



**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
and
Netsync Network Solutions ("Contractor")
for
VoIP Telephony Maintenance, Support and Licensing

Contract Number: MA 8100 NC210000074**

The City accepts the Contractor's Offer for the above requirement and enters into the following Contract. This Contract is between Netsync Network Solutions having offices at 2500 West Loop South, Ste. 410/510, Houston, TX 77027 and the City, a home-rule municipality incorporated by the State of Texas.

1.1 This Contract is composed of the following documents in order of precedence:

- 1.1.1 This Document
- 1.1.2 Supplemental Terms, incorporated herein and attached as Exhibit A hereto.
- 1.1.3 DIR-TSO-4167, incorporated herein by reference.
- 1.1.4 Netsync's Offer, dated August 05, 2021, incorporated herein and attached as Exhibit B hereto.

1.2 Compensation.

The Contractor shall be paid a total Not-to-Exceed amount of \$44,127.00 as indicated in the Offer.

1.3 Term of Contract.

This Contract shall become effective on the date executed by the City ("Effective Date") and shall remain in effect for 36 months or the City terminates the Contract.

- 1.4 Designation of Key Personnel.** The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
Contractor Contract Manager	Christi D Hubbard	512-483-1080	chubbard@netsync.com
City Contract Manager	Jesse Kellogg	512-530-2454	Jesse.Kellogg@austintexas.gov
Procurement Specialist	Elisa Folco	512-974-1421	Elisa.Folco@austintexas.gov

1.5 Invoices. Email invoices to ABIA.Invoices@austintexas.gov

For questions regarding your invoice/payment please contact the City Contract Manager.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

NETSYNC NETWORK SOLUTIONS

Nicole Nordhougen

Printed Name of Authorized Person

Nicole Nordhougen 09 / 08 / 2021

Signature/Date

General Counsel

Title:

CITY OF AUSTIN

Elisa Folco

Printed Name of Authorized Person

Elisa Folco Digitally signed by Elisa Folco
Date: 2021.09.09 14:49:30
-05'00'

Signature/Date

Procurement Specialist IV

Title:

EXHIBIT A
SUPPLEMENTAL TERMS – COOPERATIVE

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

1. GENERAL

1.1 INDEFINITE QUANTITY:

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

1.2 INVOICES:

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

1.3 PAYMENT:

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.
- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. Delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
 - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. Damage to the property of the City or the City's agents, employees or Contractors, which is not covered by insurance required to be provided by the Contractor;

- v. Reasonable evidence demonstrates that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
 - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of notice of non-appropriation.

1.4 AUDITS AND RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
 - i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

1.5 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:

- i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
- ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
- iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

1.6 ADVERTISING:

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

1.7 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

1.8 NON-DEBARMENT CERTIFICATION:

When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs. The Contractor shall notify the Procurement Specialist within five business days if they become debarred from doing business with the Federal Government during the term of the Contract.

1.9 EQUAL OPPORTUNITY:

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.
- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

1.10 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:

Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any “company” for goods or services unless the following verification is included in this Contract.

- A. For the purposes of this Section only, the terms “company” and “boycott Israel” have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a “company”, then the Contractor verifies that he:
 - i. does not “boycott Israel”; and
 - ii. will not “boycott Israel” during the term of this Contract.
- C. The Contractor’s obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

1.11 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

1.12 INSURANCE:

A GENERAL INSURANCE REQUIREMENTS:

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:
 - City of Austin Purchasing Office
 - P.O. Box 1088
 - Austin, Texas 78767
 - OR
 - PURInsuranceCompliance@austinTexas.gov
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or

decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
- xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
- (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
- a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.

- ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
 - b. Independent Contractors coverage (Contractor/Subcontracted work);
 - c. Products/Completed Operations Liability for the duration of the warranty period;
 - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
 - b. 30 Day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- iii. **Business Automobile Liability Insurance:** Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

2. SERVICES

2.1 TRAVEL EXPENSES:

All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the current United States General Services Administration Domestic Per Diem rates as published and maintained online at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

No amounts in excess of the Travel Policy or rates shall be paid. All Invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

Exhibit B
Netsync Offer

NETSYNC
2500 West Loop South, Ste.
410/510
Houston, TX 77027 USA
713.218.5000

QUOTE
AAAQ340187-05

Quote #:	AAAQ340187-05
Date:	08/05/2021
Valid for:	30 Days

Sell To Contact	Inside Sales	Account Manager
Department of Aviation/City of Austin jesse.kellogg@austintexas.gov (512) 530-2242	Lori Endsley lendsley@netsync.com	Christi D Hubbard chubbard@netsync.com

Please send purchase order to: PO@netsync.com

Line #	Part	Description	Qty	Unit Price	Ext Price
Main Site				Sub Total 44,127.00	
Flex Licensing					
1.0	A-FLEX-3	Collaboration Flex Plan 3.0	1	0.00	0.00
1.1.0	SVS-FLEX-SUPT-BAS	Basic Support for Flex Plan	1	0.00	0.00
1.2.0	A-FLEX-NUPL-P	NU On-Premises Calling Professional Unit Price: 4.13 Each per Month Duration: 3 Years, Billing Frequency: Prepaid	175	148.68	26,019.00
1.3.0	A-FLEX-ADD-ER	NU Emergency Responder Add-on (1) Unit Price: 0.44 Each per Month Duration: 3 Years, Billing Frequency: Prepaid	175	15.84	2,772.00
1.4.0	A-FLEX-SRST-E	SRST Endpoints (1)	350	0.00	0.00
1.5.0	A-FLEX-P-PRO	Unified Communications Manager Smart License - Pro (1)	175	0.00	0.00
1.6.0	A-FLEX-P-UCXN	Unity Connection Smart License (1)	175	0.00	0.00
1.7.0	A-FLEX-P-ER	Emergency Responder Smart License (1)	700	0.00	0.00
1.8.0	A-FLEX-SW-12.5-K9	On-Premises & Partner Hosted Calling SW Bundle v12.5 (1)	1	0.00	0.00
1.9.0	A-FLEX-FILESTG-ENT	File Storage Entitlement	3500	0.00	0.00
1.10.0	A-FLEX-PROPACK-ENT	Pro Pack for Cisco Control Hub Entitlement	175	0.00	0.00
1.11.0	A-FLEX-MSG-NU-ENT	Messaging Named User Entitlement (1)	175	0.00	0.00
2.0	A-FLEX-CC	Flex Contact Center	1	0.00	0.00
2.1.0	SVS-FLEX-SUPT-BAS	Basic Support for Flex Plan	1	0.00	0.00
2.2.0	A-FLEX-PJXPC	Flex CC On-Premises UCCX Premium Concurrent Agent Unit Price: 42.60 Each per Month Duration: 3 Years, Billing Frequency: Prepaid	10	1,533.60	15,336.00
2.3.0	A-FLEX-J-AGT-RTU	On-Premises PCCE & UCCE, Hosted CCE & CCX Agent RTU	1	0.00	0.00
2.4.0	A-FLEX-05-12.5-K9	On-Premises UCCX Standard & Premium Media Kit v12.5	1	0.00	0.00
2.5.0	A-FLEX-PJX-SVR12.5	On-Premises UCCX Standard & Premium Server v12.5 (incl 12.6)	1	0.00	0.00
2.6.0	A-FLEX-PJXPAGT12.5	On-Premises UCCX Premium Agent License v12.5	10	0.00	0.00

Notes: 220035057-118127-01

Flex Plan
Cisco Systems TX|DIR-TSO-4167

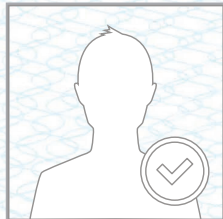
Total	44,127.00
Tax/Vat	0.00
Shipping	0.00
Grand Total USD	44,127.00

1 / 1

Signature Certificate

Document Ref.: 4STEJ-2TQCS-WFVZF-V72CC

Document signed by:



Nicole Nordhougen

Verified E-mail:
nicole@netsync.com

IP: 184.99.152.26

Date: 09 Sep 2021 00:37:36 UTC

Nicole Nordhougen



Document completed by all parties on:

09 Sep 2021 00:37:36 UTC

Page 1 of 1



Signed with PandaDoc.com

PandaDoc is a document workflow and certified eSignature solution trusted by 25,000+ companies worldwide.



NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.



(Check)

OFFEROR HEREBY CERTIFIES

Offeror has read the following and will comply with Austin City Code, Sec. 5-4-2.

1. Not to engage in any discriminatory employment practice defined in this chapter;
2. To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment;
3. To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
4. To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
5. To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
6. To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
7. To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Non-Discrimination and Non-Retaliation Policy set forth below.

MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICY

1. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations. The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.
2. The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
3. Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.
4. Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and nonretaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.
5. UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NONDISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.
6. Contractor agrees that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.
7. The Contractor agrees that this Non-Discrimination and Non-Retaliation Certificate, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
Cisco Systems, Inc.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Cisco Systems, Inc. (hereinafter "Vendor"), with its principal place of business at 170 West Tasman Drive, San Jose, California 95134.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-425, on December 20, 2017, for Cisco Branded Products and Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-425 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, End User License Agreement; Appendix E, Services Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-425, including all addenda; and Exhibit 2, DIR-TSO-TMP-425, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with three (3) optional one-year renewals. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings**A. Products**

Products available under this Contract are limited to Cisco branded products and services and third-party products that complement the Cisco branded products and services as specified in the Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to Cisco branded services as specified in Appendix C, Pricing Index and Appendix E, Services Agreement. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

C. Emerging Technologies and Future Acquisitions

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technologies such as next generation, enhancements and upgrades for products or services that are within the scope of the Cisco Branded Products and Services RFO DIR-TSO-TMP-425. Vendor may propose such products and services throughout the term of the Contract with pricing and terms to be negotiated upon DIR's acceptance. Any determination or acceptance of additions will be at DIR's sole discretion. In addition, DIR and Vendor may mutually agree to add future acquisitions by Cisco to the Contract, with product and service terms, conditions and pricing to be mutually agreed upon in writing by contract amendment.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon thirty (30) calendar days written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

Vendor Contract No. _____

If sent to the State:

Kelly A Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Lynne Coughlan
Cisco Systems, Inc.
170 West Tasman Drive
San Jose, California 95134
Phone: (617) 951 - 6755
Facsimile: (703) 842 - 8684
Email: lcoughla@cisco.com

7. Software License, Service and Leasing Agreements**A. Software License Agreement**

1) Customers acquiring software licenses to Cisco branded products under the Contract shall hold, use and operate such software subject to compliance with the End User License Agreement set forth in Appendix D of this Contract. No changes to the End User License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License Agreement, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. Order Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the End User License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the End User License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the End User License Agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor for Cisco branded products. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this**

Vendor Contract No. _____

Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher. For third-party products included in the Appendix C Pricing Index, Vendor will provide the applicable third-party software license agreements to Customer.

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix E of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software End User License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not without prior written agreement from Customer's authorized signatory, require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and Vendor's resellers who pass through product documents and obligations from the Manufacturer or Publisher.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

A. Appendix A, Section 3, Definitions, A. Customer, is hereby restated in its entirety as follows:

A. Customer - the any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing. Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order.

Notwithstanding the above, nothing in the definition of Customer shall require Vendor to offer products and services to state agencies and political subdivisions of other states as authorized under Chapter 2170, Texas Government Code.

B. Appendix A, Section 3, Definitions, G. Purchase Order, is hereby restated in its entirety as follows:

Vendor Contract No. _____

G. Purchase Order - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument). The terms of this agreement supersedes any terms printed on Customer's Purchase Order and any Purchase Order terms are null and void.

- C. Appendix A, Section 4, General Provisions, D. Assignment**, is hereby restated in its entirety as follows:

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another Texas state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

- D. Appendix A, Section 4, General Provisions, E. Survival**, is hereby restated in its entirety as follows:

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order prior to acceptance by Vendor or its Order Fulfiller. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

- E. Appendix A, Section 5, Intellectual Property Matters**, is hereby restated in its entirety as follows:

This contract does not contemplate, authorize or support acquisition of custom software products or services or the creation of intellectual property. If Vendor and Customer seek to contract for such product or service, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Vendor decide to authorize customized software or hardware products or the creation of intellectual property, then the terms and conditions of ownership of intellectual property will be negotiated between the parties at such time.

Vendor Contract No. _____

- F. Appendix A, Section 7, Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract**, is hereby restated in its entirety as follows:

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use its commercially reasonable efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

- G. Appendix A, Section 7, Contract Fulfillment and Promotion, C. Product Warranty and Return Policies**, is hereby restated in its entirety as follows:

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products. Warranty and returns for third-party products will be subject to the separate policies and terms set forth by the applicable third-party, provided said policies and terms were provided to Customers prior to acceptance by Customer of the third-party products. Vendor/Order Fulfiller will assign any such warranty and return rights to Customer, to the extent applicable.

- H. Appendix A, Section 7, Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information**, is hereby restated in its entirety as follows:

E. Internet Access to Contract and Pricing Information

1) Vendor Website

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include:

- a) the products and services awarded (alternatively, categories);
- b) description of product and service (categories) awarded;
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) designated Order Fulfillers;
- f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;
- g) instructions for obtaining quotes and placing Purchase Orders;
- h) warranty policies;
- i) return policies;
- j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- l) the DIR logo in accordance with the requirements of this Section.

Vendor Contract No. _____

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty; provided however, that Vendor is provided written notice of the website's non-compliance, and Vendor fails to correct such non-compliance within thirty (30) calendar days.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within thirty (30) business days after written notification by DIR.

3) Website Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in Section 4 of the Contract.

4) Website Changes

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict DIR or Customer access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

I. Appendix A, Section 7, Contract Fulfillment and Promotion, G. Vendor and Order Fulfiller Logo, is hereby restated in its entirety as follows:

G. Vendor and Order Fulfiller Logo

In the event DIR should need use of Vendor's or Order Fulfiller's Logos, mutually agreed upon criteria will be coordinated with Vendor.

Vendor Contract No. _____

- J. **Appendix A, Section 8, Pricing, Purchase Order, Invoices, and Payments, C. Customer Price,** is hereby restated in its entirety as follows:

C. Customer Price

- 1) The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

- 3) If pricing for Vendor's products or services available under this Contract are provided by Vendor at a lower price to: (i) an eligible Customer in Texas who is not purchasing those products or services under this Contract or (ii) any other Texas entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price prospectively. This requirement applies to products or services quoted directly by Vendor for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Upon either Customer's notice to Vendor, or Vendor's notice to Customer that the party(ies) have become aware of this pricing differential and the pricing differential has been confirmed by Vendor or Customer provides reasonable confirmation to Vendor, this Contract shall be amended within ten (10) business days to reflect the lower price.

- K. **Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payments, G. Changes to Prices,** is hereby replaced in its entirety as follows:

G. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing or remove the product or service from its pricing list within thirty (30) calendar days. Failure to do so will constitute an act of default by Vendor.

- L. **Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payments, K. Transfer of Title,** is hereby added to this section as follows:

K. Transfer of Title

Transfer of Title shall occur upon acceptance of goods. Customer shall have five (5) business days after receipt to accept products. Absent written rejection within five (5) business days,

Vendor Contract No. _____

products will be deemed accepted, without waiving the right to return products as set forth under Vendor and product warranty provisions.

M. Appendix A, Section 9, Contract Administration, B. Reporting and Administrative Fees, is hereby restated in its entirety as follows:

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense. Vendor will provide all required documentation at no cost.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at ict.sales@dir.texas.gov. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, Order Filler's Company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer (brand), quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information required by DIR and listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with Vendor's applicable Order Filler's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14th) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth

Vendor Contract No. _____

(25th) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15th; DIR closes January sales and notifies Vendor of administrative fee by March 14th; Vendor submits administrative fee for January sales by March 25th.

b) DIR may change the amount of the administrative fee upon thirty (30) calendar days written notice to Vendor without the need for a formal contract amendment.

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

d) Notwithstanding the foregoing, DIR shall timely provide to Vendor a report of all ineligible sales or other reporting discrepancies (including administrative fees), based on DIR's review of available sales information.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within ten (10) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within ten (10) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval, such approval not unreasonably withheld.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. DIR will select the auditor (and all payments to auditor will require DIR approval).

c) Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

N. Appendix A, Section 9, Contract Administration, C. Records and Audit, paragraph 3, is hereby restated in its entirety as follows:

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers thirty (30) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be

Vendor Contract No. _____

made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

- O. Appendix A, Section 10, Vendor Responsibilities, A. Indemnification, 2) ACTS OR OMISSIONS,** is hereby restated in its entirety as follows:

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED REASONABLE COSTS, ATTORNEY FEES, AND EXPENSES resulting from bodily injury (including death) or damage to tangible property to the extent arising out of, or resulting from any negligent acts or omissions, or willful misconduct of the Vendor or its agents, employees, or subcontractors, in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- P. Appendix A, Section 10, Vendor Responsibilities, A. Indemnification, 3) INFRINGEMENTS,** is hereby restated in its entirety as follows:

3) INFRINGEMENTS

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEEs from any and all third-party claims alleging infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

Notwithstanding the foregoing, such indemnity shall not apply, and Vendor shall have no liability under this section if the alleged infringement is caused by:

- 1) Modification of a product by Customer or a third party

Vendor Contract No. _____

- 2) 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
- 3) Combination, operation, or use of a product with non-Cisco products, software or business processes
- 4) Customer's use of the products after Vendor informs Customer of modifications or a change required to avoid such claims and offers to implement those changes
- 5) Any modifications made to the Product by the Vendor pursuant to Customer's specific instructions.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

Q. Appendix A, Section 10, Vendor Responsibilities, A. Indemnification, 4) Property Damage, is hereby deleted in its entirety.

R. Appendix A, Section 10, Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE, Paragraph 2), is hereby restated in its entirety as follows:

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, REASONABLE ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

S. Appendix A, Section 10, Vendor Responsibilities, N. Required Insurance Coverage, is hereby restated in its entirety as follows:

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide certificates of insurance, or other proof of insurance acceptable to DIR, reflecting maintenance of the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall

Vendor Contract No. _____

provide certificates of insurance, or other proof of such insurance coverage acceptable to Customer to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. Required coverage must remain in effect throughout the term of the Contract and each Purchase Order issued to Vendor thereunder. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured, but only to the extent of liabilities falling within Vendor's contractual and indemnity obligations pursuant to this Agreement; and
- d) Waiver of Subrogation, but only to the extent of liabilities falling within Vendor's contractual and indemnity obligations pursuant to this Agreement.

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation, but only to the extent of liabilities falling within Vendor's contractual and indemnity obligations pursuant to this Agreement; and
- b) State of Texas, DIR and Customer included as an additional Insured, but only to the extent of liabilities falling within Vendor's contractual and indemnity obligations pursuant to this Agreement.

T. Appendix A, Section 10, Vendor Responsibilities, X. Use and Protection of Confidential Information, is hereby added to Appendix A as follows:

Vendor Contract No. _____

X. Use and Protection of Confidential Information

Customer and Vendor agree that in connection with this Contract and their relationship, they may come into possession of another party's Confidential Information. The receiving party shall at all times keep in trust and confidence all such Confidential information received, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, Vendor shall be authorized to disclose Customer's Confidential Information to order fulfillers, contractors or employees of a Vendor entity who have a legitimate business need to have access to such information to fulfill Customer's purchase orders. Notwithstanding any record retention policies and laws, the receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. Additionally, the receiving party is authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure. Customer and DIR may disclose information necessary to comply with the Texas Public Information Act.

Vendor shall not disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the Customer. Any press release or publication by Vendor regarding this Agreement is subject to prior review and written approval of DIR and Customer. Customer and DIR may publish the contract and Agreement in its customary manner or as required by law.

- U. Appendix A, Section 11, Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation, a) Termination for Non-Appropriation by Customer**, is hereby restated in its entirety as follows:

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract.

Vendor Contract No. _____

(except for products or services accepted before termination, for which return provisions are provided, which Customer fails to return), nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

V. Appendix A, Section 11, Contract Enforcement, B. Termination, 3) Termination for Convenience, is hereby restated in its entirety as follows:

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship prior to the delivery of the ordered products or services by giving the other party thirty (30) calendar days written notice. Notwithstanding the foregoing, if a Customer issued a Purchase Order and accepted delivery of the ordered products or services, the Customer is obligated to pay for the product or services in accordance with the payment and return provisions contained in this Agreement.

W. Appendix A, Section B. Termination, 4. Termination for Cause, b) Purchase Order, is hereby restated in its entirety as follows:

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance materially relates to vendor provision of goods or services to the Customer.

X. Appendix A, Section 11, Contract Enforcement, C. Force Majeure, is hereby restated in its entirety as follows:

C. Force Majeure

DIR, Customer, Vendor or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase

Vendor Contract No. _____

Order if it is determined by the Customer that Order Filler will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

Remainder of page intentionally left blank

Vendor Contract No. _____

This Contract is executed to be effective as of the date of last signature.

Cisco Systems, Inc.

Authorized By: Signature on File

Name: Jennifer Pate

Title: Authorized Signatory

Date: 6/29/2018

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

Authorized By: Signature on File

Name: Hershel Becker / Colleen Berkley, Procurement Director
On Behalf of Hershel Becker

Title: Chief Procurement Officer

Date: 7/3/2018

Office of General Counsel: Signature on File, 6/29/2018

PRODUCT Category	Manufacturer Part Number	MSRP COST	Each Per Unit	DIR Customer Discount % from MSRP	DIR Customer Price
Cisco Core & Compute	Cisco Core & Compute Products (Hardware & Software) including but not limited to, Networking, Wireless and Mobility, Security, Collaboration, Data Center, Analytics, Video, Internet of Things, Meraki, etc. on Cisco's then-current U.S. Global Pricelist under the Core & Compute Categories.	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	36%	Customer price will be a minimum of 36.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist
Cisco Market	Cisco Market Products including but not limited to, Cloud Analytics, Cloud Applications and Services, Automated Infrastructure, Cloud Security, Collaboration Tools, etc. on Cisco's then-current U.S. Global Pricelist under the Market Category.	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	10%	Customer price will be a minimum of 10.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist
Cisco Net	Cisco Net Products including but not limited to, custom, limited or restricted offers on Cisco's then-current U.S. Global Pricelist under the Net Category.	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	0%	Customer price will be 0.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist
VALUE ADDED AND RELATED SERVICES					
Cisco Smart Net Total Care Service	<p>Cisco is providing its standard warranty term for all new hardware and software purchased under the contract. Customers may purchase Cisco Smart Net Total Care Service for an increased level of maintenance support which provides:</p> <ol style="list-style-type: none"> 1) Global 24 hr/365 day access to experts in the Cisco Technical Assistance Center (TAC); 2) Self-help support through online communities, resources, and tools; 3) Hardware replacement options, including 2-hour, 4-hour and next business day; and 4) Operating System (OS) software updates. Below is pricing for a 1, 3, and 5 year term of service. 				
Smart Net Total Care for Government (1 year term)	Technical support and flexible hardware coverage provided by the Cisco Technical Assistance Center (TAC)	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	10.00%	Customer price will be a minimum of 10.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist

Smart Net Total Care for Government (3 year term)	Technical support and flexible hardware coverage provided by the Cisco Technical Assistance Center (TAC)	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	17.00%	Customer price will be a minimum of 17.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist
Smart Net Total Care for Government (5 year term)	Technical support and flexible hardware coverage provided by the Cisco Technical Assistance Center (TAC)	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	21.00%	Customer price will be a minimum of 21.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist
Smart Net Total Care for Education (1 year term)	Technical support and flexible hardware coverage provided by the Cisco Technical Assistance Center (TAC)	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	25.00%	Customer price will be a minimum of 25.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist
Smart Net Total Care for Education (3 year term)	Technical support and flexible hardware coverage provided by the Cisco Technical Assistance Center (TAC)	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	28.00%	Customer price will be a minimum of 28.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist
Smart Net Total Care for Education (5 year term)	Technical support and flexible hardware coverage provided by the Cisco Technical Assistance Center (TAC)	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	30.00%	Customer price will be a minimum of 30.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist
Technical and Maintenance Services					
Other Cisco Technical and Maintenance Services **	All other maintenance support offers <u>not</u> under Smart Net Total Care Service, including Support Services for on-premise Software	See Table 1 below and posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	10.00%	Customer price will be a minimum of 10.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist

Cisco Services (formerly known as Advanced Services) **	Services includes, but not limited to, Survey/Design, Implementation, Optimization, Remote, Managed, Technical, Advisory, Network Architectural Design, Statements of Work (SOWs), Combined Services, and other Deployment or Advisory Services	See Table 1 below and posted Pricelist at Cisco's TX DIR Contract webpage	US GPL* and SOW-based Projects	0.00%	Customer price will be 0.0% less the then-current List Price as published on Cisco's Global Pricelist
Cisco Reseller/Partner Services (Limited) **	Limited Partner Services, subject to Cisco's written approval, that enable the implementation and/or technical support of Cisco Offers/Solutions	See Table 2 below and posted Pricelist at Cisco's TX DIR Contract webpage	SOW-based Projects	0.00%	Customer price will be 0.0% less the then-current List Price as published on Cisco's U.S. Global Pricelist
Training	Various Training Courses Available Related to Cisco Offers/Solutions	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	0.00%	Customer price will be 0.0% less the then-current List Price as published on Cisco's U.S. Global Pricelist
Support	See above under Smart Net Total Care Service & Other Technical and Maintenance Services	See posted Pricelist at Cisco's TX DIR Contract webpage	US GPL*	10.00%	Customer price will be a minimum of 10.00% less the then-current List Price as published on Cisco's U.S. Global Pricelist

* US GPL is Cisco's then-current U.S. Global Pricelist found on Cisco's TX DIR Webpage, <https://www.cisco.com/c/en/us/solutions/industries/government/us-government-solutions-services/resources/government-contracts-funding-vehicles/state-local-government-contracts/state-of-texas-dir-4167.html> .

Cisco Services

Service	Onsite NTE Amount/Hour*	Remote NTE Amount/Hour*
Maintenance Services	\$600.00	\$525.00
Deployment Services	\$743.17	\$661.17
Advisory Services	\$743.18	\$661.18
Architectural Design Services	\$743.19	\$661.19
Statement of Work Services	\$743.20	\$661.20
Training Deployment Services	\$600.00	\$525.00

*The hourly labor rates provided are not to exceed (NTE) rates. Cisco will use the NTE rates to calculate a cost to deliver a statement of work (SOW). Cisco will use the NTE rates, required level of effort needed to produce the client approved deliverables, and skill set to determine the price of the SOW. For each customized SOW, Cisco will provide a fixed cost for the agreed upon deliverables. Any travel costs that are incurred for the specific SOW will be billed for separately. Individual hours, or blocks of hours may not be purchased separately. Because the SOW is offered at a fixed price, Cisco does not keep time cards.

Partner Services

Service	Onsite NTE Amount/Hour*	Remote NTE Amount/Hour**
Partner Services	\$600.00	\$525.00

NOTE: Limited Partner Services for Basic Install and Config include the following:

- Certified and Technical Project Management
- Staging & Implementation Engineering
- Site Survey, High Level Design Review
- Global Implementation Capability
- Configuration Development
- Knowledge Transfer
- Acceptance Testing

*Onsite NTE Amount/Hour: Customer Premise Labor Rates Not To Exceed Hourly

**Remote NTE Amount/Hour: Vendor Premise Labor Rates Not To Exceed Hourly

Amendment Number 1
to
Contract Number DIR-TSO-4167
between
State of Texas, acting by and through the Department of Information Resources
and
Cisco Systems, Inc.

This Amendment Number 1 to Contract Number DIR-TSO-4167 ("Contract") is between the Department of Information Resources ("DIR") and Cisco Systems, Inc. ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 1, C. Order of Precedence**, is hereby restated in its entirety as follows:

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, End User License Agreement; Appendix E, Services Agreement; Appendix F, Master Lease Agreement (MLA); Appendix G, Master Operating Lease Agreement (MOLA); Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-425, including all addenda; and Exhibit 2, DIR-TSO-TMP-425, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix G, Master Operating Lease Agreement; Appendix F, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, End User License Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-425, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-425, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Appendix G, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling document shall be this Contract, then Appendix F or Appendix G, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. **Appendix F, Master Lease Agreement**, is hereby added.
3. **Appendix G, Master Operating Lease Agreement**, is hereby added.
4. **Contract, Section 6, Notification**, is hereby restated in its entirety as follows:

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Mimi Farr
Sr. Manager, USPS Contracts Management Office
Cisco Systems, Inc.
170 West Tasman Drive
San Jose, California 95134
Phone: (408) 527-2627
Facsimile: (408) 608-1802
Email: mimnguye@cisco.com

5. **Contract, Section 7, Software License, Service and Leasing Agreements** is modified to add new subsections D and E and renumber D to F:

7. Software License, Service and Leasing Agreements

D. Master Operating Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to, and to allow as Lessors its Order Fulfillers, utilize the Master Operating Lease Agreement in Appendix G of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR contracts.

E. Master Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to, and to allow as Lessors its Order Fulfillers, utilize the Master Lease Agreement in Appendix E of this Contract for DIR authorized entities as Lessees that are **not** Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions. Texas State Agencies that have the requisite capital authority and who are

not required to utilize such authority via the Texas Public Finance Authority may or may not be eligible to utilize the Master Lease Agreement; each such agency must confer with its own counsel to make this determination.

F. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software End User License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not without prior written agreement from Customer's authorized signatory, require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and Vendor's resellers who pass through product documents and obligations from the Manufacturer or Publisher.

6. Appendix D, Section 15, Survival, is hereby restated in its entirety as follows:

15. Survival

Subject to Appendix A, Section 4E, of DIR Contract No. DIR-TSO-4167, Sections 4, 5, the warranty limitation in 7(a), 7(b) 7(c), 8, 10, 11, 13, 14, 15, 17 and 18 shall survive termination or expiration of this EULA.

7. **Appendix E, Section 13 (f)**, is hereby restated in its entirety as follows:

f. Subject to Sections d and e above, the term of a SOW shall be as specified in that SOW and each Service provided under this Agreement shall expire at the end of its respective term, which may be after the termination of this Agreement becoming effective.

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

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

Cisco Systems, Inc.

Authorized By: Signature on File

Name: Jennifer Pate

Title: Authorized Signatory

Date: 7/18/2018

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

Authorized By: Signature on File

Name: Colleen Berkley for Hershel Becker

Title: Director Procurement Services

Date: 7/26/2018

Office of General Counsel: Signature on File, 7/23/2018

Amendment Number 2
to
Contract Number DIR-TSO-4167
between
State of Texas, acting by and through the Department of Information Resources
and
Cisco Systems, Inc.

This Amendment Number 2 to Contract Number DIR-TSO-4167 ("**Contract**") is between the Department of Information Resources ("DIR") and Cisco Systems, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Appendix C, Pricing Index** is hereby replaced in its entirety with the attached Appendix C, Pricing Index.

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

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

Cisco Systems, Inc.

Authorized By: Signature on File

Name: Jennifer Pate

Title: Authorized Signatory

Date: 1/10/2019

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

Authorized By: Signature on File

Name: Hershel Becker
Colleen Berkley for Hershel Becker

Title: Chief Procurement Officer

Date: 1/17/2019

Office of General Counsel: Signature on File 1/17/2019