comply with such laws and regulations governing the export, re-export, and transfer of IronPort Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses.

15. Assignment. Neither party may assign or delegate its rights or obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed; provided that any such assignment shall not relieve the assigning entity of any obligation to pay monies that were owed prior to the date of the assignment. Notwithstanding the foregoing, (a) either party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to its parent or majority-owned subsidiary company of sufficient net worth to meet any potential

liability under this Agreement, and (b) IronPort may, without Customer's consent, assign the right to receive any amount due.

16. Subcontracting. IronPort reserves the right to subcontract Services to a third party organization to provide Services to Customer. Any such subcontract shall not relieve IronPort of any of its obligations under this Agreement.

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17. 10. Inventory Review. From time-to-time, IronPort may perform an inventory review of Customer's infrastructure. IronPort 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, attorneys' and audit fees. IronPort 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.

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18. Notices. All notices required or permitted under this Agreement will be in writing and will be deemed given one 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 IronPort.com or by a mail or fax.

19. Entire Agreement. This Agreement 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.

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20. 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.

21. 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.

22. 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, and other professionals 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.

23. 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.

24. 11. 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.

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25. 12. Headings. Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.

26. 13. Survival. Sections set forth directly herein or incorporated from the WSCA Master Agreement, including: (Payment), (Term and Termination), (Confidentiality), (Warranty), (Limitation of Liability and Consequential Damages Waiver), (License), 13 (Ownership), 14 (Force Majeure), 15 (Applicable Law and Jurisdiction), 16 (Export Control), 19 (Inventory Review), 20 (Notices), 21 (Entire Agreement), 22 (No Waiver), 23 (Severability), 24 (Attorneys' Fees), 25 (No Agency), 28 (Survival), the Glossary of Terms and the Services-Not-

EXHIBIT A
GLOSSARY OF TERMS

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

Advanced Services means the Services set forth in the AS Service Description(s) found at and/or SOW(s) selected by the Customer. Advanced Services does not include IronPort's core maintenance services, nor does it apply to the purchase, support or maintenance of any Products.

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

AS Service Descriptions mean the description of the Advanced Services available from IronPort, which are attached hereto.

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

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

IronPort.com () is the IronPort Website for its suite of online services and information.

Confidential Information means proprietary and confidential Information received by IronPort or Customer from the other party in connection with this 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 IronPort, any information posted on IronPort.com.

Customer means the entity purchasing Services for its own internal use.

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

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

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

Direct Purchases means purchases of Services by Customer directly from IronPort.

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

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.

Four-hour Response means:

- (i) For Advance Replacement Service, the four-hour time period commences upon the IronPort problem diagnosis and determination that a field replacement unit (FRU) is required and ends when the FRU is delivered onsite.

- (ii) For onsite service, the four-hour time period commences upon the IronPort problem diagnosis and determination that remedial onsite service is required and ends when IronPort personnel arrive onsite.

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

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

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

Level 1 means support that is defined as having the necessary technical staff (IronPort or IronPort-authorized Reseller) with appropriate skill, perform installations, Remedial Hardware Maintenance, and basic Hardware and Software configuration on IronPort 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 IronPort Product(s). Customer shall not report Software bugs to IronPort 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 IronPort shall cooperate in attempting to replicate and resolve related Software bugs in either Customer's or IronPort'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 IronPort before seeking further resolution with IronPort'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. IronPort 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. IronPort 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. IronPort designates Minor releases as a change in the tenths digit of the Software version number [x.(x).x].

Network means a set of interconnected and interworking IronPort supported Hardware and Software that is implemented, operated, and supported by Customer from a single security operations center (SOC).

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

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

Product means IronPort Hardware and Software products that are made generally available.

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

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

RMA means Return Material Authorization.

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

Services means one or more of the services options selected by the Customer in its Purchase Order and described at:

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 provided to Customer by IronPort, including any copies, Updates, upgrades, modifications, enhancements, and any derivative works thereof.

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, on Business Days for ease handling of calls.

Statement of Work or SOW means the documents agreed upon by the parties that define the Services and Deliverables, if any, to be provided by IronPort to Customer.

Technical Support Services means Services that provide both essential proactive and reactive operation and maintenance support Services identified as Technical Support Services at.

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

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

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

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

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

EXHIBIT B

CISCO IRONPORT SEVERITY AND ESCALATION GUIDELINES

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

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

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

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

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

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

Cisco IronPort Escalation Guideline

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

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

EXHIBIT C
SERVICES NOT COVERED

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

1. Services are only provided for generally available Products and Software releases/versions, unless agreed otherwise.
2. Any customization of, or labor to install, Software and Hardware (including installation of Updates).
3. Furnishing of supplies, accessories or the replacement of expendable parts (e.g., cables, blower assemblies, power cords, and rack mounting kits).
4. Electrical or site work external to the Products.
5. Any expenses incurred to visit End User's location, except as required during escalation of problems by IronPort.
6. Services performed at domestic residences.
7. Support or replacement of Product that is altered, modified, mishandled, destroyed or damaged by one or more of the following: (a) natural causes; (b) environmental failures; (c) your failure to take any required actions; (d) a negligent or wilful act or omission by you or use by you other than as specified in the applicable IronPort-supplied documentation; or (e) an act or omission of a third party.
8. Services or software to resolve Software or Hardware problems resulting from third party product or causes beyond IronPort's control or failure to perform your responsibilities set out in this document.
9. Services for non-IronPort Products used in connection with IronPort Products and/or Services.
10. Any Hardware or third party product upgrade required to run new or updated Software.
11. Erasure or other removal of any customer or third party data on Products (or parts thereof) returned, repaired or otherwise handled by IronPort.
12. Additional Services are provided at the then-current time and materials rates.
13. Except as otherwise agreed, Software entitlement, including media, documentation, binary code, source code or access in electronic or other form is not provided. In addition, except as otherwise provided, no right, use or license to our Software is granted and you acknowledge and agree that you obtain no such rights.

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

Comment [IT1]: OPEN: Get the content link here.

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

Exhibit D
Product Description

Capitalized terms used in this Exhibit D, unless otherwise defined herein, have the meanings ascribed to them in the Agreement.

Products Table

Description of Product and Services

Customer will receive the Cisco IronPort Hybrid Hosted Email Service for the number of users set forth on the Products Table set forth above.

Cisco IronPort Hybrid Hosted Email Security includes the following two components

- o Hosted Email Security - delivered through hardware and software deployed in Cisco data centers as set forth in Exhibit E
- o On-Premise Email Security – delivered through Cisco IronPort appliances and software deployed on-site at customer's premises or in customer data center as set forth in Exhibit F

The Hosted Email Security component includes

1. Hardware infrastructure powered by Cisco IronPort technology
2. 24x7 Monitoring, Management and Support

The On-Premise Email Security component includes

1. Cisco IronPort email security appliances
2. 24x7 Support for the Cisco IronPort appliances and software

Customer may activate (provided applicable fees are paid) the Cisco IronPort software listed below:

1. IronPort Anti-Spam Software
2. IronPort Virus Outbreak Filters
3. Sophos Anti-Virus Software
4. McAfee Anti-Virus Software
5. IronPort PXE Encryption Software

Order and Fulfillment

Customer may purchase the Cisco IronPort Hybrid Hosted Email Service for its own internal use either directly or through an authorized reseller of Cisco IronPort products.

Customer Responsibilities

Customer:

1. is responsible for using reasonable efforts to resolve internally any support questions prior to contacting Cisco IronPort;
2. is responsible for reporting any and all Errors promptly in writing in English;
3. is responsible for providing sufficient information to Cisco IronPort to enable Cisco IronPort to duplicate the circumstances indicating a reported Software defect or Error;
4. is responsible for promptly incorporate the bug fixes, patches, updates, upgrades, releases and new versions provided hereunder (On-Premise Email Security component only);

5. is responsible for providing technical information as may be required by Cisco IronPort Systems Engineers or Cisco Security Analysts, including but not limited to IP addresses for Customer's existing solution;

6. is responsible for implementing and using strong passwords for accessing Cisco IronPort dedicated infrastructure and the Cisco IronPort Hybrid Hosted Email Security portal;

The following are common guidelines for choosing strong passwords. These are designed to make passwords less easily discovered by intelligent guessing:

- *Include numbers, symbols, upper and lowercase letters in passwords*
- *Password length should be around 12 to 14 characters*
- *Avoid any password based on repetition, dictionary words, letter or number sequences, usernames, relative or pet names, or biographical information (e.g., dates, ID numbers, ancestors names or dates...)*

7. is responsible for any catastrophic security events that result from any unauthorized configuration of the Cisco IronPort Hybrid Hosted Email Service components by the Customer's personnel. These include, but are not limited to, configuring the Hybrid Hosted Email Service components in a manner not prescribed in the Documentation, creating an open relay, changing the network configuration set by Cisco IronPort, shutting down the dedicated infrastructure, etc;

8. or Customer designated personnel must not change the password for Cisco IronPort support services or delete the Cisco support user ID;

9. must not use the Cisco IronPort Hybrid Hosted Email Service to send spam, viruses or mal-ware;

10. agrees and acknowledges that, during the term of this Agreement, Cisco IronPort may obtain information regarding Customer's email communication and Customer agrees that, as a condition to entering into this Agreement and Cisco IronPort's commitment to providing the Hybrid Hosted Email Service, Cisco IronPort may use statistical data generated regarding Customer's email, so long as the source or content of the emails are not being disclosed.

11. agrees and acknowledges that Cisco IronPort reserves the right to shut down the Cisco IronPort Hybrid Hosted Email Service in the event that the Customer materially breaches the Agreement or does not comply with Customer's obligations set forth in this section entitled, "Customer Obligations".

Ownership

Cisco IronPort and/or its parent company will retain ownership, as applicable, of the following hardware used as part of providing Cisco IronPort Hybrid Hosted Email Security service:

1. Hardware infrastructure used in the Cisco IronPort data center as part of the Hosted Email Security component of the Cisco IronPort Hybrid Hosted Email Security
2. Cisco IronPort appliances provided as part of the On-Premise Security component of the Cisco IronPort Hybrid Hosted Email Security
3. If Customer already possesses title to Cisco IronPort appliances, then it shall retain title to such existing Cisco IronPort appliances.

Product Support and Maintenance

As long as Customer is current on all applicable fees, Cisco IronPort will:

- (i) Provide the services set forth in the Service Description and the Support and Maintenance Description set forth in Exhibit E and Exhibit F, respectively.
- (ii) Provide all software patches, updates and releases commercially released by Cisco IronPort;
- (iii) Resolve technical problems identified within Cisco IronPort's products. Cisco IronPort does not provide technical support for any third-party hardware or software not purchased and/or authorized by Cisco IronPort;
- (iv) Provide remote diagnostics and analysis of your dedicated infrastructure;

- (v) Back-up the Customer's configuration. (Hosted Email Security Component Only) *
- (vi) Provide 24 x 7 access to all of our Documentation and our Knowledge Base; and
- (vii) Provide 24 x 7 access to Cisco Remote Management Services for Cisco IronPort Hybrid Hosted Email Service.

*Any passwords stored in the configuration will be stored in text format.

Capacity Assurance

- A. As long as Customer is current on all applicable fees, Cisco IronPort will, in its sole and reasonable discretion, provide additional capacity to handle an increase in spam volumes and inbound email for _____ number of users. The capacity assurance spans both the Hosted Email Security component and on-premise component of the Cisco IronPort Hybrid Hosted Email Security.

- a. *Hosted Email Security component*

Capacity assurance for the hosted component will include capacity to handle an increase in spam volumes and inbound email.

- b. *On-Premises component*

Capacity assurance for the on-premise component will include capacity required to handle an increase in user generated outbound mail volume as well as legitimate inbound email volumes.

- B. Exceptions that apply to both the hosted and on-premise components include

- o Capacity requirements placed on the system due to misconfigured, ill-formed or performance intensive activities that include but are not limited to body-scanning, content dictionaries, high number of TLS connections, etc.
 - o Capacity needs placed on the system due to new requirements placed on the system due to a changing regulatory scheme or business environment.
 - o Capacity needs placed on the system from non-users. This includes but is not limited to marketing communications, customer's customers, email generating program or entity, etc.
 - o An increase in email volume from marketing campaigns and other events that are not part of the Customer's day-to-day operations.

Cisco IronPort will use its commercially reasonable efforts to provide capacity for events that were unforeseen by the Customer.

Scheduled Maintenance (Hosted Email Security Component Only)

From time-to-time, Cisco IronPort performs scheduled maintenance, to update the servers (Cisco IronPort and third-party servers at the datacenter(s)) and software that are part of the Cisco IronPort Hybrid Hosted Email Service. Cisco IronPort will make all reasonable attempts to: (i) notify Customer at least 48 hours in advance of any planned downtime or scheduled maintenance; and (ii) perform scheduled maintenance between 6:00 pm to 10:00 pm PST every Thursday. Notwithstanding the foregoing, Customer acknowledges that Cisco IronPort may, in certain situations, need to perform critical maintenance on less than 48 hour advance notice.

Exhibit E
Service Description

The Service Description is available at the following link:
http://www.cisco.com/legal/Cisco_IronPort_Hosted_Email_Security.pdf

Exhibit F
On-Premises Appliance Platinum Support Description

Cisco IronPort Hybrid Hosted Email Security

Platinum Support for On-Premise Appliances

OVERVIEW

The Platinum Support Program for Cisco IronPort Hybrid Hosted Email Security offers a comprehensive array of support services to assist customers with the administration and maintenance of their on-premise Cisco IronPort appliances. This program includes 24 x 7 access to Customer Support Engineers through the Cisco Remote Operations Services (ROS) Service Desk and access to our online ROS Web Portal complete with its expansive knowledge base, the latest product documentation, release notes, and ticket management tools. The Platinum Support Program for Hybrid Hosted Email Security provides the benefit of a 1 hour response time and a 4 hour mean time to complete (MTTC) for Priority 1 support requests.

HYBRID HOSTED ON-PREM SUPPORT FEATURES

SUPPORT REQUESTS	Phone	24 X 7
	US Toll Free	+1.800.234.9034
	ROS Web Portal	24 X 7
	URL	https://ros.cisco.com/portal

TECHNICAL SUPPORT FOR ON-PREMISE APPLIANCES

Response Times 1 Hour

Mean Time to Complete (MTTC) Priority Level 1: <4 Hours
Priority Level 2: 24 Hours
Priority Level 3: 72 Hours

ON-PREMISE HARDWARE AND SOFTWARE SUPPORT

Software Upgrade Notifications We will notify you of periodic system modifications and software upgrades that apply to your specific on-premise systems.

Field Upgrades You can upgrade your on-premise appliances to the most recent software release at your convenience, by following the easy-to-use instructions in our upgrade notifications.*

Remote Diagnostics Upon your request your ticket could be escalated to a Cisco IronPort specialist who can perform remote diagnostics and analysis of your on-premise appliances.

Hardware Support In the unlikely event of an on-premise hardware malfunction, we will provide field hot-swappable replacement parts or units as well as installation instructions, as required by the nature of the issue.**

*Some restrictions may apply.

**Our shipments are scheduled to arrive at your site the next business day by 10:30 AM local time. Delivery schedule may vary for international shipments.

ONLINE RESOURCES

Documentation 24 X 7 access to documentation posted in our online ROS Web Portal allows you to become familiar with our products and support at your convenience. Documentation includes product information and manuals.

Knowledge Base 24 X 7 access to our knowledge base in our online ROS Web Portal allows you to research common technical issues at your convenience.

Ticket Management 24 X 7 access to support in our online ROS Web Portal allows you to open new service request tickets as well as update and view recent tickets.

DETAILS

GENERAL SUPPORT TERMS

- As long as customer is current on all applicable fees, Cisco IronPort Hybrid Hosted Email Security provides a subscription to software patches, updates, releases and new versions commercially released by Cisco IronPort at no charge that correspond to the currently shipped version of the on-premise products purchased.
- Ticket categorization, priority assignment, and escalation and tracking will be handled as all tickets received from customers with active support agreements are handled, which is consistent with Cisco ROS standard categorization, priority assignment, escalation and tracking procedures.

SCOPE OF SUPPORT

The Platinum Support Program for Cisco IronPort Hybrid Hosted Email Security specifically supports resolution of technical problems identified within Cisco IronPort's products at customer premises. This support program does not provide technical support for third-party hardware. This support program will, however, provide support for Sophos Anti-Virus software included with the Hybrid Hosted platform.

ON-PREMISE SUPPORT TICKET PROCESSES

Cisco IronPort is dedicated to providing a superior Customer Support experience. Our ticket and escalation processes enable us to deliver an unforgettable service experience to all of our customers through a systematic approach. We leverage ticket priority combined with Service Level Objectives (SLO) and escalation process to ensure effective problem resolution. These components are described below.

Ticket Priority Level Definitions

Ticket priority level definitions are used to assist in the prioritization of handling Customer Support tickets. Below is the guide on the various priority levels.

Priority Level	Application/ Application Status	Impact on Business Operations	Issue Description
Priority 1: Critical	Down	Severe	Operation Stopped
Priority 2: High	Up	Significant	Operation Restricted
Priority 3: Medium	Up	Minor	Workaround available

Service Level Objectives

Cisco IronPort Hybrid Hosted Email Security support team follows service level objectives according to the priority of your Service Request ticket for the appliances deployed on the customer premise. Our SLOs provide a basis for timely responses.

SLO Name	SLO Detail	SLO Targets
Response Time	Time to respond to customer*	Priority 1 <1 Hour Priority 2 <4 Hours Priority 3 <1 Day
Mean Time to Complete (MTTC)	Complete Customer-initiated Service Requests within X hours	Priority 1 <4 Hours Priority 2 <1 Day Priority 3 <3 Days

*Customer is contacted by e-mail, web, or phone to gather additional information about the ticket and determine the necessary steps to reproduce the issue.

Escalation Process

Cisco IronPort in collaboration with the Cisco ROS' Service Desk has a structured escalation process that ensures the appropriate support engineers are assigned to respond to tickets efficiently and effectively. Escalations will be primarily driven by elapsed time against Service Level Objectives (SLOs) ensuring effective routing of tickets to appropriate Cisco Security Operations Center (SOC) technical resources. Tickets will be escalated as needed by the Cisco SOC to Cisco IronPort Customer Support Engineers to ensure SLOs are met.

Exhibit G
Service Level Agreements



Uptime Service Level Agreement

As long as Customer has paid all applicable fees, Cisco IronPort will, in addition to the Service Level Objectives and Processes set forth in the Service Description, provide the following:

A. The Cisco IronPort Hosted Email Service will accept connections on Port 25 and process email at least 99.999% over a trailing one-year period. Uptime is determined by dividing the total number of minutes the Service was processing email divided by the number of minutes in a one year period or 525,600 minutes. Downtime must exceed 30 seconds per occurrence before it is an infraction. An infraction is limited to a single incident, whereby separate downtime occurrences cannot be aggregated. Uptime is determined and validated by an industry-recognized 3rd party monitoring service that performs service-level checks from various locations on the global internet.

B. Exceptions

- o Excludes downtime resulting from Planned Downtime activities which include
 - 1. Hardware upgrades
 - 2. Customer requested or Cisco/IronPort initiated software upgrades
 - 3. Any customer specific activity including moves, facility upgrades, etc.
- "*Planned Downtime*" is defined as the downtime that results from a scheduled maintenance period that was announced in advance (for activities like upgrades, updates, etc.) Cisco IronPort will make all reasonable attempts to: (i) notify Customer at least 24 hours in advance of any Planned Downtime and (ii) perform scheduled maintenance is performed 6:00 pm to 10:00 pm PST every Thursday. Notwithstanding the foregoing, Customer acknowledges that Cisco IronPort may, in certain situations, need to perform critical maintenance on less than 24 hour advance notice.
- o Excludes downtime resulting from hardware, software or other data center equipment or services not in the control of Cisco IronPort or within the scope of the Cisco IronPort Hosted Email Service
- o Does not include uptime of other Services, including CASE updates, AV updates from IronPort partners and the SenderBase service
- o Excludes any downtime resulting from hardware or software configuration changes made by the Customer
- o Excludes downtime resulting from Denial of Service attacks on the installed appliances or ancillary services like SenderBase, etc.
- o Excludes downtime resulting from any event contemplated in Section 14 of the Agreement (Force Majeure Event)

C. Remedy

If Customer experiences a downtime infraction (subject to the provisions set forth in Section(B), and Customer has fulfilled all of its obligations under the Agreement (including the obligations set forth in this Exhibit), then the Customer will be entitled to the applicable rebate (as set forth in the table below) as its sole and exclusive remedy:

Mailbox Count:	1000+	2000+	5000+	10000+	20000+
Actual Uptime < 99.999%	\$125	\$200	\$300	\$500	\$1,000

Customer may only make a total of two (2) claims of a downtime occurrence within a rolling three hundred sixty-five (365) day period. If Customer experiences three (3) or more downtime occurrences within a rolling three hundred sixty-five (365) day period, Cisco IronPort and Customer will come to a written agreement, within thirty (30) days of Customer providing notice of such occurrence, on the next course of action. If Customer experiences a downtime infraction more than five (5) times a year for a service and IronPort fails to provide a reasonable written plan of

permanent corrective action to customer within a 30 day time frame after the fifth occurrence, then customer shall have the right to cancel service at no cost or obligation and financial responsibility for any future payments.

D. Customer Responsibilities

- o Customer must provide notice within thirty (30) days of the downtime occurrence
- o Customer must provide timeframe details of the downtime occurrence, any correlated Cisco ROS ticket numbers, and, if available, pings and trace routes showing that the device was not available on the network
- o Customer must provide confirmation, if possible, that there were:
 1. No network failures at the customer site either internal or external at the time of the occurrence
 2. No Customer implemented changes that adversely affected the system availability or made the system to cause delays (excepting any changes requested by Cisco IronPort)
 3. No material delay in responding to warnings raised by Cisco IronPort generally, or specifically related to the incidence of downtime

Failure to comply with this Section (D) will result in a forfeit of Customer's right to the remedy set forth in Section (C) above.



Anti-Spam Service Level Agreement

As long as Customer has paid all applicable fees, Cisco IronPort will, in addition to the Service Level Objectives and Processes set forth in the Service Description, provide the following:

A. The Cisco IronPort Hosted Email Service will detect and stop at least 99% of all inbound Spam that is routed through the Service. The "**Spam Catch Rate**" is determined by dividing Caught Spam by the sum of the Caught Spam and the number of Missed Spam, during a trailing thirty (30) day period.

B. Exceptions

- o Marketing emails with opt-out provisions will not be counted in the missed spam calculation.
- o Messages that include sexually explicit, pornographic or inappropriate content will not be counted in the missed spam calculation.

C. Remedy

If Customer experiences a Spam Catch Rate equal to less than the amount set forth in Section (A) and subject to Section (B), and Customer has fulfilled all of its obligations under the Agreement (including the obligations set forth in this Exhibit), then the Customer will be entitled to the applicable rebate (as set forth in the table below) as its sole and exclusive remedy:

Mailbox Count	<1,000	1,000 - 2,000	2,000 - 3,000	3,000 - 10,000	>10,000
Anti-Spam	\$500	\$1,000	\$2,000	\$3,000	\$5,000

Within any given three hundred sixty-five (365) day period, Customer may only make a total of two (2) claims that the Anti-Spam Service Level Agreement is not being met. If Customer experiences three (3) or more occurrences within a rolling three hundred sixty-five (365) day period, that the Anti-Spam Service Level Agreement is not being met, Cisco IronPort and Customer will come to a written agreement, within thirty (30) days of Customer providing notice of such occurrence, on the next course of action.

D. Customer Responsibilities

- o Customer must provide notice within thirty (30) days of the date the claim arises.
- o Customer must have SenderBase reputation filters enabled at default levels (blocking from -10 to -3) or more aggressive.
- o Customer must have the reputation messages per connection multiplier set to the default value (3).
- o Customer must have IronPort Anti-Spam block settings at the default value (90) or more aggressive.
- o Customer must have IronPort Anti-Spam quarantine enabled with settings at default (50) or more aggressive.
- o Customer must have SenderBase Network Participation enabled.
- o Customer must be able to provide copies of missed spam to Cisco IronPort upon request.
- o Customer must provide the domains covered by the service, the number of mailboxes and the incoming mail report for the last 30 days.

Failure to comply with this Section (D) will result in a forfeit of Customer's right to the remedy set forth in Section (C) above.

E. Definitions

"Spam" is unsolicited or unauthorized bulk email (SMTP only) as mutually agreed upon by Customer and Cisco, and excludes unwanted marketing messages that include opt-out provisions.

"Caught Spam" is Spam either quarantined; or categorized as a "threat message" in the User Interface.

"Missed Spam" is Spam delivered to an end user's inbox.



False Positive Rate Service Level Agreement

A. The Cisco IronPort Hosted Email Service will not categorize legitimate inbound email as Spam more than one time per one million messages processed. The "*False Positive Rate*" is determined by counting the number of non-Spam messages misclassified as Spam relative to the total attempted messages processed over a trailing thirty (30) day period, as set forth in the User Interface.

B. Exceptions

- o Email messages from legitimate senders whose IP addresses may be compromised due to an unforeseen event will not be counted towards the false positive rate. Cisco IronPort will make a determination in good faith based on its system logs, monitoring reports and configuration records for such email senders.
- o Marketing emails with opt-out provisions will not be counted towards the false positive rate.
- o Messages that include sexually explicit, pornographic or inappropriate content will not be counted towards the false positive rate.

C. Remedy

If Customer experiences a False Positive Rate greater than the rate set forth in Section (A) above and subject to Section (B) above, and Customer has fulfilled all of its obligations under the Agreement (including the obligations set forth in this Exhibit), then the Customer will be entitled to the applicable rebate (as set forth in the table below) as its sole and exclusive remedy:

Million Credit	<1,000	1,000+ <2,000	2,000+ <5,000	5,000+ <10,000	10,000+ <20,000	20,000+
Anti-Spam	\$500	\$1,000	\$2,000	\$3,000	\$5,000	

Within any given three hundred sixty-five (365) day period, Customer may only make a total of two (2) claims that the False Positive Rate Service Level Agreement is not being met. If Customer experiences three (3) or more occurrences within a rolling three hundred sixty-five (365) day period, that the False Positive Rate Service Level Agreement is not being met, Cisco IronPort and Customer will come to a written agreement, within thirty (30) days of Customer providing notice of such occurrence, on the next course of action.

D. Customer Responsibilities

- o Customer must provide notice within thirty (30) days of the date the claim arises.
- o Customer must have SenderBase reputation filters enabled at default levels (blocking from -10 to -3) or more conservative.
- o Customer must have the reputation messages per connection multiplier set to the default value (3).
- o Customer must have IronPort Anti-Spam block settings at the default value (90) or more conservative.
- o Customer must have IronPort Anti-Spam quarantine enabled with settings at default (50) or more conservative. Non-Spam that is quarantined counts as a false positive.
- o Customer must have SenderBase Network Participation enabled.
- o Customer must provide copies of false positive messages to Cisco IronPort.
- o Customer must provide the domains covered by the service, the number of mailboxes and the incoming mail report for the last 30 days. Hybrid hosted customers must enable IronPort Anti-Spam at a minimum in the hosted layer and not on premise.

- o Customers must only enable IronPort Anti-Spam for spam scanning to qualify.

E. Definitions

"Spam" is unsolicited or unauthorized bulk email (SMTP only) as mutually agreed upon by Customer and Cisco, and excludes unwanted marketing messages that include opt-out provisions.

"Caught Spam" is Spam either quarantined; or categorized as a "threat message" in the User Interface.

"Missed Spam" is Spam delivered to an end user's inbox.



Virus Catch Rate Service Level Agreement

A. The Cisco IronPort Hosted Email Service will detect and stop 100% of all Known Viruses that are routed through the Service. A "*Known Virus*" is defined solely by the provider of anti-virus software that is used for a specific message. Known Viruses will be detected and stopped within 30 minutes of when the anti-virus provider releases a signature for the platform.

B. Exceptions

- o Messages that contain a URL to a website hosting malware are not included.

C. Remedy

If Customer experiences a Virus Catch Rate less than the rate set forth in Section (A) above and subject to Section (B) above, and Customer has fulfilled all of its obligations under the Agreement (including the obligations set forth in this Exhibit), then the Customer will be entitled to the applicable rebate (as set forth in the table below) as its sole and exclusive remedy:

Mailbox Count	<1,000	2,000	5,000+	10,000+	20,000+
Anti-Virus	\$400	\$750	\$1,000	\$2,000	\$3,000

Within any given three hundred sixty-five (365) day period, Customer may only make a total of two (2) claims that this Virus Catch Rate Service Level Agreement is not being met. If Customer experiences three (3) or more occurrences within a rolling three hundred sixty-five (365) day period, that this Virus Catch Rate Service Level Agreement is not being met, Cisco IronPort and Customer will come to a written agreement, within thirty (30) days of Customer providing notice of such occurrence, on the next course of action.

D. Customer Responsibilities

- o Customer must provide notice within thirty (30) days of the date the claim arises.
- o Customer must have SenderBase reputation filters enabled at default levels (blocking from -10 to -3) or more aggressive.
- o Customer must have SenderBase Network Participation enabled.
- o Customer must provide copies of all missed Virus-positive messages to Cisco IronPort in a password-protected attachment.
- o Customer must ensure that the message was scanned by the anti-virus engine (e.g. message did not exceed the maximum scanning size limit).
- o Customer must provide the domains covered by the service, the number of mailboxes and the incoming mail report for the last 30 days.

E. Definitions

"Virus" is a binary or executable code whose purpose is to gather information from the infected host, change or destroy data on the infected host, use inordinate system resources in the form of memory,

disk space, CPU cycles or network bandwidth on the infected host, use the infected host to replicate itself to other hosts, or provide control or access to any of the infected host's system resources. A virus does not include: (1) text messages that use fraudulent claims to deceive the customer, and/or prompt the customer to action, (2) a binary or executable code installed or run by the end user that gathers information for sales or marketing purposes, (3) a virus that may be detected and cleaned by other virus scanning products, or (4) an ineffective or inactive virus fragment.

Exhibit #4
IronPort Evaluation Agreement

IRONPORT EVALUATION AGREEMENT

This IronPort Evaluation Agreement (this "Agreement") is entered into as of _____ (the "Effective Date") by and between Cisco IronPort Systems, LLC, a Delaware Limited Liability Company with its principal place of business at 950 Elm Avenue, San Bruno, CA 94066 ("IronPort") and _____, with its principal place of business at: _____ ("Customer").

1. Evaluation.

a. Customer may use the Product(s) for evaluation purposes for a period of thirty (30) days from the receipt of the Product(s) (the "Evaluation Period"). Customer and IronPort may, upon mutual written agreement (including via email), extend the Evaluation Period.

b. Software contained in any of the Product(s) or otherwise provided by IronPort hereunder (the "Software") is only licensed to Customer for the term of the Evaluation Period for use in conjunction with the hardware with which it is supplied for the purposes of Customer's testing and evaluation. All right, title, and interest in and to the Software, including ownership of all intellectual property rights therein and thereto, shall remain at all times in IronPort and its licensors. Customer shall not make any copies of the Software.

c. Customer shall not alter, modify, decompile or reverse engineer the Product(s) or the Software in any manner.

d. As used herein, "Product(s)" means the IronPort product(s) listed on Exhibit A attached hereto, which is supplied to Customer hereunder for the purposes set forth herein at the location identified in Exhibit A attached hereto. Customer acknowledges that Product(s) delivered for evaluation purposes may be used and/or refurbished units.

2. Assistance. IronPort shall provide reasonable assistance to Customer with respect to the installation and use of the Product(s) during the Evaluation Period.

3. Ownership. Unless purchased by Customer, the Product(s) shall remain the exclusive property of IronPort and its licensors. Under no circumstances shall Customer sell, license, sublicense, distribute, assign or otherwise transfer to a third party or encumber the Product(s) without IronPort's prior written consent. Customer shall be responsible for any damage to or loss of the Product(s), excluding ordinary wear and tear.

4. Term and Termination. This Agreement shall commence on the Effective Date and shall terminate at the end of the Evaluation Period, unless earlier terminated as set forth herein. IronPort may, at its option, terminate this Agreement immediately if Customer (i) fails to comply with any terms and conditions of this Agreement or (ii) uses the Product(s) other than as authorized herein. As soon as practicable following any termination or expiration of this Agreement (and in no event more than ten (10) business days thereafter), Customer agrees to return to IronPort the Product(s) and all related materials and documentation, including without limitation all Confidential Information of IronPort. Sections 1(b), 1(c) and 3-8 shall survive termination or expiration of this Agreement.

5. No Warranty. THE PRODUCT(S) ARE PROVIDED "AS IS", AND IRONPORT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. Limitation of Liability. IN NO EVENT SHALL IRONPORT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT SHALL IRONPORT'S TOTAL LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHER LEGAL THEORY, EXCEED THE GREATER OF THE AMOUNT PAID BY CUSTOMER HEREUNDER OR FIVE HUNDRED DOLLARS (\$500). THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF IRONPORT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7. Confidential Information. IronPort and Customer each agree to retain in confidence all information disclosed by a party to the other party pursuant to this Agreement which is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential (the "Confidential Information"). Customer acknowledges and agrees that the Product(s) and all information provided to Customer in

accordance with this Agreement shall be IronPort's Confidential Information without the need for any marking. Each party agrees to: (a) strictly preserve and protect the confidentiality of the other party's Confidential Information; and (b) refrain from using the other party's Confidential Information except as contemplated herein. The provisions of this Section 7 shall survive the termination or expiration of this Agreement for a period of two (2) years.

8. Miscellaneous. The parties are independent contractors, and nothing in this Agreement is intended to or shall create any agency, partnership or joint venture relationship between them. This Agreement shall be governed by the laws of the State of California without reference to conflicts of laws principles. Customer may not assign this Agreement, or any of its rights or obligations hereunder, by operation of law or otherwise, without IronPort's prior written consent. The failure of either party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver by either party of any breach of this Agreement shall not be deemed a waiver of any subsequent breach of, the same or any other term of this Agreement. This Agreement constitutes the entire Agreement between IronPort and Customer with respect to the subject matter hereof and supersedes any and all other written or oral agreements existing between the parties hereto regarding the subject matter of this Agreement. This Agreement may not be modified without the prior written consent of both parties.

Wherefore, the parties have caused this Product and Services Sales Agreement to be executed effective as of the Effective Date.

CISCO IRONPORT SYSTEMS, LLC	CUSTOMER
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT A

Type of Product: _____

Evaluation Unit Shipping Address:

Company Name:	_____
Care Of:	_____
Address 1:	_____
Address 2:	_____
City, State:	_____
Zip Code:	_____
Country:	_____
Fax:	_____

Technical Contact (Required)	
Evaluator Name:	_____
E-mail Address:	_____
Phone number:	_____

Rapid Rails: Yes / No (Circle One)

If Yes, please specify type of Rack:

- 4-Post Square Hole
- 4-Post Round Hole
- 2-Post Round Hole
- Versa Rails

If No, is a Shelf Unit Required: Yes / No

When complete, please fax to:
Cisco IronPort Systems, LLC
Sales Operations
650-989-7112

Exhibit #5
IronPort End User License Agreement (EULA)

CISCO IRONPORT SYSTEMS, LLC SOFTWARE LICENSE AGREEMENT

NOTICE TO ALL USERS: CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT ("AGREEMENT") FOR THE LICENSE OF THE SOFTWARE (AS DEFINED BELOW). BY CLICKING THE ACCEPT BUTTON OR ENTERING "Y" WHEN PROMPTED, YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY, COLLECTIVELY, THE "COMPANY") CONSENT TO BE BOUND BY AND BECOME A PARTY TO THE FOLLOWING AGREEMENT BETWEEN CISCO IRONPORT SYSTEMS LLC, A DELAWARE LIMITED LIABILITY COMPANY ("IRONPORT") AND COMPANY (COLLECTIVELY, THE "PARTIES"). BY CLICKING THE ACCEPT BUTTON OR ENTERING "Y" WHEN PROMPTED, YOU REPRESENT THAT (A) YOU ARE DULY AUTHORIZED TO REPRESENT YOUR COMPANY AND (B) YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT ON BEHALF OF YOUR COMPANY, AND AS SUCH, AN AGREEMENT IS THEN FORMED. IF YOU OR THE COMPANY YOU REPRESENT DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK THE CANCEL BUTTON OR ENTER "N" WHEN PROMPTED AND PROMPTLY (BUT NO LATER THAN THIRTY (30) DAYS OF THE DELIVERY DATE, AS DEFINED BELOW) NOTIFY IRONPORT, OR THE RESELLER FROM WHOM YOU RECEIVED THE SOFTWARE, FOR A FULL REFUND OF THE PRICE PAID FOR THE SOFTWARE.

1. DEFINITIONS

1.1 "Company Service" means the Company's email or internet services provided to End Users for the purposes of conducting Company's internal business.

1.2 "Documentation" means IronPort's standard end user guide documentation for the IronPort hardware containing the Software.

1.3 "Delivery Date" means the date the IronPort hardware containing the Software is delivered to Company.

1.4 "End User" means the employee, contractor or other agent authorized by Company to access to the Internet or use email services via the Company Service.

1.5 "Ordering Document" means the purchase agreement, evaluation agreement, beta, pre-release agreement or similar agreement between the Company and IronPort or the Company and an IronPort reseller, or the valid terms of any purchase order accepted by IronPort in connection therewith, containing the purchase terms for the Software license granted by this Agreement.

1.6 "Service(s)" means (i) the provision of the Software functionality, including Updates and Upgrades, and (ii) the provision of support by IronPort or its reseller, as the case may be.

1.7 "Software" means: (i) IronPort's proprietary software licensed by IronPort to Company along with IronPort's hardware products; (ii) any software provided by IronPort's third-party licensors that is licensed to Company or sublicensed by IronPort to Company to be implemented for use with IronPort's hardware products; (iii) any other IronPort software module(s) licensed by IronPort to Company along with IronPort's hardware products; and (iv) any and all Updates and Upgrades thereto.

1.8 "Updates" means minor updates, error corrections and bug fixes that do not add significant new functions to the Software, and that are released by IronPort or its third party licensors. Updates are designated by an increase to the Software's release number to the right of the decimal point (e.g., Software 1.0 to Software 1.1). The term Updates specifically excludes Upgrades or new software versions marketed and licensed by IronPort or its third party licensors as a separate product.

1.9 "Upgrade(s)" means revisions to the Software, which add new enhancements to existing functionality, if and when it is released by IronPort or its third party licensors, in their sole discretion. Upgrades are designated by an increase in the Software's release number, located to the left of the decimal point (e.g., Software 1.x to Software 2.0). In no event shall Upgrades include any new versions of the Software marketed and licensed by IronPort or its third party licensors as a separate product.

2. LICENSE GRANTS AND CONSENT TO TERMS OF DATA COLLECTION

2.1 License of Software. By using the Software and the Documentation, Company agrees to be bound by the terms of this Agreement, and so long as Company is in compliance with this Agreement, IronPort hereby grants to Company a non-exclusive, non-sublicensable, non-transferable, worldwide license during the Term to use the Software only on IronPort's hardware products, solely in connection with the provision of the Company Service to End Users. The duration and scope of this license(s) is further defined in the Ordering Document. Except for the license rights granted herein, no right, title or interest in any Software is granted to the Company by IronPort, IronPort's resellers or their respective licensors. This license and any Services are co-terminus.

2.2 Consent and License to Use Data. Subject to Section 3 hereof, and subject to the IronPort Privacy Statement at <http://www.ironport.com/privacy.html>, as the same may be amended from time to time by IronPort with notice to Company, Company hereby consents and grants to IronPort a license to collect and use the data from the Company as described in the Documentation, as the same may be updated from time to time by IronPort ("Data"). To the extent that reports or statistics are generated using the Data, they shall be disclosed only in the aggregate and no End User identifying information may be surmised from the Data, including without limitation, user names, phone numbers, unobfuscated file names, email addresses, physical addresses and file content. Notwithstanding the foregoing, Company may terminate IronPort's right to collect and use Data at any time upon prior written or electronic notification, provided that the Software or components of the Software may not be available to Company if such right is terminated.

3. CONFIDENTIALITY. Each party agrees to hold in confidence all Confidential Information of the other party to the same extent that it protects its own similar Confidential Information (and in no event using less than a reasonable degree of care) and to use such Confidential Information only as permitted under this Agreement. For purposes of this Agreement "Confidential Information" means information of a party marked "Confidential" or information reasonably considered by the disclosing party to be of a proprietary or confidential nature; provided that the Data, the Software, information disclosed in design reviews and any pre-production releases of the Software provided by IronPort are expressly designated Confidential Information whether or not marked as such.

4. PROPRIETARY RIGHTS; OWNERSHIP. Title to and ownership of the Software and other materials and all associated Intellectual Property Rights (as defined below) related to the foregoing provided by IronPort or its reseller to Company will remain the exclusive property of IronPort and/or its superior licensors. Company and its employees and agents will not remove or alter any trademarks, or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software or other materials delivered to Company by IronPort or its reseller. Company will not modify, transfer, resell for profit, distribute, copy, enhance, adapt, translate, decompile, reverse engineer, disassemble, or otherwise determine, or attempt to derive source code for any Software or any internal data files generated by the Software or to create any derivative works based on the Software or the Documentation, and agrees not to permit or authorize anyone else to do so. Unless otherwise agreed in writing, any programs, inventions, concepts, documentation, specifications or other written or graphical materials and media created or developed by IronPort or its superior licensors during the course of its performance of this Agreement, or any related consulting or professional service agreements,

including all copyrights, database rights, patents, trade secrets, trademark, moral rights, or other intellectual property rights ("Intellectual Property Right(s)") associated with the performance of such work shall belong exclusively to IronPort or its superior licensors and shall, in no way be considered a work made for hire for Company within the meaning of Title 17 of the United States Code (Copyright Act of 1976).

5. LIMITED WARRANTY AND WARRANTY DISCLAIMERS

5.1 Limited Warranty. IronPort warrants to Company that the Software, when properly installed and properly used, will substantially conform to the specifications in the Documentation for a period of ninety (90) days

from the Delivery Date or the period set forth in the Ordering Document, whichever is longer ("Warranty Period"). FOR ANY BREACH OF THE WARRANTY CONTAINED IN THIS SECTION, COMPANY'S EXCLUSIVE REMEDY AND IRONPORT'S ENTIRE LIABILITY, WILL BE PROMPT CORRECTION OF ANY ERROR OR NONCONFORMITY, PROVIDED THAT THE NONCONFORMITY HAS BEEN REPORTED TO IRONPORT AND/OR ITS RESELLER BY COMPANY WITHIN THE WARRANTY PERIOD. THIS WARRANTY IS MADE SOLELY TO COMPANY AND IS NOT TRANSFERABLE TO ANY END USER OR OTHER THIRD PARTY. IronPort shall have no liability for breach of warranty under this Section or otherwise for breach of this Agreement if such breach arises directly or indirectly out of or in connection with the following: (i) any unauthorized, improper, incomplete or inadequate maintenance or calibration of the Software by Company or any third party; (ii) any third party hardware, software, services or system(s); (iii) any unauthorized modification or alteration of the Software or Services; (iv) any unauthorized or improper use or operation of the Software or Company's failure to comply with any applicable environmental specification; or (v) a failure to install and/or use Updates, Upgrades, fixes or revisions provided by IronPort or its resellers from time to time.

5.2 WARRANTY DISCLAIMER. THE EXPRESS WARRANTIES SET FORTH IN SECTION 5.1 OF THIS AGREEMENT CONSTITUTE THE ONLY PERFORMANCE WARRANTIES WITH RESPECT TO THE SOFTWARE OR SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IRONPORT LICENSES THE SOFTWARE AND SERVICES HEREUNDER ON AN "AS IS" BASIS, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, IRONPORT AND ITS SUPERIOR LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY (EITHER IN FACT OR BY OPERATION OF LAW), AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER IRONPORT NOR ITS THIRD PARTY LICENSORS WARRANT THAT THE SOFTWARE OR SERVICES (1) IS FREE FROM DEFECTS, ERRORS OR BUGS, (2) THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED, OR (3) THAT ANY RESULTS OR INFORMATION THAT IS OR MAY BE DERIVED FROM THE USE OF THE SOFTWARE WILL BE ACCURATE, COMPLETE, RELIABLE AND/OR SECURE.

6. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF BUSINESS, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF SUCH PARTY RECEIVED ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF IRONPORT ARISING UNDER ANY PROVISION OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT, OR OTHER LEGAL THEORY, EXCEED THE TOTAL AMOUNT PAID TO IRONPORT FOR THE SOFTWARE OR SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

7. TERM AND TERMINATION. The term of this Agreement shall be as set forth in the Ordering Document (the "Term"). If IronPort defaults in the performance of any material provision of this Agreement, then Company may terminate this Agreement upon thirty (30) days written notice if the default is not cured during such thirty (30) day period. If Company defaults in the performance of any material provision of this Agreement, IronPort may terminate this Agreement upon thirty (30) days written notice if the default is not cured during such thirty (30) day notice and without a refund. This Agreement may be terminated by one party immediately at any time, without notice, upon (i) the institution by or against the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of such party's debts, (ii) such other party making a general assignment for the benefit of creditors, or (iii) such other party's dissolution. The license granted in Section 2 will immediately terminate upon this Agreement's termination or expiration. Within thirty (30) calendar days after termination or expiration of this Agreement, Company will deliver to IronPort or its reseller or destroy all copies of the Software and any other materials or documentation provided to Company by IronPort or its reseller under this Agreement.

8. U.S. GOVERNMENT RESTRICTED RIGHTS; EXPORT CONTROL. The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any

use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. Company acknowledges that the Software and Documentation must be exported in accordance with U.S. Export Administration Regulations and diversion contrary to U.S. laws is prohibited. Company represents that neither the United States Bureau of Export Administration nor any other federal agency has suspended, revoked or denied Company export privileges. Company represents that Company will not use or transfer the Software for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license. Company acknowledges it is Company's ultimate responsibility to comply with any and all import and export restrictions, and other applicable laws, in the U.S. or elsewhere, and that IronPort or its reseller has no further responsibility after the initial sale to Company within the original country of sale.

9. MISCELLANEOUS. This Agreement is governed by the laws of the United States and the State of California, without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of (i) any provision of any present or future law or regulation of the United States or any applicable law that applies to the subject hereof, and (ii) interruptions in the electrical supply, failure of the Internet, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such party. This Agreement and the Ordering Document set forth all rights for the user of the Software and is the entire agreement between the parties and supersedes any other communications with respect to the Software and Documentation. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of IronPort, except that IronPort may modify the IronPort Privacy Statement at any time, in its discretion, via notification to Company of such modification that will be posted at <http://www.ironport.com/privacy.html>. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by IronPort or a duly authorized representative of IronPort. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. The parties confirm that it is their wish that this Agreement has been written in the English language only.

10. IRONPORT CONTACT INFORMATION. If Company wants to contact IronPort for any reason, please write to CISCO IRONPORT SYSTEMS LLC, 950 Elm Avenue, San Bruno, California 94066, or call or fax us at tel: 650.989.6500 and fax:650.989.6543.

Exhibit #6
IronPort Product/Services Offering & Price Schedule

WSCA MASTER AGREEMENT

Amendment #4

IronPort List Price & WSCA Discount

IronPort List Price

IronPort Products and Services sold under the WSCA Master Agreement, Amendment #4 are subject to the then-current list price for Government and Public Sector Academic customers set forth in the Cisco IronPort North American Price Book in effect at time of Order. ("IP List Price") Contractor shall maintain the IP Pricebook on Contractor's WSCA website during the Prime Contract term.

WSCA Government Purchasers

Public sector purchasers other than public sector k-12 or higher education academic users purchase at the IP list price for "Government" users.

WSCA Academic Purchasers

Public sector k-12 or higher education academic customers purchase at the IP list price for "Academic Users."

IronPort Discount-off-List

IP Orders under this Amendment #4 are subject to the following minimum price discounts off the applicable IP Price book list price applicable to the Customer (e.g., Government or Academic):

IP OFFERING

DISCOUNT OFF LIST:

<u>Product</u>	
o Bundles	35%
o Software	
o Security Services	
o Individual H/W & Accessories	
o Support	

<u>Training & ProServe</u>	10%
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STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #

5

CONTRACT #

**AR233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT ("Contract" or "WSCA Master Agreement")**

Original Starting Date:

10/01/07

Amended Expiration Date:

05/31/2012

TO BE ATTACHED AND MADE PART OF the specified Contract by and between the State of Utah Division of Purchasing and

CISCO SYSTEMS, INC

(Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Effective Date of Amendment:

Date of last signature of the Parties

The contract is amended to:

This Amendment #5 only applies to purchases made in the State of Utah. The purpose of this Amendment #5 is to add an administration state fee for the State of Utah that was not originally provided in the WSCA Master Agreement.

Please provide the following contact information.

	Name	Phone Number	Email Address
General Contact	Mimi Nguyen	1 408.527.2627	mimnguye@cisco.com
Sales Contact	Greg Semler	1.408.894.7116	gsemler@cisco.com
Quarterly Report Contact	Angeline (Gigi) Feril	1.408.424.0712	aferil@cisco.com

All other terms and conditions in the original contract remain the same.

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

CONTRACTOR
Dana Gundersen 8/17/10 **STATE OF UTAH**
 Contractor's Signature Date Kent D Beers 8/23/10
Dana Gundersen Kent D Beers
 Contractor's Name (Print) Director
DIRECTOR Finance State of Utah Division of Purchasing
 Title (Print)

Purchasing Agent	Phone #	E-mail	Fax #
Debbie Gundersen	(801) 538-3150	dgundersen@utah.gov	(801) 538-3882

AMENDMENT # 5**To**

**AR-233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT ("Contract" or "WSCA Master Agreement")**

(Adding an administration state fee for purchases in the State of Utah only)

This Amendment # 5 is entered into between Cisco Systems, Inc. with its principal place of business at 170 Tasman Drive, San Jose, CA 95134 ("Cisco" or "Contractor") and the Division of Purchasing and General Services, an agency of the State of Utah ("State"), with its principal place of business at State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061, and acting on its own behalf and as the lead state for the WSCA Master Agreement on behalf of the *Western States Contracting Alliance* ("WSCA"), (collectively, the "Parties"). This Amendment #5 is effective as of the date of last signature of the Parties below ("Effective Date"). Capitalized terms used herein and not so defined shall have the same meaning as set forth in the WSCA Master Agreement.

WHEREAS, the State of Utah did not sign a separate Participating Addendum to the WSCA Master Agreement. Since the State of Utah is the contract administrator for the WSCA Master Agreement, it was deemed that the State of Utah executed a Participating Addendum upon execution of the WSCA Master Agreement as set forth in Attachment B, Section 1.8 of the WSCA Master Agreement.

WHEREAS, the purpose of this Amendment #5 is to provide an administration state fee for the State of Utah (in addition to the WSCA Administration Fee) that was not originally provided in the WSCA Master Agreement. This Amendment #5 shall apply only to the State of Utah and all purchases made by State of Utah's authorized Customers under the WSCA Master Agreement.

NOW THEREFORE, the Parties agree to amend the WSCA Master Agreement as follows:

- 1. State of Utah Administration Fees.** Add the following provisions to the WSCA Master Agreement, Attachment B, Section 18:

"A. STATE OF UTAH REPORTS AND FEES ONLY: The Contractor agrees to provide a quarterly administration fee to the State of Utah ("State of Utah Administration Fee") in the form of a Check or EFT payment as set forth hereunder. The State of Utah Administration Fee is in addition to the WSCA Administration Fee, but only applies to purchases made by authorized Customers in the State of Utah. The State of Utah Administration Fee will be payable to the "State of Utah Division of Purchasing" for an amount equal to one percent (1%) of the Net Purchase Price paid by the State of Utah's authorized Customer. The Contractor's WSCA pricing to the Customers in the State of Utah may be adjusted to offset for the equivalent fee amount. Contractor also agrees to provide quarterly sales volume reports in accordance with Amendment #3 to the WSCA Master Agreement and the following schedule:

CY Quarter	Activity Period	Due Dates (Reports & UT Fees)
Q1:	January 1 – March 31 st	May 31 st
Q2:	April 1 – June 30 th	August 31 st
Q3:	July 1 – September 30 th	November 30 th
Q4:	October 1 – December 31 st	February 28 th

The State of Utah Adminstration Fee will be effective and applied on all purchases made starting Q4 CY2010 or October 1, 2010.

B. STATE OF UTAH TAXES ONLY: Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionforms/signed.pdf>. The tangible personal property or services being purchased are being paid from STATE funds and used in

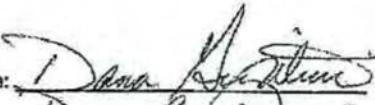
the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K."

2. In all other respects, the WSCA Master Agreement remains unchanged.

This Amendment #5 represents the entire understanding of the Parties and merges, supersedes and replaces any prior oral, electronic or other written communications or understandings with respect to the subject matter herein, and may only be modified by a written document executed by the Parties. Each Party warrants and represents that its respective signatory appearing below is, as of the date of signature, duly authorized to execute this Amendment #5 on behalf of and with the intent to legally bind their respective principal first identified above.

[Affix signatures as required by State Statutes, Rules or Policies below.]

CISCO SYSTEMS, INC.

Signature: 
Print Name: Diana G. Gundersen
Title: Director, Finance
Date: 8/17/10

STATE OF UTAH, ON ITS OWN BEHALF AND ON
BEHALF OF WSCA

Signature: 
Print Name: Kent D. Beers
Title: Director, Purchasing
Date: 8/23/10



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT # **6**
CONTRACT # **AR233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT ("Contract")**

Original Starting Date: **10/01/07**

Amended Expiration Date : **05/31/2012**

TO BE ATTACHED AND MADE PART OF the specified Contract by and between the State of Utah Division of Purchasing and

CISCO SYSTEMS, INC

(Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Effective Date of Amendment: Date of last signature, below.

The contract is amended to:

Incorporate Cisco WebEx Products and Services offerings, the sale of which is solely governed by the terms set forth in this Amendment # 6, which is attached hereto and expressly incorporated by reference.

Please provide the following contact information.

	Name	Phone Number	Email Address
General Contact	Mimi Nguyen	1 408 527 2627	mimnguye@cisco.com
Sales Contact	Greg Semler	1.408.894.7116	gsemler@cisco.com
Quarterly Report Contact	Angelene Feril	1.408.894.7856	aferil@cisco.com

All other terms and conditions in the original contract remain the same.

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

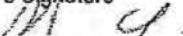
CONTRACTOR

STATE OF UTAH

Contractor's Signature

Date

Date



2/10/2011

D Kent Beers, Director

State of Utah Division of Purchasing

Contractor's Name (Print)

GEORGE LI

Title (Print)

SR DIRECTOR, FINANCE

Purchasing Agent

Phone #

e-mail

Fax #

(801)

538-

3882

Debbie Gundersen

(801) 538-3150

dgundersen@utah.gov

Page | 1

AMENDMENT #6

TO

**AR-233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE
MASTER AGREEMENT ("AR-233" or "Prime Contract")**

WebEx Products and Services Add

This Amendment #6 ("Amendment") to AR-233 is entered into by and between Cisco Systems, Inc. with its principal place of business at 170 Tasman Drive, San Jose, CA 95134 ("Cisco" or "Contractor") and the Division of Purchasing and General Services, an agency of the State of Utah ("State"), acting for itself and as the lead state on behalf of the *Western States Contracting Alliance* ("WSCA"), with its principal place of business at 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 (collectively, the "Parties") for good and valuable consideration, the mutual receipt of which is hereby acknowledged by the Parties. Capitalized terms shall have the meanings as defined in this Amendment, or if none, then as defined in the Prime Contract.

1. Scope

The scope of the Prime Contract (also referred to as the "WSCA Master Agreement") is amended to add the service offerings of Cisco WebEx LLC, a wholly owned subsidiary of Cisco Systems, Inc. ("WE" or "WebEx") as listed and priced in the attached Exhibit #A, entitled "WE List Price & WSCA Discount" ("WE Pricebook" and, as to services, the "WE Services," or "WebEx Services").

2. Prime Contract Incorporation

WE Services sold under AR-233 are exclusively governed by the terms set forth in this Amendment. The Prime Contract Attachments A, B and C (as amended) are incorporated by reference into this Amendment and apply to the sale of WE Services, subject to the following additions, modifications and exclusions:

AR-233 - Attachment A

- A. Section E.1 is modified to include the following discount:

<u>WE Services</u>	<u>5% off WE List Price</u>
--------------------	-----------------------------

- B. Sections E.2 through E.4 are deleted and replaced with the support provisions set forth in Exhibit B, for purposes of support services available with the purchase of WE Services.

AR-233 - Attachment B

- A. Section 1.2 is deleted in its entirety and replaced with the following:

i. "Contractor" shall mean Cisco WebEx LLC, a wholly owned subsidiary of Cisco Systems, Inc.

- B. Section 1.5 is deleted as inapplicable.
C. Section 1.11 is deleted as inapplicable.

D. Section 1.14 is deleted in its entirety and replaced with the following:

"Services" shall mean those services within the scope of <http://contractdocuments.webex.com/WBS.html> and WebEx professional and/or consulting services ("WE Professional Services"). WE Professional Services are subject to the terms of service set forth in Attachment D of the Prime Contract.

E. Section 1.16 is deleted as inapplicable.

F. Section 5 is deleted as inapplicable.

G. Section 12.1 is deleted in its entirety and replaced with the following:

- i. Term of Purchase Orders. During the Prime Contract term, the "Initial Term" of a Purchase Order will be for the number of months set forth on the Purchase Order, commencing on the date the Service is available for use by Purchaser. Each "Renewal Term" will automatically begin at the end of the preceding (Initial or Renewal) Term and continue for the number of months set forth on the Purchase Order; provided however that no Renewal Term may commence after the expiration or termination date of the Prime Contract.
- ii. Termination of Purchase Orders. Either party may terminate any Purchase Order at the end of any (Initial or Renewal) Term by providing the other party written notice of termination at least thirty (30) days prior to the end of such term.
- iii. Term of Amendment. This Amendment will commence on the Effective Date and shall continue for a period ending on the Termination Date of the Prime Contract.

H. Section 12.2 is deleted in its entirety and replaced with the following:

- i. Either party may terminate any Purchase Order at the end of any (Initial or Renewal) Term by providing the other party written notice of termination at least thirty (30) days prior to the end of such term, unless such Purchase Order has previously expired due to termination or expiration of the Prime Contract. Upon termination of the Prime Contract, Purchaser must cease use of the Services and return any associate software in its possession and control.
- i. Section 15 (Conflict of Terms) is not applicable to WE Purchase Orders placed under this Amendment. In the event of any conflict, the order of precedence for WE Purchase Orders placed under this Amendment shall be resolved as follows:
 - a. WSCA Participating Addendum (for the State in which the Purchase Order is placed);
 - b. This Amendment; and
 - c. The Prime Contract.

J. Section 20 is deleted in its entirety.

K. Sections 21.1 and 21.2 are both deleted in their entirety and replaced with the following:

- a. CONTRACTOR WARRANTS THAT THE SERVICES WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE APPLICABLE SERVICE DESCRIPTION. IN THE EVENT OF A BREACH OF THE FOREGOING WARRANTY, CONTRACTOR'S SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY AND A PARTICIPATING STATE'S SOLE AND EXCLUSIVE REMEDY WILL BE FOR CONTRACTOR TO MAKE COMMERCIALLY REASONABLE EFFORTS TO CORRECT ANY NON-COMFORMANCE OR, IF CONTRACTOR IS UNABLE TO DO SO WITHIN A REASONABLE TIME, TO PROVIDE THE PARTICIPATING STATE A REFUND FOR ANY FEES PAID FOR SERVICES FROM WHICH THE PARTICIPATING STATE DID NOT RECEIVE BENEFICIAL USE BECAUSE THE SERVICES FAILED TO COMPLY WITH THIS WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, WEBEX'S SERVICES, AND ANY CONTRACTOR SOFTWARE, ARE PROVIDED "AS IS" AND "AS AVAILABLE." CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND,

EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CONTRACTOR MAKES NO OTHER WARRANTY OR REPRESENTATION REGARDING CONTRACTOR'S SERVICES, ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH CONTRACTOR'S SERVICES OR WEBSITE, OR THAT CONTRACTOR'S SERVICES WILL MEET ANY USER REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF CONTRACTOR'S SERVICES AND WEBSITE ARE AT USER'S SOLE RISK. THE PARTICIPATING STATE WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO THE PARTICIPATING STATE OR ITS USERS RESULTING FROM THE USE OF SUCH SERVICES OR WEBSITE.

- L. Section 26 is deleted in its entirety as inapplicable.

AR-233 - Attachment C

- A. Section 1 is deleted in its entirety as inapplicable.
B. Section 2.1 is deleted in its entirety and replaced with the following:

"Prices for Services are those specified in WE's then-current Global Price List, less the applicable discounts ("Price Discounts") are specified in this Attachment 6, Exhibit A."

- C. Section 2.3 is deleted in its entirety and replaced with the following:
"WE may change its U.S. List Prices for the Services at any time and shall announce such price changes by issuance of a revised Price List (including via electronic posting) or other announcement of price change. Purchase Orders received before the date of price change announcement(s) to WE's Global Price List and those received within thirty (30) days thereafter, will be invoiced to Purchaser without regard to the price change, provided however, price decreases will be effective for all Purchase Orders accepted by WE after the date of issuance or announcement of revised prices."
D. Section 3.4 is deleted in its entirety as inapplicable.
E. Section 3.5 is revised such that the noted URL is replaced with the following:
<http://contractdocuments.webex.com/WBS.html>.
F. Section 4 is deleted in its entirety as inapplicable.

3. Additional Requirements

The following additional requirements are specific to the Services.

- A. **Purchaser Site Set Up.** Initially, Contractor will set up a web site that does not include the Purchaser's corporate logos, page headers or colors ("General Site"). Contractor then will set-up a site for use by Purchaser that incorporates Purchaser's corporate logos, page headers and colors (the "Purchaser Site"). The General Site will be available until Purchaser and Contractor have completed their obligations to create the Purchaser Site. Purchaser will supply the links and branding information and materials necessary for Contractor to create the Purchaser Site. Contractor expects that the Purchaser Site will be available by the Anticipated Start Date set forth on the Purchase Order, provided Purchaser has provided materials in a timely fashion. Contractor will make minor changes to the Purchaser Site, such as fixing and changing links, at no additional cost. A fee, set forth in the Purchase Order, will be charged for more extensive changes.
- B. **Fee Adjustments.** Contractor may, upon at least forty five (45) days prior written notice and effective at the end of the then-current (Initial or Renewal) Term (defined below), adjust the fees paid by Purchaser for the Services, provided that Purchaser shall have the option, within thirty (30) days of receiving such notice from Contractor, to either (i) modify the quantity or type of Services utilized by Purchaser by a mutual written amendment between the parties, or (ii) terminate the affected Orders upon written notice, either of which will become effective at the beginning of the next Renewal Term.

C. Use of Purchaser Name.

i. Purchaser's Name and Logo. Purchaser agrees that Contractor may use Purchaser's name and logo on the Purchaser Site, in order to satisfy Contractor's responsibilities under Section 3 of this Agreement.

D. Purchaser's Responsibilities.

i. Account Number/Password. Purchaser is responsible for all uses of the General and Purchaser Site. Purchaser is responsible for maintaining the confidentiality of Purchaser's account number and passwords. Purchaser agrees to immediately notify Contractor of any unauthorized use of Purchaser's account of which Purchaser becomes aware.

ii. Content of Communications on Purchaser's Account. Purchaser agrees that Purchaser is solely responsible for the content of all visual, written or audible communications using Purchaser's account. Purchaser agrees that Purchaser will not use the Services to send unsolicited email outside Purchaser's company or organization in violation of applicable law. Purchaser further agrees not to use the Services to communicate any message or material that is harassing, libelous, threatening, obscene, would violate the intellectual property rights of any party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation. Although Contractor is not responsible for any such communications, Contractor may suspend any such communications of which Contractor is made aware of, at any time upon prompt notice to Purchaser. Purchaser agrees to indemnify, defend and hold harmless Contractor from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from Purchaser's violation of this section. Notwithstanding the foregoing, Purchaser's acceptance of this section does not, in and of itself, constitute a waiver of any statutory immunity available at law.

iii. No Commercial Use. Other than using the Services for conferences or meetings in which Purchaser is an active participant, and as permitted under the terms of the Agreement, the Services may be used for internal business purposes only. Purchaser may not resell, distribute, or make any commercial use of, use on a timeshare or service bureau basis, or use to operate a Web-site or otherwise generate income from the Services or use the Services for the development, production, or marketing of a service or product substantially similar to the Services. Purchaser shall not use the Services in any manner that could damage, disable, overburden, impair, or otherwise interfere with or disrupt the websites, Services, or any network or networks connected to the Services or security systems. The Services may not be exported, re-exported, diverted, transferred or disclosed in violation of any export law or regulation.

iv. Use of AOL Screen Names or Networks. If applicable, a user's use of a user identification or screen name issued by America Online or its affiliates ("AOL") or your use of the AOL network is governed by the AOL Network Registered User Terms of Service located at http://about.aol.com/aolnetwork/terms_use.

- E. All stated references in the Prime Contract scope of permissible product and services offerings is amended to add WE Services offered under the then-current WE Pricebook during the Prime Contract term. For Purchase Orders under this Amendment, all Prime Contract references to the "Cisco Global Price List" shall be deemed to refer solely to the WE Pricebook.
- F. Purchase Orders for WE Services may only be accepted by "Fulfillment Partners" who are specifically authorized to resell the WE Services. For purposes of Purchase Orders placed under this Amendment, Prime Contract references to "Fulfillment Partners" shall be deemed to refer to only those resellers holding a specific authorization to resell WE Services.
- G. The WE offerings and price discounts are to be applied against the then-current WE Pricebook as further detailed in this Amendment, Exhibit A.
- H. This Amendment shall end co-terminously with the Prime Contract (as amended).
- I. Attachment C, Exhibit A (WSCA Master Agreement List & Discount) is not applicable to WE Purchase Orders placed under this Amendment.

- J. Attachment C, Exhibit B (Demo Depot and Try and Buy Terms) is not applicable to WE Purchase Orders placed under this Amendment.
- K. Attachment D (Cisco Master Services Agreement and Advanced Services Agreement) is not applicable to WE Purchase Orders placed under this Amendment.
- L. Attachment E (Cisco Redacted Bid Proposal) is not applicable to WE Purchase Orders placed under this Amendment.

4. WE Exhibits

This Amendment expressly incorporates the following WE Exhibits and documentation ("WE Agreements") and governs Purchase Orders of WE Services under this Amendment:

Exhibit A: WEBEX SERVICES OFFERING & DISCOUNT
Exhibit B: PREMIUM SUPPORT SERVICES

5. Separation of Orders

WE Orders under this Amendment will be kept separate from Purchase Orders otherwise placed under the Prime Contract for non-WE products or services. Rights and obligations under WE Orders shall not have any co-dependencies or contingencies, e.g., in acceptance, technical performance, payment or refund terms, for obligations otherwise under Cisco Systems, Inc. Product Orders under the Prime Contract. Without diminishing WSCA, the Participating States' and Purchaser's rights against Cisco for all non-WE Product orders, including but not limited pricing, payment terms, and/or warranties, all claims and liabilities relating to WE Purchase Orders shall be exclusively noticed to and made against Cisco WebEx LLC as follows:

General Counsel
Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134

This Amendment will provide the terms under which members of the WSCA may purchase WE Services. WSCA agrees to look only to WE for performance of the WE Services, and to not seek from WebEx performance under the terms of the Prime Contract. Similarly, WSCA agrees to look only to Cisco for performance under the terms of Prime Contract, and not seek from Cisco performance of the WE Services. WSCA also understands and agrees that the purpose of this Amendment is solely to purchase WE Services and any deviations from the existing Prime Contract will not affect its rights and obligations under the terms of the Prime Contract as those rights and obligations pertain to non-WebEx Services products or services, including but not limited to any deviations in pricing, payment terms, payment dependencies, and/or technical and/or functional dependencies.

This Amendment represents the entire understanding of the parties and supersedes any prior oral, electronic or other written communications or understandings with respect to the subject matter herein. This Amendment may only be modified by a written document executed by both parties. Each party warrants and represents that its respective signatory whose signature appears on page 1 is, as of the date of signature, duly authorized to execute this Amendment on behalf of and with the intent to legally bind their respective principal first identified above.

Exhibit A

WebEx Services Offering & Discount

WE List Price

WE Services sold under the WSCA Master Agreement, Amendment #6 are subject to the WE List Price in effect at time of Order. Contractor shall maintain the WE Pricebook on Contractor's WSCA website during the Prime Contract term.

WE Discount-off-List

Five percent (5%) off WE List Price in effect at time of Order for WE Services.

Exhibit B

Premium Support Services

1. Issue Severity Levels

Issue Severity is determined by objective examination of the incident. The following outlines Contractor criteria for each category:

Severity Levels			
Severity Level	Definition	Examples	
		Service	Condition
Severity 1	Core Service functionality unavailable	Meetings	Unable to start/join
		Telephony	unable to start/join Telephony: dead air or fast busy
		Connect	unable to IM, access DMS.
		Cisco Mail	unable to send/receive mail
Severity 2	Secondary services unavailable.	Meetings	Meeting recording unavailable, Meeting report unavailable, RA function not working
		Telephony	Toll number does not work, but toll free works and vice versa
		Connect	Unable to download new client
		Cisco Mail	Unable to access old mails/archive
Severity 3	Intermittent or partial failure of secondary services. Branding Issues. Admin Features.	Meetings	Intermittent error while accessing site, start meeting, joining meeting
		Telephony	Intermittent error while start/join teleconference
		Connect	Connect admin functions
		Cisco Mail	Cisco Mail admin functions
Severity 4	Single point of failure condition.	All services	A cluster has been failed over to the backup infrastructure and may remain there until the next maintenance window before being failed back to primary.
Severity 5	Informational, tracking of non-standard operational condition, non-impacting service reboots	All services.	Customer network connectivity issues, problem with the customers ISP, computer, or software, etc.

2. Response/Resolution Time

Below indicates the response/resolution times for each Severity Issue. All times indicated are worst case scenarios.

Severity Level Response/Resolution Time			
Severity Level	TTR Goal	Response or Action plan	Higher Level Escalation if no ETR (Estimated Time of Resolution) after:
Severity 1	0 minutes	20 minutes	1 hour
Severity 2	0 minutes	20 minutes	1 hour
Severity 3	0 minutes	1 hour	4 hours
Severity 4	Managed to SLA - at mgmt discretion - restore N+1 service at next maintenance window, or ASAP without customer impact	4 hours	NA
Severity 5	NA	24 hours	NA

- a. Response time is the elapsed time for Contractor to acknowledge a problem of a given severity. In the instance where the problem cannot be resolved in the response time interval, Contractor will provide a status and an action plan for resolution.
- b. Escalations are to be utilized in the event that acceptable status and/or resolution have not been accomplished by the Contractor Customer Support Team in the time frames indicated.
- c. WSCA, the Participating State or Purchaser, as applicable, agree to work with Contractor and will make available qualified persons to aid in reproducing and/or isolating problems should there be an incompatibility between Contractor and the end user's environment. In the event that such individual cannot be made available, these resolution times may be extended.

3. Notifications

- a. Contractor performs standard customer maintenance activities during regular minor and major change windows. These windows are currently conducted between 9pm and 12am PST weekdays, and 7pm and 12am PST Saturdays.
- b. Contractor will provide notification of any unscheduled maintenance activities 7 days in advance of the change. In the event that there is an unscheduled urgent change required which must be accomplished inside that window, Contractor will make reasonable commercial efforts to provide as much notice as possible to WSCA, Participating State or Purchaser, as applicable.
- c. All notifications are made to a designated customer-maintained email alias that the WSCA agrees to provide to Contractor.

4. Summary of Change Notifications

Type of change	Notification Interval
Minor update	Based on customer impact. 7 day notification via email if change affects service features or repairs key service issues
Major update	14 days notification via email
Scheduled maintenance	2 days, notification via email
Unscheduled maintenance	Varies, as much notice as possible, via email.

Definitions:

- a. A Minor update (service patch) is a change to the service, which addresses specific issues that may impact some, but not all customers. Cosmetic changes, or minimal updates to the user

interface, or updates which aid in the overall operation of the service but which are not visible to the customer experience are included in this change level.

- b. A Major update is a significant change to the service, and will impact the user experience. This may result in changes to the user interface or service features which differ from the current service release. This category of change may also require a new client to be downloaded.
- c. Scheduled maintenance refers to changes made to the Contractor service infrastructure. Purchaser is notified if the changes will impact the availability of the service.
- d. Unscheduled maintenance refers to emergency service procedures required to maintain the availability of the service, and require service interruption to the customer to complete.

5. Support

- a. Contractor provides 24 x 7 x 365 technical support in English. In addition, Contractor provides limited support in other languages at its discretion. These numbers will be accessible to the customer so long as this SLA is in effect and this location:
<http://support.Contractor.com/support/phone-numbers.html>

- b. To access training:

1. Go to: <http://university.Contractor.com>
2. Enter Contractor account information (Username, password, Contractor URL)
3. Choose a service and expand the list of course offerings.
4. Enroll in an Instructor-Led class or go through Self-Paced training

- c. 85% of calls to Contractor support will be answered within 120 seconds.
 - d. The Contractor e-mail response commitment to inquiries submitted via the MyResources Support portal (<http://support.Contractor.com>) will be 24 hours or less.

6. Escalation Contacts

Should the need arise; the following Technical and Business Escalation Contacts can be utilized:

a. Technical Escalations

Contact	Name	Phone Number	Email
Contractor Technical Support		+1.408.435.4088 866.229.3239	http://support.Contractor.com/support/submit-ticket.html
Technical Support Manager			
Technical Support Manager			
Technical Support Manager			
Director, Customer Operations			

b. Business Escalations

Contact	Name	Phone Number	Email
Client Services Manager			
Client Services Supervisor			
Manager, Client Services			
Director, Customer Care			

7. Updates to Support Services Exhibit

This Support Services Exhibit will be periodically reviewed, and updates accepted, subject to the mutual agreement of Contractor and WSCA management.



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT # 7

CONTRACT # AR233

Original Starting Date: 10/01/07

Expiration Date : 05/31/12

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and

CISCO SYSTEMS, INC.

(Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Amended Expiration Date: 05/31/2014

Effective Date of Amendment:

05/31/12

Potential Renewal Options Remaining:

The contract is amended to:

Please provide the following contact information.

	Name	Phone Number	Email Address
General Contact	Mimi Nguyen	Office: 408.527.2627 Cell: 650.303.4483	mimnguye@cisco.com
Sales Contact	Greg Semler	Office: 408.894.7114 Cell: 360.951.8086	gsemler@cisco.com
Quarterly Report Contact	Angelene Feril	Office: 408.424.0712 Cell: 408.318.3163	aferil@cisco.com

All other terms and conditions in the original contract remain the same.

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

CONTRACTOR

Contractor's Signature

Date

STATE OF UTAH

Kent Beers, Director
State of Utah Division of Purchasing

Date

Brian Fukuhara

Contractor's Name (Print)

Vice President Finance

Title (Print)

APPROVED BY LEGAL

Purchasing Agent

Phone #

e-mail

Fax #

Debbie Gundersen

801-538-3150

dgundersen@utah.gov

801-538-3882

10/27/2008

ATTACHMENT II

DEVIATIONS TO STANDARD COUNTY TERMS AND CONDITIONS

Standard County Terms and Conditions	Disposition	Comments
Contract Term	County provision not included.	WSCA contract covers this provision.
Background and Security Investigations	Alternative language to address this provision is included in the recommended contract.	WSCA contract includes similar provision.
Confidentiality	County provision not included.	WSCA contract covers this provision.
Assignment and Delegation	County provision not included.	WSCA contract covers this provision.
Budget Reductions	Not included in recommended contract.	Not applicable as this is a pre-paid agreement.
Compliance with Applicable Law	County provision not included.	WSCA contract covers this provision.
Conflict of Interest	County provision not included.	WSCA contract covers this provision.
Considerations for Hiring GAIN/GROW Program Participants	Not included in recommended contract.	Provision cannot be included in the contract as Cisco has very specific corporate hiring practices.
Employment Eligibility Verification	County provision not included.	WSCA contract covers this provision.
Fair Labor Standards	County provision not included.	WSCA contract covers this provision.
Force Majeure	County provision not included.	WSCA contract covers this provision.
Independent Contractor Status	County provision not included.	WSCA contract covers this provision.
Indemnification	County provision not included.	WSCA contract covers this provision.
General Provisions for All Insurance Coverage	County provision not included.	WSCA contract covers this provision.
Non-discrimination and Affirmative Action	County provision not included.	WSCA contract covers this provision.
Notice to Employees Regarding the Federal Earned Income Credit	Not included in recommended contract.	Cisco will comply with this as it applies to California contract workers.

ATTACHMENT II

Standard County Terms and Conditions	Disposition	Comments
Prohibition Against Inducement or Persuasion	Not included in recommended contract.	County policies will prevail in regard to County employees.
Record Retention and Inspection/Audit Settlement	County provision not included.	WSCA contract covers this provision.
Recycled Bond Paper	Not included in recommended contract.	Cisco cannot impose this provision on its entire corporation.
Termination for Non-Appropriation of Funds	Not included in recommended contract.	Not applicable as this is a pre-paid agreement.
County Auditing of Contractor Records	County provision not included.	WSCA contract covers this provision.
Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economical and Clinical Health Act (HITECH) Agreement	Not included in recommended contract.	Cisco will not have access to Public Health Information (PHI).