

**QUANTITY PURCHASE AWARD AGREEMENT # \_\_\_\_\_**  
**FOR CISCO HARDWARE, SOFTWARE, PROFESSIONAL AND ADVANCED SERVICES**  
**EDS # \_\_\_\_\_**

This Addendum is entered into by and between the State of Indiana acting by and through the Indiana Office of Technology ("IOT") for the State and Other Governmental Entities (defined below) and Cisco Systems, Inc. ("Cisco") pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

**WHEREAS**, IC 4-13.1-2-1 authorizes IOT to establish standards and associated contracts for the technology infrastructure of the State; and

**WHEREAS**, IOT Data Communications Network Hardware Standard ITS 99-1 establishes Cisco as the single vendor standard for data network hardware including, but not limited to, switches, routers, wireless access points and firewalls for agencies within the Executive Branch of State government for the Campus Area Network (CAN), Metropolitan Area Network (MAN), Wide Area Network (WAN), and Local Area Network (LAN); and

**WHEREAS**, it is in the best interest of the State to establish a Quantity Purchase Agreement ("QPA") for the purchase of Cisco hardware, software, professional and advanced services; and

**WHEREAS**, Cisco provides its goods and services only through Cisco-certified Fulfillment Partners; and

**WHEREAS**, it is the State's intent, through this QPA, to streamline redundancy of multiple contracts with Cisco Fulfillment Partners, aggregate orders, achieve economies in pricing and obtain the optimum provision of services for Cisco products; and

**WHEREAS**, the State will issue purchase order to Approved Fulfillment Partners (defined below), and shall make all monetary payments to the Approved Fulfillment Partners;

**WHEREAS**, this QPA shall not impact any purchase orders accepted or products delivered by a Fulfillment Partner prior to the Effective Date of this QPA

**NOW THEREFORE**, the parties enter into this Agreement to establish a QPA continuing Cisco as the single vendor standard for data network hardware during the contract term, whereby the State and Other Governmental Entities may purchase Cisco hardware, software, professional and advanced services from Cisco's Approved Fulfillment Partners as described herein pursuant to the terms and conditions set out below.

**1. Statewide Quantity Purchasing Agreement; Form Contract.**

*A. Definitions.* For the purposes of this QPA, the "**State**" means the State of Indiana executive branch agencies, the judicial branch, the legislative branch, and separately elected statewide officers. "**Other Governmental Entities**" means any Indiana county, municipality, municipal corporation, state educational institution, school corporation, city or county hospital, or body corporate and politic. "**Approved Fulfillment Partner**" means a dealer, distributor, or other person or entity with whom Cisco has an affiliation to act as a fulfillment agent for direct order taking, processing, fulfillment or provisioning under this QPA and meeting the criteria set forth in 2A, below.

*B. Form Contract.* The purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in Cisco's State, Local and Education Supplier Agreement, which consists of 31 pages without terms on both sides inclusive of the following exhibits (collectively, the "Form Contract"), which are attached hereto and incorporated herein.

Exhibit A: Discount Schedule  
Exhibit B: Services Exhibit

## Exhibit C: End User License Agreement

This Addendum and the Form Contract are incorporated into each other and, when read together, shall constitute one integrated document (the "QPA"). Any inconsistency, conflict, or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence and effect to this Addendum.

### **2. Duties of Cisco.**

*A. Approved Fulfillment Partners.* Cisco provides goods and services only through Cisco-certified and approved Fulfillment Partners. Each Fulfillment Partner used by the State pursuant to this QPA ("Approved Fulfillment Partner") must (i) be registered to do business with the Indiana Secretary of State, (ii) have obtained a separate Vendor number from the Indiana Auditor of State, (iii) have provided the Auditor with the information required to make payment by electronic transfer as required by IC 4-13-2-14.8, (iv) have agreed to accept the terms and conditions of this QPA when accepting an order placed on behalf of the State, (v) be mutually agreed to by Cisco and the State.

*B. Goods and Services Provided.* Cisco, through Approved Fulfillment Partners, shall provide Cisco equipment, software, professional and advanced services meeting or exceeding the requirements defined by the State or Other Governmental Entities. Depending on the services required, Cisco may seek proposals from Approved Fulfillment Partners, and provide the proposals received to the State or the Other Governmental Entity.

(i) Standard goods and services offered under this QPA are found on Cisco's website at [www.Cisco.com](http://www.Cisco.com).

(ii) All equipment ordered under this QPA shall be newly manufactured, not remanufactured or refurbished, except for service repairs or if certified remanufactured parts are requested by the State and are available from an Approved Fulfillment Partner.

(iii) All services, except for maintenance, shall be performed in accordance with a Statement of Work or Purchase Order, as applicable, and any terms and conditions shall be consistent with this QPA. The terms and conditions in this QPA shall take precedence over any inconsistent or contradictory terms in any Statement of Work or Purchase Order

(iv) Cisco shall assist the State in quantifying cost savings and identify ongoing opportunities for additional savings during the term of this QPA as may be reasonably requested by the State.

*C. Orders Placement through Approved Fulfillment Partners.* All orders will be placed directly through an Approved Fulfillment Partner. All Approved Fulfillment Partners are eligible to quote pricing for procurements under this QPA. Cisco will not, directly or indirectly, restrict any Approved Fulfillment Partner's participation or ability to quote pricing under this QPA. An Approved Fulfillment Partner will not offer less favorable pricing discounts than the QPA discounts established by Cisco under Exhibit A to this Agreement. Any additional incremental discounts, if offered, may be provided in the discretion and as the sole legal obligation of the Approved Fulfillment Partner. All requests for quotes and purchase orders placed by the State shall reference this QPA and shall originate with IOT.

*D. Approved Fulfillment Partner Invoicing.* Each Approved Fulfillment Partner may directly receive a purchase order, submit invoices for its own account, and receive payments in its own name. Payment of an Approved Fulfillment Partner invoice shall be deemed payment to Cisco. Cisco shall make no claim against the State or any Other Governmental Entity for any payment dispute between Cisco and an Approved Fulfillment Partner.

*E. Cisco Oversight of Approved Fulfillment Partners.* Cisco will work with the State to 1) properly onboard Approved Fulfillment Partners such that they are fully aware of statewide contract parameters, 2) manage de-certification or off-boarding of Approved Fulfillment Partners from servicing statewide entities under this contract, and 3) assist in the resolution of any escalated customer issue. Cisco will track the performance of Approved Fulfillment Partners and other resources used and ensure that quality and

service levels are maintained and that applicable Cisco certification requirements are met based on specialty of services requested under this QPA. Cisco will facilitate regular meetings to review QPA progress and Approved Fulfillment Partner performance.

*E. Other Governmental Entities.* Other Governmental Entities may purchase from this QPA by the means of a Purchase Order, a Statement of Work, or such other document as is acceptable to Cisco, the relevant Approved Fulfillment Partner, and the Governmental Entity. The State will not be responsible or financially liable for any orders placed, goods provided, or work performed for any Other Governmental Entity.

**3. Term.** This QPA shall be effective for a period of three (3) years and may be renewed for a maximum of two (2) additional one year terms, for a total of five (5) years. It shall commence on the last State signatory date ("Effective Date") and shall remain in effect for three (3) years after the last State signatory date.

**4. Consideration.**

*A. Pricing.* For purchases by the State and Other Governmental Entities, minimum pricing for all products and services shall be that shown on Cisco's current price list in effect at the time the order is placed less firm discounts as set forth in Exhibit A. The Equipment or services price quoted shall be for the purchase of equipment or services meeting the specifications requested, and shall be for FOB destination. No additional charge may be requested later.

*B. Invoicing.* Approved Fulfillment Partners will invoice the State directly. All invoices must reference this QPA in order to be processed by the Auditor of State. Payment by the State of a Fulfillment Partner invoice shall be deemed payment to Cisco. Cisco shall make no claim against the State for any payment dispute between Cisco and an Approved Fulfillment Partner.

*C. Total Remuneration.* Cisco will receive no direct financial remuneration from the State for goods and services purchased by the State under this QPA, it being understood that Cisco's remuneration derives from its agreements with its Approved Fulfillment Partners.

*D.* The State will not be responsible or financially liable for any orders placed, goods provided, or work performed for any Other Governmental Entity.

By mutual agreement of the parties, the following terms and conditions are deleted from the Form Contract:

- A. Any provision requiring the State of Indiana to provide insurance
- B. Any provision requiring the State of Indiana to provide indemnity
- C. Any provision providing that the Contract be construed in accordance with laws other than those of the State of Indiana
- D. Any provision providing that suit be brought in any State other than Indiana
- E. Any provision providing for resolution of Contract disputes
- F. Any provision requiring the State of Indiana to pay any taxes
- G. Any provision requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney's fees
- H. Any provision modifying the statute of limitations provided by Indiana statute.
- I. Any provision relating to the time within which a claim must be made.
- J. Any provision requiring payment of consideration in advance unless authorized by an exception listed in IC 4-13-2-20
- K. Any provision limiting disclosure of the Contract in violation of the Access to Public Records Act, IC 5-14-3-3.5 or Executive Order 05-07.
- L. Any provision giving the Form Contract precedence over this Addendum

The following terms and conditions are incorporated into and made a part of the Form Contract. When used in the remainder of this Addendum, "Cisco" includes Cisco and all Approved Fulfillment Partners providing goods or services under this QPA; "the State" includes the State and Other Governmental

Entities; "this Contract" includes this QPA and any Statements of Work or Purchase Orders issued to Approved Fulfillment Partners.

**5. Access to Records.** Cisco and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this agreement. Provided Cisco receives a thirty (30) day advanced written notice, Cisco shall make such materials available at their respective offices at all reasonable times during the Contract period, and such audit will be conducted during Cisco's normal business hours and shall not duly interrupt or interfere with Cisco's normal business operations, for three (3) years from the date of final payment under the Contract, for inspection by the State or by any other authorized representative of State government. Copies thereof shall be furnished at no cost to the State if requested.

**6. Assignment; Successors.** As set forth in paragraph 2A, goods and services provided under this Contract will be supplied by Approved Fulfillment Partners who may accept orders and bill the State directly. To the extent that use of Approved Fulfillment Partners may be construed as an assignment or a subcontract, the State consents to such limited assignment or subcontract. Cisco binds its successors and assignees to all the terms and conditions of this Contract. Neither Cisco nor any Approved Fulfillment Partner may assign or subcontract the whole or any part of this Contract without the State's prior written consent.

**7. Audits.** Cisco acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, *et seq.* and audit guidelines specified by the State. The State shall give Cisco thirty (30) days advance written notice, to perform an audit of Cisco's records as it pertains only to the State. In the event that such an audit is conducted by a third party, at the State's sole expense, such third party shall, prior to conducting such an audit execute a confidentiality agreement for the benefit of Cisco in a form reasonably satisfactory to Cisco.

**8. Authority to Bind.** The signatory for Cisco represents that he/she has been duly authorized to execute this Addendum on behalf of Cisco and has obtained all necessary or applicable approvals to make this Contract fully binding upon Cisco when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by Cisco when accepted by the State of Indiana.

**9. Changes in Work.** Cisco shall not commence any additional work or change the scope of the work until authorized in writing by the State. Cisco shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**10. Compliance with Laws.**

A. Cisco shall comply with all applicable Federal, State and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any State or Federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and Cisco to determine whether the provisions of either require formal modification.

B. Cisco and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Cisco is not familiar with these ethical requirements, Cisco should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If Cisco or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to Cisco. In addition, Cisco may be subject to penalties under IC 4-2-6 and IC 4-2-7.

C. Cisco certifies by signing this Addendum, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. Further, Cisco agrees that any payments in arrears and currently due to the State of Indiana may be

withheld from payments due to Cisco. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until Cisco is current in its payments and has submitted proof of such payment to the State.

D. Cisco warrants that it has no current or pending or outstanding criminal, civil, or enforcement actions initiated by the State pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Cisco agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other Contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to Cisco's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to Cisco, Cisco may request that it be allowed to continue, or receive work, without delay. Cisco must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

F. Cisco warrants that Cisco and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed is a material breach of this Contract and grounds for immediate termination of the Agreement and denial of further work with the State.

G. Cisco hereby affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

H. As required by IC 5-22-3-7,

(1) Cisco and any principals of Cisco certify that (A) Cisco, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) Cisco will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) Cisco and any principals of Cisco certify that an affiliate or principal of Cisco and any agent acting on behalf of Cisco or on behalf of an affiliate or principal of Cisco (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

**11. Condition of Payment.** All services provided by Cisco under this Contract must be performed to the State's reasonable satisfaction, as determined by the undersigned State representative in accordance with the Cisco Services Warranty terms as set forth in Form Contract Section 12 – Limited Warranty and where applicable, Statement of Work (SOW) specifications to which both parties have expressly agreed to in a signed writing, and all applicable Federal, State, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any Federal, State, or local statute, ordinance, rule or regulation.

**12. Confidentiality of State Information.** Cisco understands and agrees that data, materials, and information disclosed to Cisco may contain confidential and protected information. Cisco covenants promises and assures that data, material, and information gathered, based upon, or disclosed to Cisco for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Cisco for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this

section and pursuant to 10 IAC 5-3-1(4), Cisco and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11 to the extent said provisions are expressly applicable to Cisco's performance under this Contract. If any Social Security number(s) is/are disclosed as a direct result of Cisco's sole negligent act or omission, Cisco agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other direct claims and expenses for which it is liable under the terms of this Contract.

### **13. Continuity of Services.**

A. Cisco recognizes that the services under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another Contractor, may continue them. Cisco agrees to:

1. Furnish phase-in training, and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. Cisco shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires, and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval.

C. Cisco shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

D. Cisco shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract.

E. Cisco shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after Contract expiration that result from phase-in, phase-out operations).

### **14. Debarment and Suspension.**

A. Cisco certifies that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Cisco.

B. Cisco also further certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupments, paybacks and or penalties that might arise from non-compliance. Cisco shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its Contractual relationship with the subcontractor for work to be performed under this Contract.

**15. Default by State.** Paragraph 43(B) of this Addendum Controls.

**16. Disputes.** Should any disputes arise with respect to this Contract, Cisco and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

A. Cisco agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should Cisco fail to continue to perform its responsibilities regarding all non-disputed work without delay, any additional costs incurred by the State or Cisco as a result of such failure to proceed shall be borne by Cisco, and Cisco shall make no claim against the State for such costs. If the State and Cisco cannot resolve a dispute

within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to Cisco and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to Cisco of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Cisco to terminate this Contract, and Cisco may bring suit to collect these amounts without following the disputes procedure contained herein.

**17. Drug-Free Workplace Certification.** Cisco hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Cisco will give written notice to the State within ten (10) days after receiving actual notice that Cisco or an employee of Cisco in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of this Contract and/or debarment of Contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Contract amount set forth in this Contract is in excess of \$25,000.00, Cisco hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all Contracts and grants from the State in excess of \$25,000.00. No award of a Contract shall be made, and no Contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by Cisco and made a part of the Contract or agreement as part of the Contract documents.

Cisco certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a Statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Cisco's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform it's employees of (1) the dangers of drug abuse in the workplace; (2) Cisco's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the Statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the Statement; and (2) notify Cisco of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, State or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**18. Employment Eligibility Verification.** As required by IC 22-5-1.7, Cisco affirms under the penalties of perjury that:

A. Cisco does not knowingly employ an unauthorized alien.

B. Cisco shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. Cisco is not required to participate should the E-Verify program cease to exist.

C. Cisco shall not knowingly employ or contract with an unauthorized alien. Cisco shall not retain an employee or contract with a person that Cisco subsequently learns is an unauthorized alien.

D. Cisco shall require any subcontractors who perform work under this Contract to certify to Cisco that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Cisco agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if Cisco fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

**19. Employment Option.** Deleted by agreement of the parties.

**20. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**21. Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive. The State shall promptly notify Cisco in writing of such funding cancellation. Cancellation under this paragraph shall not affect the obligations of the State for goods or services provided prior to the date of cancellation.



**22. Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**23. Indemnification.** Cisco agrees to indemnify, defend, and hold harmless the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses arising out of a claim or suit brought by a third party based upon bodily injury (including death) or damage to tangible personal property (not including lost or damaged data) as caused by the negligent or intentional acts or omissions of Cisco and/or its subcontractor, if any, in the performance of the Contract. The foregoing indemnification obligations are conditioned upon the State promptly notifying Cisco in writing of the claim or suit for which Cisco is obligated under this section, cooperating with, assisting and providing information to Cisco as reasonably required, and, subject to the consent of the Indiana Attorney General pursuant to IC 4-6-5-3, and the consent of the Governor pursuant to IC 34-13-3-14, granting Cisco the exclusive right to defend or settle such claim or suit. Notwithstanding the foregoing, Cisco shall have no indemnity obligations for claims arising from negligent or intentional acts or omissions of the State. The State shall not provide such indemnification to Cisco.

**24. Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

Cisco shall be responsible for providing all necessary unemployment and workers' compensation insurance for Cisco's employees. Each Approved Fulfillment Partner shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.

**25. Information Technology Enterprise Architecture Requirements.** If Cisco provides any information technology related products or services to the State, Cisco shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/> to the extent said standards, policies, and guidelines are applicable to Cisco's performance under this Contract. Cisco specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate the Form Contract for default if Cisco fails to cure a breach of this provision within a reasonable time.

**26. Insurance.**

A. Cisco shall secure and keep in force during the term of this Contract, the following insurance coverage, covering Cisco for claims which may arise out of or result from this Contract:

1. Commercial general liability, including Contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$5,000,000 per occurrence and in the annual aggregate unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability for which Cisco is obligated to defend or indemnify the State pursuant to the terms of this Agreement.

2. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence or per accident.

3. Cisco shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2.

B. Cisco's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of Cisco.

3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by Cisco in excess of the minimum requirements set forth above, subject to the terms and conditions of the indemnity provision set forth in this Agreement and any limitation of liability or consequential damages waiver set forth in this Agreement, if applicable. The duty to indemnify the State under this Contract shall not be limited or expanded by the insurance required in this Contract or otherwise maintained by Cisco.

4. In the event of cancellation, Cisco shall promptly replace coverage so that no lapse in insurance occurs.

5. Failure to provide insurance as required in this Contract may be deemed a breach of Contract entitling the State to terminate this Contract.

6. Cisco shall furnish a certificate of insurance to the undersigned State agency prior to the commencement of this Contract.

**27. Key Person(s).** Deleted by agreement of the parties.

**28. Licensing Standards.** Cisco, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by Cisco pursuant to this Contract. The State will not pay Cisco for any services performed when Cisco, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, Cisco shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**29. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

**30. Minority and Women's Business Enterprises Compliance.** Many of Cisco's Approved Fulfillment Partners are certified by the Department of Administration's Minority and Women's Business Enterprises Division, and may provide goods or services directly under this Contract. If subcontractors will be utilized under any Purchase Order or Statement of Work issued under this Contract, Cisco agrees to comply with the provisions of 25 IAC 5 and any participation plan or subcontractor commitment that may have been submitted to the State.

**31. Nondiscrimination.** Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, Cisco covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, State, or local law ("Protected Characteristics"). Furthermore, Cisco certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the

provision of services.

Cisco understands that the State is a recipient of Federal funds, and therefore, where applicable, Cisco and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

**32. Notices.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Indiana Office of Technology  
Attn: QPA Manager  
IGCN, 100 N. Senate Avenue Room 551  
Indianapolis, IN 46204

B. Notices to Cisco shall be sent to:

Cisco Systems, Inc.  
Office of the General Counsel  
Attn: Contract Notice  
170 West Tasman Drive  
San Jose, CA 95134

C. As required by IC 4-13-2-14.8, payments to Cisco or a Cisco Fulfillment Partner shall be made via electronic funds transfer in accordance with instructions filed by Cisco with the Indiana Auditor of State.

**33. Order of Precedence.** Any inconsistency or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence to this Addendum. This Addendum shall take precedence and control over any inconsistency or ambiguity in a subsequently-issued Purchase Order, Statement of Work, or similar document.

**34. Ownership of Documents and Materials.**

A. Cisco Licenses and Documentation. Cisco grants the State a fully paid, non-exclusive license to reproduce in its entirety or incorporate sections of Documentation that is delivered with Cisco Products purchased by the State. This license is granted only for the purposes of operating and maintaining the Products for internal use and does not allow distribution to third parties or resale.

Cisco owns and will continue to own all right, title, and interest in and to the Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by Cisco (or a third party acting on Cisco's behalf) pursuant to this QPA, including modifications, enhancements, improvements or derivative works of any of the foregoing and all Intellectual Property in any of the foregoing.

B. Work for Hire by the State. In the event both parties expressly agree to a mutually executed Statement of Work ("SOW") for Work for Hire Services, all documents, records, programs, data, film, tape, articles, memoranda, and other materials developed under the SOW shall be considered "work for hire" and Cisco transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to Contract performance by Cisco, without the prior written consent of the State, is prohibited. During the performance of the services specified herein, Cisco shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of Cisco. Any loss or damage thereto shall be restored at Cisco's expense. Full, immediate, and unrestricted access to the work product of Cisco as developed under the SOW during the term of this

Contract shall be available to the State.

**35. Payments.**

A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by Cisco in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

B. If Contractor is being paid in advance for the maintenance of equipment and/or software, pursuant to IC 4-13-2-20(b)(14), Cisco agrees that if it fails to perform the maintenance required under this Contract, in accordance with the Cisco Services Warranty terms as set forth in Form Contract Section 12 – Limited Warranty and where applicable, Statement of Work (SOW) specifications, upon receipt of written notice from the State, it shall re-perform the maintenance or refund the consideration paid, pro-rated through the date of non-performance.

**36. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from Federal or other sources.

**37. Renewal Option.** This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed Contract may not be longer than the term of the original Contract. Any provision for automatic renewal is void.

**38. Security and Privacy of Health Information.** Cisco agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent said requirements are expressly applicable to Cisco's performance under this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, Cisco covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by Cisco in the course of its work under this Contract. Cisco agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

**39. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provision of this Contract.

**40. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

**41. Taxes.** The State is exempt from State and local taxes and many federal taxes. The State will not be responsible for any taxes levied on Cisco as a result of this Contract.

**42. Termination for Convenience.** This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination

becomes effective. Cisco shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. Cisco shall be compensated for services herein provided but in no case shall total payment made to Cisco exceed the original Contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

#### **43. Termination for Default**

A. With the provision of thirty (30) days notice to Cisco, the State may terminate this Contract in whole or in part, if Cisco **fails to**:

1. Correct or cure any breach of this Contract within said thirty (30) day period;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. With the provision of sixty (60) days notice to the State, Cisco may terminate this Contract in whole or in part and institute the appropriate measures to collect all monies due up to and including the date of termination, if the State **fails to**:

1. Correct or cure any breach of this Contract within said sixty (60) day period;
2. Make progress so as to endanger performance of this Contract; or
3. Perform any of the other provisions of this Contract.

C. The State shall pay the Contract price for completed supplies delivered and services accepted. Cisco and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. 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.

E. Notwithstanding any notice and cure period set forth in this paragraph, this Contract may be terminated immediately by Cisco for cause in the event of a breach of the following terms of the Form Contract: Section 11 - Software Licensing, Section 14 - Confidential Information or Section 20 - Export Restrictions.

**44. Travel.** No expenses for travel will be reimbursed unless specifically permitted under the scope of the services or consideration provision. Expenditures made by Cisco for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-State travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

**45. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and Cisco shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by Cisco's negligent performance of any of the services furnished under this Contract.

**46. Work Standards.** Cisco agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals and Cisco shall grant such request.

**47. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate Contract clauses (as contained in the 2011 OAG/IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are identified by name below: paragraphs deleted by agreement of the parties noted in the body of the Addendum; paragraph 5 (Access to Records); paragraph 6 (Assignment); paragraph 7 (Audits); paragraph 11 (Condition of Payment); paragraph 12 (Confidentiality of State Information); paragraph 19 (Employment Option); paragraph 21 (Funding Cancellation); paragraph 23 (Indemnification); paragraph 24 (Independent Contractor); paragraph 25 (Information Technology Architecture); paragraph 26 (Insurance); paragraph 27 (Key Persons); paragraph 30 (M/WBE Compliance); paragraph 33 (Order of Precedence); paragraph 34 (Ownership of Documents and Materials); paragraph 43 (Termination for Default).

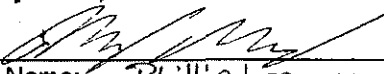
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**Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of Cisco, that he/she has not, nor has any other member, employee, representative, agent or officer of Cisco, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, Cisco and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

**Cisco Systems, Inc.:**

By:   
Printed Name: Phillip Lozano  
Title: Director of Finance  
Date: June 6, 2012

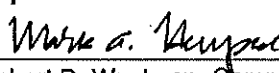
**APPROVED BY LEGAL**

**Indiana Office of Technology**

By:   
Brian S. Arrowood, Chief Information Officer

Date: 19. June - 2012

**Approved by:  
Department of Administration**

 (for)  
Robert D. Wynkoop, Commissioner

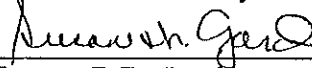
Date: 6/19/2012

**Approved by:  
State Budget Agency**

 (for)  
Adam M. Horst, Director

Date: 6/25/12

**APPROVED as to Form and Legality:  
Office of the Attorney General**

 (for)  
Gregory F. Zoeller, Attorney General

Date: 6-27-12

[The "Form Contract"]  
STATE, LOCAL AND EDUCATION ("SLED")  
STRATEGIC SUPPLIER AGREEMENT  
TERMS AND CONDITIONS

1. **DEFINITIONS**

- 1.1. **Affiliate(s)**, with respect to Customer, are "Other Governmental Entities" described in paragraph 1 of the Addendum. **Affiliate**, with respect to Cisco, is any corporation, firm, partnership or other entity that directly or indirectly controls, or is controlled by, or is under common control with Cisco, including but not limited to Cisco IronPort, LLC, Cisco WebEx, LLC and Cisco Tandberg, LLC.
- 1.2. **Cisco** is Cisco Systems, Inc. ("Cisco"), its employees and agents. Contractor also includes any firm, provider, organization, individual, or other subcontractor or entity performing the business activities authorized under this Agreement by and on behalf of Cisco.
- 1.3. **Cisco.com** is Cisco's suite of on-line services and information at <http://www.cisco.com>.
- 1.4. **Contractor** is Cisco and includes Approved Fulfillment Partners defined in paragraph 2 of the Addendum to the extent authorized by Cisco under the terms of this Agreement.
- 1.5. **Customer** is (a) the State, acting by and through one or more public entities, including but not limited to: State agencies, boards, commissions, committees, councils, departments, institutions, legislative body(ies), public authorities, public benefit corporations, and public educational institutions; and (b) Affiliates to the extent acting solely in their capacity as authorized purchasers under this Agreement. Most State agencies are listed at [http://www.in.gov/core/find\\_agency.html](http://www.in.gov/core/find_agency.html).
- 1.6. **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.
- 1.7. **Cisco Reseller(s)** (also referred to as Cisco "Fulfillment Reseller") are third parties qualified by Cisco to resell Products under this Agreement as authorized pursuant to this Agreement, and are referred to in the Addendum as "Approved Fulfillment Partner(s)".
- 1.8. **Hardware** is the tangible Cisco product acquired by Customer from Cisco and listed on the Price List. Hardware does not include any tangible product listed on the Price List in the name of a third party.
- 1.9. **Price List** is the then-current U.S. price list(s) published during the Agreement term at the Contract website maintained by Cisco under this Agreement on [cisco.com](http://cisco.com) applicable to the relevant Cisco Affiliate to which each Purchase Order is issued by Customer.
- 1.10. **Products** are, individually or collectively as appropriate, Hardware, Software and Documentation listed on the then-current Price List.



**1.11. Purchase Order** is a written or electronic order issued by Customer to Cisco or Cisco Fulfillment Reseller for Products or Services to be purchased, licensed or provided under this Agreement which, upon acceptance by Cisco, constitutes Customer's acceptance of and agreement to be bound by the terms of this Agreement.

**1.12. RMA** is a Return Material Authorization.

**1.13. Services** are any maintenance or technical support and any other professional services purchased under this Agreement and performed or to be performed by Cisco.

**1.14. Software** is the machine readable (object code) version of the computer programs listed from time to time on the Price List or provided with the Hardware and made available by Cisco for license to Customer including firmware, and any copies made, bug fixes for, updates to, or upgrades thereof. Software does not include any computer programs listed on the Price List in the name of a third party.

**1.15. SOW** is a Statement of Work which describes the Services to be performed by Cisco, if any.

**1.16. Territory** is comprised of those Affiliates or regions as consistent with Affiliate(s) as defined in Section 1.1.

## **2. SCOPE**

This Agreement sets forth the terms and conditions for Customer's purchase of Products and Services solely for Customer's internal business use. Customer hereby certifies that it is acquiring and intends to use the Products solely for the purposes set forth in this Section 2.0. Customer shall not resell or otherwise transfer title to any Product nor transfer any Software license to any third party, or to any United States Federal, State, or Local Entity, such as GSA, CMAS or other similar State or Federal schedule Contracts. Customer makes no volume guarantee or minimum purchase commitment under this Agreement.

## **3. CISCO FULFILLMENT RESELLERS**

**3.1.** Without diminishing Cisco's Prime Contractor obligations under this Agreement, Cisco may utilize authorized Cisco Resellers as Cisco deems necessary to perform Prime Contractor's obligations under this Agreement, including: (i) accept Product Purchase Orders; (ii) fulfill Purchase Orders; (iii) determine the final resale prices offered to Customer, provide that Products or Services are not offered at not less than the stated Contract discount(s) in Exhibit A; (iv) directly invoice Customer and (v) directly receive in its own name payment(s) from Customer. Fulfillment Partners who participate in the Federal Communication Commission's E-rate discount program established under the authority of the Federal Telecommunications Commission Act of 1996 may accept and process E-Rate transactions under their own E-rate registration numbers.

**3.2.** A list of approved Cisco Fulfillment Resellers will be maintained on the Website and updated by Cisco throughout the Contract term. Cisco is solely responsible for determining the quantity, technical certifications and other qualifications for Reseller authorization. There shall be no set minimum or maximum on the number of Cisco Resellers who may be authorized during the Contract term, and Cisco may add or delete Resellers at any time subject to the State's vendor responsibility pre-approval of additions. Cisco may, as it deems necessary and upon written notice to the State, delete authorized Fulfillment Resellers at any time during the Agreement term.

**3.3.** Cisco Resellers have no authority to supplement, modify or amend this Agreement or to bind Cisco to any additional terms and conditions other than as set forth in this Agreement.

**4. CONTRACT WEBSITE**

- 4.1. Cisco will maintain a Contract website during the Contract term and keep the information current and correct on a timely basis. ("Website")
- 4.2. Data maintained at the Website shall include: (a) Manufacturer's Price List(s); (b) List of names and addresses of approved Cisco Resellers, with associated identifying detail; (c) escalation contacts.

**5. PRICES**

- 5.1. Prices for Products and Services shall be those specified in Cisco's then current Price List, less the firm discount set forth in Exhibit A, posted at the time of acceptance of the Purchase Order by Cisco, or in accordance with an applicable, valid written price quotation, if any, submitted by Cisco to Customer for such Products or Services. Cisco may change its List prices for Products or 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 on the Website.
- 5.2. All prices are exclusive of any freight, handling and shipping, insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to Products and Services provided pursuant to this Agreement (except for taxes based on Cisco's revenue income) or shall present an exemption certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice.
- 5.3. The pricing discounts set forth in Exhibit A apply to Purchase Orders accepted under this Agreement pursuant to the terms and conditions as set forth herein. With respect to any additional Customer-proposed terms, Cisco reserves the right, in its sole discretion and judgment, to accept such terms and modify the pricing discounts stated herein to a lower discount to reflect potential additional costs, obligations, risks or liabilities associated with the addition of said terms to Cisco, or to reject the proposed change in its entirety. In the event Cisco agrees to the additional terms, the changes require mutual written approval as attached to the Purchase Order.
- 5.4. Fulfillment Resellers are required to sell Products at not less than the minimum firm discount(s) established by the State and Cisco under this Agreement, Exhibit A. Resellers may, however, offer additional incremental discounts, in their sole discretion, for individual transactional orders and are solely responsible for determining the final price between Reseller and Customer. Cisco does not control and has no authority to set or limit the final pricing offered by Resellers to Customers. Other than the foregoing, Cisco Fulfillment Resellers have no authority to supplement, amend or supersede any terms of this Agreement.
- 5.5. Where permitted by applicable law, lease financing is an allowable payment option under the Agreement. If elected by Customer, the terms and conditions of the capital lease financing agreement will be set forth in separate writing executed between the Customer and third party financing company, including all documentation required to secure tax-exempt financing in compliance with law and regulations.

## **6. ORDERS**

- 6.1. Customer shall purchase or license Products or Services by issuing a Purchase Order, signed, if requested by Cisco, or (in the case of electronic transmission) sent by its authorized representative, indicating specific Products and Services, Cisco Product numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, Contract reference, and identity of the End User for each Product and Service. 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.
- 6.2. Only Cisco or authorized Cisco Fulfillment Resellers listed on Cisco's Contract Webpage may directly accept Purchase Orders, invoice or receive payments for products or services under the terms and conditions of this Agreement.
- 6.3. Every Purchase Order issued under this Agreement will bear on the face of it the State's unique Contract identifier as assigned to this Agreement.
- 6.4. Customer may defer Product shipment for up to thirty (30) days from the original shipping date scheduled by Cisco, provided written or electronic notice (issued, in either case, by an authorized representative of Customer) is received by Cisco at least ten (10) days before the originally scheduled shipping date. Cancelled Purchase Orders, rescheduled shipments or Product configuration changes requested by Customer less than ten (10) days before the original scheduled shipping date shall be subject to acceptance by Cisco. Cisco reserves the right to reschedule shipment in cases of configuration changes requested by Customer within ten (10) days of scheduled shipment. No cancellation shall be accepted by Cisco where Products are purchased with implementation services, including 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.

## **7. SHIPPING AND DELIVERY**

- 7.1. Scheduled shipping dates will be assigned by Cisco as close as practicable to Customer's requested date based on Cisco's then-current lead times for the Products. Cisco will communicate scheduled shipping dates in the order acknowledgement or on cisco.com. Cisco shall select the carrier.
- 7.2. Shipping terms are FOB destination, shipping and handling prepaid by Contractor. The method of shipment shall be selected by Cisco consistent with the nature of the Products and hazards of transportation. Acceptance by Customer shall be deemed to have occurred upon delivery of the applicable Products to the location specified on the Purchase Order. Title and risk of loss shall pass to Customer upon acceptance. Customer shall be responsible for all freight, handling and insurance charges subsequent to delivery unless Products are rejected.
- 7.3. For Purchase Orders requesting shipment to destinations outside the shipping area of Cisco Systems, Inc. but within the Territory, Customer may need to Contract with, and/or order from, a Cisco Affiliate.
- 7.4. Customer requests for delivery outside of the Territory are subject to prior written approval of Cisco. If Customer requests in its Purchase Order delivery of Products to Customer's forwarding agent or another representative in the country of shipment, Customer shall

assume responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance.

- 7.5. Cisco shall not be liable for any loss, damage or penalty for delay in delivery or for failure to give notice of any delay. Except in accordance with the applicable shipping terms set forth in this agreement, Cisco shall not have any liability in connection with shipment, nor shall the carrier be deemed to be an agent of Cisco.
- 7.6. All sales are final. Except as provided in Cisco's warranty Statements, Cisco does not accept returns unless (i) Cisco shipped a product other than as specified in the Purchase Order, (ii) such Product is unopened, and (iii) the Product is returned in accordance with Cisco's then current RMA policy and procedures.

## **8. PAYMENT**

- 8.1. Upon and subject to credit approval by Cisco, payment terms shall be thirty (35) days from the date of delivery in compliance with Indiana Prompt Payment Act IC 5-17-5. All payments shall be made in the currency of the Price List applicable to the Purchase Order. If at any time Customer is delinquent in the payment of any invoice, or is otherwise in breach of this Agreement, Cisco may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order, require Customer to prepay for further shipments until complete payment has been received. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (i) ten per cent per annum or (ii) the maximum rate permitted by law, whichever is less.
- 8.2. Where permitted by the law of the Customer, Cisco Capital lease financing is an allowable payment option under this Agreement. The terms and conditions of the capital lease financing arrangement with Cisco will be set forth in a separate writing between the Customer and Cisco.
- 8.3. Unless otherwise agreed to by Cisco, Customer will issue Purchase Orders to and make payments under this Agreement under the name of Cisco's authorized Fulfillment Resellers. Resellers' company name and FEIN numbers will be posted by Cisco at the Cisco Website, along with Resellers' contact information and "remit to" addresses.

## **9. RESOLUTION OF CUSTOMER PROBLEMS**

- 9.1. Escalation of transactional issues, including warranty, maintenance or service issues, shall be first resolved with the Fulfillment Reseller whom the Customer originally placed the order with.
- 9.2. For all outstanding, transactional issues that cannot be resolved satisfactorily following the Fulfillment Reseller's escalation procedures, Customer should contact Cisco's designated point of contact identified on the Cisco Website who will assist with the resolution between Customer and Fulfillment Reseller.
- 9.3. 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>.

## **10. AFFILIATES OF CUSTOMER**

- 10.1. Affiliates of Customer may purchase Products and Services from Cisco under this Agreement. Customer is not liable for any charges incurred by Affiliate(s) of Customer under this Agreement or any separate service agreement.

10.2. Any breach by an Affiliate of (i) a Purchase Order under this Agreement, or (ii) any other agreement with Cisco or a Cisco Affiliate, shall entitle Cisco to exercise remedies directly against the Affiliate, including but not limited to, termination of all Affiliate Purchase Orders, future purchase rights under this Agreement, and all other agreements with Affiliate in accordance with Section 17.0 (Term and Termination).

10.3. The limit of liability set forth in this Agreement shall be deemed an aggregate limit of liability, not per Customer or Affiliate.

## 11. PROPRIETARY RIGHTS AND SOFTWARE LICENSING

11.1. Customer's use of Software is governed by the terms contained in Exhibit C (End User License Agreement ("EULA")). For purposes of this Agreement, all references to "Customer" or "You" therein shall refer to Customer.

11.2. Customer shall notify Cisco promptly of any breach or suspected breach of the EULA and further agrees that it will, at Cisco's request, assist Cisco in efforts to preserve Cisco's intellectual property rights including pursuing an action against any breaching third parties.

## 12. LIMITED WARRANTY

12.1. **Products.** The warranties for the Products may be found at the following URL: <http://www.cisco.com/go/warranty>. Notwithstanding any other term of this Agreement, Cisco's sole and exclusive warranty and obligations are set forth in Cisco's Limited Warranty Statement delivered with the Product.

12.2. **Services.** All Services provided hereunder shall be performed in a workmanlike manner. Customer shall notify Cisco promptly of any claimed breach of this Services warranty. Customer's sole and exclusive remedy for any breach of warranty shall be, at Cisco's option, re-performance of the Services or termination of the applicable Equipment List or SOW, and return of the portion of the fees paid to Cisco by Customer for such non-conforming Services.

12.3. **Restrictions.** The limited warranties referenced in this Section 12.0 do not apply if the Product (a) has been altered, except by Cisco, (b) has not been installed, operated, repaired, used or maintained in accordance with instructions made available by Cisco, (c) has been subjected to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated; (d) is acquired by Customer for beta, evaluation, testing, demonstration purposes or other circumstances for which Cisco does not receive a payment of a purchase price or license fee. The limited warranties referenced in this Section 12.0 also do not apply to any software or hardware that may be offered for sale on the Price List in the name of a third party.

12.4. **DISCLAIMER OF WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 12.0, 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, QUIET ENJOYMENT, ACCURACY, OR SYSTEM INTEGRATION, OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD.

### 13. TRADEMARK USAGE

Customer may request Cisco's written consent to use the name, logo, trademarks, and other marks of Cisco (collectively, the "Marks") for any proper purpose. If such consent is granted, Customer's use of such Marks shall be in accordance with Cisco's then-current policies as updated from time to time at [http://www.cisco.com/en/US/about/ac50/ac47/about\\_cisco\\_policies\\_list.html](http://www.cisco.com/en/US/about/ac50/ac47/about_cisco_policies_list.html). Customer shall not attach to any Product any trademark, trade name, logo, or label other than an aesthetically proper label identifying the Customer, its location and its relationship to Cisco. Customer shall not affix any Mark to any product or device other than a Product.

### 14. CONFIDENTIAL INFORMATION

14.1. "**Confidential Information**" to be disclosed by Customer under this Agreement is information regarding Customer's network operations and technical plans and marketing and financial data, and "Confidential Information" to be disclosed by Cisco under this Agreement is information regarding Cisco's Products and Services, technical, financial, and marketing data, information relating to future product and service development, and information posted on cisco.com.

14.2. The receiving party ("**Receiving Party**") may use the Confidential Information solely for the purpose of furtherance of the business relationship between the parties, as provided in this Agreement and shall not disclose the Confidential Information to any third party, other than to employees of the Receiving Party who have a need to have access to and knowledge of the Confidential Information, solely for the purpose authorized above. Each party shall take appropriate measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure. Information (other than that on cisco.com) disclosed by the disclosing party ("**Disclosing Party**") in written or other tangible form will be considered Confidential Information only if such information is conspicuously designated as "Confidential," "Proprietary" or bears a similar legend. Information disclosed orally shall be considered Confidential Information only if: (i) identified as confidential, proprietary or the like at the time of disclosure, and (ii) confirmed as confidential, proprietary or the like in writing within thirty (30) days of disclosure. Confidential Information disclosed to the Receiving Party by any Affiliate or agent of the Disclosing Party is subject to this Agreement.

14.3. The Receiving Party shall have no obligation with respect to information that (i) was rightfully in possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; or (v) is disclosed by the Receiving Party pursuant to and in accordance with law, or a valid order issued by a court or government agency, provided that the Receiving Party provides (a) prior written notice to the Disclosing Party of such order and (b) the Disclosing Party prior opportunity to oppose or restrict such disclosure. Upon written demand by the Disclosing Party, the Receiving Party shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

14.4. Each party shall retain all right, title and interest to such party's Confidential Information. No license to any intellectual property (or application for intellectual property protection) is

either granted or implied by the conveying of Confidential Information. The Receiving Party shall not reverse-engineer, decompile, or disassemble any software disclosed to it and shall not remove, overprint or deface any notice of copyright or confidentiality, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party or from any copies the Disclosing Party is authorized to make.

14.5. As required by IC 5-14-3-3.5, this Agreement will be posted on the State's Contracts portal and available to the public for review.

15. **GENERAL INDEMNITY.** Paragraph 23 of the Addendum controls.

16. **PATENT AND COPYRIGHT INFRINGEMENT**

16.1 **Claims.** Cisco will defend any claim against Customer that a Product infringes third party patents or copyrights ("Claim") and will indemnify Customer against the final judgment entered by a court of competent jurisdiction or any settlements arising out of a Claim, provided that Customer:

(i) promptly notifies Cisco in writing of the Claim; and

(ii) cooperates with Cisco in the defense of the Claim, and grants Cisco, subject to IC 4-6-2 and IC 34-13-3-14, full and exclusive control of the defense and settlement of the Claim and any subsequent appeal.

16.2 **Additional Remedies.** If a Claim is made or appears likely, Customer agrees to permit Cisco to procure for Customer the right to continue using the Product, or to replace or modify the Product with one that is at least functionally equivalent. If Cisco determines that none of those alternatives is reasonably available, then Customer will return the Product and Cisco will refund Customer's remaining net book value of the Product calculated according to generally accepted accounting principles.

16.3. **Exclusions.** Cisco has no obligation for any Claim based on:

(i) compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;

(ii) modification of a Product by Customer or a third party;

(iii) 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; or

(iv) combination, operation, or use of a Product with non-Cisco products, software or business processes.

16.4 **Sole and Exclusive Remedy.** This Section 16 States Cisco's entire obligation and Customer's exclusive remedy regarding any claims for intellectual property infringement.

17. **TERM AND TERMINATION**

17.1 **Term.** Paragraph 3 of the Addendum controls.

17.2 **Termination for Convenience.** Paragraph 42 of the Addendum controls

17.3 **Termination for Non-Appropriation of Funding.** Paragraph 21 of the Addendum controls

17.4 **Termination for Cause.** Paragraph 43 of the Addendum controls

17.5 **Rights Upon Termination or Expiration.**

17.5.1 Upon termination or expiration of this Agreement, (a) Cisco reserves the right to cease all further delivery of Product or Services, (b) all outstanding invoices immediately become due and payable, and (c) all rights and licenses of Customer under this Agreement shall terminate, subject to the terms of the last sentence of this paragraph. If Cisco agrees to complete delivery of any further Products or Services due against any existing Purchase Orders then Customer shall pay for such Products delivered or Services rendered. Except for a termination of this Agreement resulting from Customer's breach of Proprietary Rights and Software Licensing, Confidential Information, or 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, Products provided to it by Cisco prior to the date of termination or expiration.

17.5.2 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; provided, that except for a termination resulting from Customer's breach of Proprietary Rights and Software Licensing, Confidential Information, or Export, Re-Export, Transfer & Use Controls, Customer may retain a sufficient amount of such Confidential Information and material to operate its installed base of Products.

17.5.3 In the event that, following the expiration or termination of this Agreement, Customer places Purchase Orders and Cisco 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 Cisco of any such Purchase Order will not be considered to be an extension of the term of this Agreement nor a renewal thereof.

17.5.4 The parties agree that if Customer places a firm Purchase Order that is accepted prior to the expiration or termination of this Agreement, which by its terms would extend beyond the expiration or termination of this Agreement, and Cisco has accepted such Purchase Order(s) prior to the expiration or termination of the Agreement, 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.

## 18. **SERVICES AND DOCUMENTATION**

18.1 **Services.** Customer may place Purchase Orders for the Services described in Exhibit B.

18.2 **Documentation.** Cisco hereby grants Customer a fully paid, non-exclusive license to reproduce in its entirety or incorporate sections of Documentation that is delivered with Cisco Products purchased by Customer. All such reproductions will include the following copyright notice at the title page or section page of the Cisco material: "These materials have been reproduced for internal use only with the permission of Cisco Systems, Inc. COPYRIGHT © 2012 CISCO SYSTEMS, INC. ALL RIGHTS RESERVED." This license is granted only for the purposes of operating and maintaining the Products for internal use and does not allow distribution to third parties or resale. Customer shall be solely responsible for the accuracy of all of its modifications and any resultant damages from modified Documentation.



## 19. RECORDS

- 19.1 **Customer Records.** Customer shall keep full, true, and accurate records and accounts, in accordance with generally-accepted accounting principles, of each Product and Software license purchased and deployed, including information regarding Software usage and export or transfer. Customer shall make such records available for review by or on behalf of Cisco upon fifteen (15) days' prior written notice, during regular business hours, at Customer's principal place of business and shall provide Cisco with reasonable assistance in order to review and secure copies of such records. In the event such review discloses non-compliance with this Agreement, Customer shall promptly pay to Cisco the appropriate license fees, plus the reasonable cost of conducting the review.
- 19.2 **Inventory Review.** From time-to-time Cisco may perform an inventory review of Customer's installed base of Products and review serial numbers and other records (upon reasonable advance notice) to validate Service entitlement. Cisco will charge a Service fee if it finds that Services are being provided beyond that for which Customer has paid Cisco. This Service fee includes amounts which should have been paid, interest, and audit fees. Cisco requires that Customer take all necessary action (for example, disabling passwords) to ensure that any former employees or Contractors do not access or use the Services.
- 19.3 **Cisco Records.** Paragraph 5 of the Addendum controls.

## 20. EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS

The Products and technology or direct products thereof (hereafter referred to as **Products and Technology**), supplied by Cisco 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 export, re-export, transfer and use of Cisco Products and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Information regarding compliance with U.S. export, re-export, transfer and use laws may be located at the following URL: [http://www.cisco.com/web/about/doing\\_business/legal/global\\_export\\_trade/general\\_export/Contract\\_compliance.html](http://www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export/Contract_compliance.html). Customer's obligations under this clause shall survive the expiration or termination of this Agreement.

## 21. COMPLIANCE WITH LAWS

Customer shall obtain all licenses, permits and approvals required by any government or regulatory authority and shall comply with all applicable laws, rules, policies and procedures applicable to Customer's use of the Products. Customer warrants that it shall not take any action or permit or authorize any action that will render Cisco liable for a violation of the U.S. Foreign Corrupt Practices Act, which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality thereof in order to assist it or Cisco in obtaining or retaining business. Cisco strives to maintain the highest standards of business integrity. If Customer has any cause for concern regarding any business practices these should be reported to Cisco at [ethics@cisco.com](mailto:ethics@cisco.com).

## 22. LIMITATION AND EXCLUSION OF LIABILITY

- 22.1 Nothing in this Agreement limits or excludes the liability of:
- (a) either party to the other party for:
    - (i) bodily injury or death resulting directly from the negligence of the other party;
    - (ii) fraud or fraudulent misrepresentation;
    - (iii) a breach of Section 14 (Confidential Information); or
    - (iv) any liability that cannot be limited or excluded under applicable law;
  - (b) Customer to Cisco arising out of:
    - (i) Customer's breach of Section 11 (Proprietary Rights and Software Licensing);
    - (ii) Customer's breach of the End User License Agreement in Exhibit C (EULA); or
    - (iii) any amounts due to Cisco under this Agreement.
- 22.2 Subject to Section 22.1 above and section 22.3 below, each party's total aggregate liability is limited to the greater of:
- (a) One hundred thousand dollars (US \$100,000); or
  - (b) The money paid to Cisco under this Agreement during the twelve (12) month period prior to the event that first gave rise to such liability.
- 22.3 Subject to Section 22.1 above, and notwithstanding anything else in this Agreement to the contrary, neither party will liable for any:
- (a) special, incidental, indirect or consequential damages;
  - (b) loss of any of the following: profits, revenue, business, anticipated savings, use of any product or service, opportunity, goodwill or reputation;
  - (c) lost or damaged data; or
  - (d) wasted expenditure (other than any expenditure necessarily incurred to discharge the innocent party's duty or to mitigate its losses).
- 22.4 References in this Section 22 to (a) a "party" includes a party's affiliates, officers, directors, employees, agents and suppliers, and (b) "liability" includes liability arising from Contract, tort (including negligence), under any indemnity, strict liability, or otherwise, in each case even if a party has been informed of the possibility of that liability. In Section 22.3, references to "loss" refers to any and all kinds of loss or damage including, without limitation, any damages, fines, costs, charges, fees or other liability.

**23. GENERAL**

- 23.1 **Choice of Law.** Paragraph 22 of the Addendum controls
- 23.2 **Force Majeure.** Paragraph 20 of the Addendum controls.
- 23.3 **No Waiver.** Paragraph 45 of the Addendum controls.
- 23.4 **Assignment.** Paragraph 6 of the Addendum controls.
- 23.5 **Severability.** Paragraph 39 of the Addendum controls.
- 23.6 **Attorneys' Fees.** Paragraph 36 of the Addendum controls. The State does not agree to pay attorneys fees unless order to do so by a court of competent jurisdiction.
- 23.7 **No Agency.** Paragraph 24 of the Addendum controls.
- 23.8 **Entire Agreement.** Paragraph 29 of the Addendum controls.
- 23.9 **Notices.** All notices required or permitted under this Agreement will be in writing and will be deemed given 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 in Paragraph 32 of the Addendum (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.
- 23.10 **Survival.** The following sections shall survive the expiration or earlier termination of this Agreement: Scope, Payment, Proprietary Rights and Software Licensing, Limited Warranty, Trademark Usage, Confidential Information, Patent and Copyright Infringement, Term and Termination, Records and Audit, Export, Re-Export, Transfer and Use Controls, Limitation of Liability, Waiver of Consequential and Other Damages, General, and the license to use the Software set out in Exhibit C (End User License Agreement) (subject to the termination provisions set forth in Exhibit C).
- 23.11 **Counterparts.** Deleted by agreement of the parties. The State does not execute counterparts.
- 23.12 **Headings.** Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.

**EXHIBIT A**  
**DISCOUNT SCHEDULE**

Provided that and for so long as Cisco remains the exclusive standard as described on Page 1 of this Agreement, the minimum firm discount schedule set forth below shall apply during the term in which this Agreement is in effect, for all Cisco Products and Services ordered from Cisco's then-current U.S. Price List for all Cisco Products and Services ordered by Customer directly from Cisco or Cisco Fulfillment Reseller or for its internal business use. In the event Cisco does not remain the exclusive standard, the discount hereunder will be subject to mutual renegotiation by the parties.

<b>PRODUCTS and SERVICES</b>	<b>DISCOUNT</b>
<b>Product</b>	
Cisco Data Equipment	<b>45%</b>
Cisco Voice Equipment	<b>49%</b>
<b>SMARTnet</b>	
1 year	<b>15%</b>
3 year prepaid	<b>20%</b>
<b>Advanced Services</b>	<b>0%</b>
<b>Partner Professional Services</b> (Basic Installation & Configuration Only)	<b>Authorized Resellers' labor rates will be posted at <a href="http://www.Cisco.com">www.Cisco.com</a></b>

## EXHIBIT B

### SLED STRATEGIC SUPPLIER AGREEMENT

#### SERVICES TERMS AND CONDITIONS

1. **Definitions.** Terms not defined in the body of the Agreement are those set out in the Glossary of Terms at the end of this Exhibit.
2. **Scope.** This Exhibit describes the terms and conditions for (a) Purchases from Cisco by Customer of Services, and (b) delivery by Cisco of the Services according to the options ordered by Customer or otherwise provided by Cisco to Customer. Cisco will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid, (ii) a valid Software license has been granted and (iii) Customer provides information requested by Cisco such as valid serial numbers, site location, Contract number, and Product type.
3. **Pricing.** Prices for Services shall be those specified in the Prices section of the Agreement.

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

4. **Invoicing.** Paragraph 4 of the Addendum controls.
5. **Term and Termination.**

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, provided that the Agreement has not expired or terminated as of the date of the Purchase Order acceptance by Cisco, shall be renewed 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.

The term of each SOW shall be Stated in the SOW.

Any Equipment List or SOW may be terminated if Services fees are not paid when due and payment has not been received within thirty (35) days after notice from Cisco of such past due payment, or otherwise in accordance with the termination provisions set out in the Agreement.

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, unless otherwise agreed by Cisco.

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.

6. **Limitation of Liability.** 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 SIX (6) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY.
7. **Licenses.** Subject to Customer's compliance with the terms of this Agreement, any applicable AS Service Description or SOW, and the End User License Agreement, Cisco grants to Customer a worldwide, non-exclusive and non-transferable license to use for Customer's internal business use only: (i) Software provided as a result of Services, if any, solely in object code form; (ii) other Deliverables specified in an applicable AS Service Description or SOW, if any, and (iii) Data Collection Tools, if any (collectively and individually, the "Licensed Materials"). In addition, Cisco grants to Customer a right to modify and create derivative works of any Scripts provided by Cisco to Customer pursuant to this 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 Cisco's rights in such Licensed Materials as are specified in this Agreement.

Nothing in this Agreement, any AS Service Description or any SOW shall alter or affect the Intellectual Property rights and/or licenses provided with any Cisco Products. The terms and conditions provided with the Software, or in the absence of such terms, the license posted at <http://www.cisco.com/go/warranty> ("End User License Agreement"), are hereby incorporated into this Agreement by this reference. To the extent there is a conflict between the terms of the End User License Agreement and this Agreement, the terms of the End User License 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 Cisco to Customer.

Customer will use Software solely on Cisco Hardware, except as otherwise permitted herein; provided that Customer may also use Application Software on third party hardware or as otherwise expressly authorized in the Software Documentation. In the case of Data Collection Tools that include Hardware, Customer will use any Software included with such Data Collection Tools solely only on the Hardware provided with such Data Collection Tools. In the case of Data Collection Tools that consist of Software only, Customer may use such Data Collection Tools on Hardware or third party hardware, unless otherwise set forth in an applicable AS Service Description or SOW.

The license rights granted in this Section are perpetual, provided Customer is not in breach of this Agreement. Notwithstanding the above, the license for Data Collection Tools will terminate upon the earlier of: (i) the expiration or termination of the Services pursuant to which the Data Collection Tools were provided; or (ii) Cisco's request to Customer that the Data Collection Tool(s) be returned to Cisco.

Except as otherwise expressly set forth in this Agreement or an applicable SOW, 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 derivative works of, or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Software, Deliverable or Data Collection Tool to human-readable form; or transfer, sublicense, rent, lease, distribute, or sell, any Software, 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 Cisco.

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

Customer hereby grants to Cisco a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback (as defined below) to use and incorporate Customer Feedback into any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute and create derivative works of such Customer Feedback for any and all purposes whatsoever, and Customer acknowledges and agrees that it will obtain no rights in or to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology as a result of Cisco's use of any such Customer Feedback. For purposes of this Agreement, "Customer Feedback" means all oral or written communications regarding improvements or changes to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology that Customer provides to Cisco.

8. **Ownership.** 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**").

Except as otherwise expressly set forth in this Agreement or an applicable SOW, Cisco owns and will continue to own all right, title and interest in and to the Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by Cisco (or a third party acting on Cisco's behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing (collectively, "**Cisco Intellectual Property**").

As between Customer and Cisco, Customer shall at all times retain all right, title and interest in and to all of Customer's Pre-Existing Technology and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter, other than Cisco Intellectual Property. Third Party Products shall at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

9. **Subcontracting.** Cisco may subcontract only to Approved Fulfillment Partners.

## EXHIBIT B -- ATTACHMENT 1

### GLOSSARY OF TERMS

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

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

**Advanced Services** means the Services set forth in the AS Service Description(s) found at <http://www.cisco.com/go/servicedescriptions> and/or SOW(s) selected by the Customer. Advanced Services does not include Cisco's core maintenance services, such as 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 that include but are not limited to Cisco Systems® Network management Software, security Software, IP telephony Software, Internet appliance Software, Cisco® Intelligent Contact Management Software, IP Contact Center Software, and Cisco Customer Interaction Suite Software.

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

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

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

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

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

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

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

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

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

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

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



enhanced configuration or feature set.

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

**Four-hour Response** means:

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

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

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

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

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

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

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

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

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

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

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

IDS and VPN3000).

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

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

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

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

**Services** means one or more of the services options selected by the Customer in its Purchase Order and described at: <http://www.cisco.com/go/servicedescriptions>. Services shall also include Approved Fulfillment Partners' professional services ("Partner Professional Services"), but only limited to basic installation and configuration services as follows:

- Certified and Technical Project Management
- Staging and Implementation Engineering
- Site Survey
- High Level Design Review
- Global Implementation Capability
- Configuration Development
- Knowledge Transfer
- Detailed Documentation

**Services Descriptions** mean the detailed descriptions of the Services purchased by Customer which are incorporated in the MSA by reference.

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

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

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

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

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

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

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

**Two-hour Response** means:

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

(ii) For onsite service, the two-hour time period commencing with our problem diagnosis and determination that remedial onsite service is required and ending when Cisco personnel arrive onsite.

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

**EXHIBIT B -- ATTACHMENT 2**

**CISCO SEVERITY AND ESCALATION GUIDELINES**

Customer shall assign a severity to Services-related problems (i.e. SMARTnet) 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**

<b>Elapsed Time*</b>	<b>Severity 1</b>	<b>Severity 2</b>	<b>Severity 3</b>	<b>Severity 4</b>
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 B -- ATTACHMENT 3

### SERVICES NOT COVERED

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

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

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

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

## EXHIBIT C

### END USER LICENSE AGREEMENT

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- (v) use or permit the Software 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
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