

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCT AND RELATED SERVICES
CISCO SYSTEMS, INC.

1 INTRODUCTION

1.1 Parties

This contract for Cisco Branded Products and Related Services (this “Contract”) 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. a Delaware For-Profit Corporation (hereinafter “Successful Respondent”), with its principal place of business at 170 West Tasman Drive San Jose CA 95134.

1.2 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-CPO-TMP-578, on 6/09/2023, for Cisco Branded Products and Related Services (the “RFO”). Upon execution of all Contracts, a notice of award for DIR-CPO-TMP-578, shall be posted by DIR on the Electronic State Business Daily.

1.3 Order of Precedence

A. For transactions under this Contract, the order of precedence shall be as follows:

1. this Contract;
2. **Appendix A, Standard Terms and Conditions;**
3. **Appendix B, Successful Respondent’s Historically Underutilized Businesses Subcontracting Plan;**
4. **Appendix C, Pricing Index;**
5. **Appendix D, End User Terms;**
6. **Appendix E, Services Agreement template;**
7. **Appendix F, Master Operating Lease Agreement;**

8. **Appendix G, Master Lease Agreement;**
 9. **Exhibit 1, RFO DIR-CPO-TMP-578**, including all Addenda; and
 10. **Exhibit 2, Successful Respondent's Response to RFO DIR-CPO-TMP-578**, including all Addenda.
- B. Each of the foregoing documents is hereby incorporated by reference and together constitute the entire agreement between DIR and Successful Respondent.

1.4 Definitions

Capitalized terms used but not defined herein have the meanings given to them in **Appendix A, Standard Terms and Conditions**.

2 TERM OF CONTRACT

The initial term of this Contract shall be up to two (2) years commencing on the date of the last signature hereto (the "Initial Term"), with one (1) optional two-year renewal and one (1) optional one-year renewal (each, a "Renewal Term"). Prior to expiration of the Initial Term and each Renewal Term, this Contract will renew automatically under the same terms and conditions unless either party provides written notice to the other party at least sixty (60) days in advance of the renewal date stating that the party wishes to discuss amendment or non-renewal.

3 OPTION TO EXTEND

Successful Respondent agrees that DIR may require continued performance under this Contract at the rates specified in this Contract following the expiration of the Initial Term or any Renewal Term. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed ninety (90) calendar days. Such extension of services shall be subject to the requirements of the Contract, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. DIR may exercise this option upon thirty (30) calendar days written notice to the Successful Respondent.

4 PRODUCT AND SERVICE OFFERINGS

Products and services available under this Contract are limited to the technology categories defined in Request for Offer DIR-CPO-TMP-578 for Cisco Branded Products

and Related Services. At DIR's sole discretion, Successful Respondent may incorporate changes or make additions to its product and service offerings, provided that any changes or additions must be within the scope of the RFO.

5 PRICING

5.1 Pricing Index

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

5.2 Customer Discount

- A. The minimum Customer discount for all products and services will be the percentage off List Price (as defined below) or MSRP (as defined below), as applicable, as specified in **Appendix C, Pricing Index**. Successful Respondent shall not establish a List Price or MSRP for a particular solicitation. For purposes of this Section, "List Price" is the price for a product or service published in Successful Respondent's price catalog (or similar document) before any discounts or price allowances are applied. For purposes of this Section, "MSRP," or manufacturer's suggested retail price, is the price list published by the manufacturer or publisher of a product and available to and recognized by the trade.
- B. Customers purchasing products or services under this Contract may negotiate additional discounts with Order Fulfiller. Order Fulfiller and Customer shall provide the details of such additional discounts to DIR upon request.
- C. If products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract, or (ii) to any other entity or consortia authorized to sell said products and services to eligible Customers, under the same terms and conditions provided for the State for the same products and services under this contract, then the available price of such products and services under this Contract shall be adjusted to that lower price prospectively (such adjustments shall not apply to previously invoiced or fulfilled Purchase Orders). This requirement applies to products or services quoted by Successful Respondent for a quantity of one (1) but does not apply to volume or special pricing purchases. DIR or an eligible Customer shall notify and provide evidence of better pricing to

Successful Respondent within ten (10) days of Successful Respondent providing a lower price as described in this Section to an eligible Customer, and Successful Respondent shall inform DIR upon receiving such notice. This Contract shall be amended within ten (10) days to reflect such lower price.

5.3 Changes to Prices

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

5.4 Shipping and Handling

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

6 DIR ADMINISTRATIVE FEE

- A. Successful Respondent shall pay an administrative fee to DIR based on the dollar value of all sales to Customers pursuant to this Contract (the "DIR Administrative Fee"). The amount of the DIR Administrative Fee shall be seventy-five hundredths of a percent (0.75%) of all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.
- B. All prices quoted to Customers shall include the DIR Administrative Fee. DIR reserves the right to increase or decrease the DIR Administrative Fee during the term of this Contract, upon written notice to Successful Respondent without

amending this Contract. Any increase or decrease in the DIR Administrative Fee shall be incorporated in the price to Customers.

7 INTERNET ACCESS TO CONTRACT AND PRICING INFORMATION

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

- A. A current price list or mechanism to obtain specific contract pricing;
- B. MSRP/list price or DIR Customer price;
- C. Discount percentage (%) off MSRP or List Price;
- D. Warranty policies; and
- E. Return policies.

8 USE OF ORDER FULFILLERS

8.1 Authorization to Use Order Fulfillers

Subject to the conditions in this Section 8, DIR agrees to permit Successful Respondent to utilize designated order fulfillers to provide products, services, and support resources to Customers under this Contract ("Order Fulfillers").

8.2 Designation of Order Fulfillers

- A. Successful Respondent may designate Order Fulfillers to act as the distributors for products and services available under this Contract. In designating Order Fulfillers, Successful Respondent must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. DIR and Successful Respondent will agree on the number of Order Fulfillers that are Historically Underutilized Businesses as defined by the CPA.
- B. In addition to the required Subcontracting Plan, Successful Respondent shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.
- C. DIR reserves the right to require Successful Respondent to rescind any Order Fulfiller participation or request that Successful Respondent name additional Order Fulfillers should DIR determine it is in the best interest of the State.

- D. Successful Respondent shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of this Contract. Successful Respondent shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of this Contract.
- E. Successful Respondent may qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Successful Respondent's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the criteria.
- F. Successful Respondent shall not prohibit any Order Fulfiller from participating in other procurement opportunities offered through DIR.

8.3 Changes in Order Fulfiller

Successful Respondent may add or remove Order Fulfillers throughout the term of this Contract upon written authorization by DIR. Prior to adding or removing Order Fulfillers, Successful Respondent must make a good faith effort to revise its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Successful Respondent shall provide DIR with its updated Subcontracting Plan and the Order Fulfillers information listed above.

8.4 Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall be in accordance with Section 5.

9 NOTIFICATION

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

If sent to the State:

Lisa Massock or Successor in Office
Chief Procurement Officer
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700

If sent to Successful Respondent:

Jumana DiHu
CISCO SYSTEMS, INC.
170 West Tasman Drive
San Jose, CA 95134
Phone: (773) 269-6397
Email: jdihu@cisco.com

10 SOFTWARE LICENSE, LEASE, AND SERVICE AGREEMENTS

10.1 Software License Agreement

- A. Customers acquiring software licenses to Cisco-branded products under this Contract shall hold, use, and operate such software subject to compliance with the End User Terms set forth in **Appendix D** of this Contract. Customer and Successful Respondent may agree to additional terms and conditions that do not diminish a term or condition in the End User Terms, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Successful Respondent. Successful Respondent shall make the End User Terms available to all Customers at all times.
- B. Compliance with the End User Terms is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the End User Terms.

10.2 Services Agreement

Services provided under this Contract shall be in accordance with the Services Agreement as set forth in **Appendix E** of this Contract. No changes to the Services Agreement terms and conditions may be made unless previously agreed to by Successful Respondent and DIR. Successful Respondent and Customer may agree to terms and conditions that do not diminish or lessen the rights or protections of the Customer or the responsibilities or liabilities of Successful Respondent.

10.3 Master Operating Lease Agreement

DIR and Successful Respondent hereby agree that Successful Respondent is authorized to utilize the Master Operating Lease Agreement in **Appendix F** of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR Contracts.

10.4 Master Lease Agreement

DIR and Successful Respondent hereby agree that Successful Respondent is authorized to utilize the Master Lease Agreement in **Appendix G** 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.

11 CONFLICTING OR ADDITIONAL TERMS

- A. The terms and conditions of this Contract shall supersede any additional conflicting or additional terms in any additional service agreements, statement of work, and any other provisions, terms, conditions, and license agreements, including those which may be affixed to or accompany software upon delivery (sometimes called shrink-wrap or click-wrap agreements), and any linked or supplemental documents, which may be proposed, issued, or accepted by Successful Respondent and Customer in addition to this Contract (such additional agreements, "Additional Agreements"), regardless of when such Additional Agreements are proposed, issued, or accepted by Customer. Notwithstanding the foregoing, it is Customer's responsibility to review any Additional Agreements to determine if Customer accepts such Additional Agreement. If Customer does not accept such Additional Agreement, Customer shall be responsible for negotiating any changes thereto. For third party products appearing on Appendix C, Successful Respondent or Order Fulfiller, as applicable, will provide the applicable third-party software license terms to Customer.
- B. Any update or amendment to an Additional Agreement shall only apply to Purchase Orders for the associated product or service offering after the effective date of such update or amendment; provided that, if Successful Respondent has responded to a Customer's solicitation or request for pricing, any subsequent update or amendment to an Additional Agreement may only apply to a resulting Purchase Order if Successful Respondent directly informs such Customer of such update or amendment before the Purchase Order is executed.

- C. Successful Respondent shall not require any Additional Agreement that: i) diminishes the rights, benefits, or protections of Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of Customer; or ii) 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.
- D. If Successful Respondent attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to this Contract or the Purchase Order between Successful Respondent and Customer, and Successful Respondent will nonetheless be obligated to perform such Purchase Order without regard to the prohibited documents, unless Customer elects instead to terminate such Purchase Order, which in such case may be identified as a termination for cause against Successful Respondent.

12 AUTHORIZED EXCEPTIONS TO APPENDIX A, STANDARD TERMS AND CONDITIONS

- A. **Appendix A, Section 3.8, Invoice**, is hereby deleted and replaced in its entirety as follows:

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

- B. **Appendix A, Section 3.11, Statement of Work (SOW)**, is hereby deleted and replaced in its entirety as follows:

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

- C. **Appendix A, Section 4.5, Survival**, is hereby deleted and replaced in its entirety as follows:

All applicable Statements of Work that were entered into between Successful Respondent 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 Successful Respondent shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order in accordance with Section 11. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than three (3) years. In all instances of termination or expiration and no later than five (5) days after termination or expiration or upon DIR request, Successful Respondent shall provide a list, in accordance with the format requested by DIR (i.e., Excel, Word, etc.), of all surviving Statements of Work and Purchase Orders to the DIR Contract Manager and shall continue to report sales and pay the DIR Administrative Fees for the duration of all such surviving Statements of Work and Purchase Orders. Rights and obligations under the 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.

- D. **Appendix A, Section 4.9, Data Location**, is hereby deleted and replaced in its entirety as follows:

Regardless of any other provision of the Contract or its incorporated or referenced documents, all data for State of Texas Customers shall remain, and be stored always and exclusively within the contiguous United States. State of Texas Customers can specifically request and agree otherwise in a Purchase Order by placing an order for a hosted data solution with data locations outside the United States. All data for State of Texas Customers shall be processed, accessed, viewed, transmitted, and received, always and exclusively within the contiguous United States, provided that State of Texas Customers can specifically request and agree otherwise in a Purchase Order. "Support Data," defined as data collected and maintained by Successful Respondent when a Customer submits requests for support and troubleshooting services, including information about the solutions and other details about the support incident and interaction; configuration

support data; performance monitoring data; and security threat data (threat intelligence data, URLs, metadata, netflow data, and origin and nature of malware) necessary to enable provisioning of the services, including security features of the solutions, shall not be subject to this requirement, unless otherwise requested by a Customer. For all Customers outside the State of Texas' jurisdiction, the question of data location shall be at the discretion of such Customers. NOTE: CUSTOMERS SHOULD CONSIDER WHETHER THEY REQUIRE CONTIGUOUS US-ONLY DATA LOCATION AND HANDLING AND MAKE SUCCESSFUL RESPONDENT AWARE OF THEIR REQUIREMENTS.

- E. **Appendix A, Section 5, Intellectual Property Matters**, is hereby deleted and replaced 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 Successful Respondent 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 Successful Respondent 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.

- F. **Appendix A, Section 6.A, Terms and Conditions Applicable to State Agency Purchases Only**, is hereby deleted and replaced in its entirety as follows:

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

Act ("CVAA") of 2010, as applicable. Successful Respondent hereby represents, certifies, and warrants its products and services comply with its then current Accessibility Conformance Reports.

G. Appendix A, Section 7.2, Internet Access to Contract and Pricing Information, is hereby deleted and replaced in its entirety as follows:

A. Successful Respondent Webpage

Within thirty (30) calendar days from the Effective Date, Successful Respondent will establish and maintain a website specific to the product and services offerings awarded under the Contract that is clearly distinguishable from other, non-DIR Contract offerings on Successful Respondent's website. Successful Respondent must use a web hosting service that provides a dedicated internet protocol (IP) address. Successful Respondent's website must have a Secure Sockets Layer (SSL) certificate and Customers must access Successful Respondent's website using Hyper Text Transfer Protocol Secure (HTTPS) and it will encrypt all communication between Customer browser and website. The website must include a webpage that contains:

- i) a list with description of products and/or services awarded;
 - ii) Successful Respondent contact information (name, telephone number and email address);
 - iii) instructions for obtaining quotes and placing Purchase Orders;
 - iv) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
 - v) a link to the DIR "Cooperative Contracts" webpage;
 - vi) the DIR logo in accordance with the requirements of Section 7.9; and
 - vii) any other information that the Contract indicates is required to be included on the webpage.
- B. If Successful Respondent does not meet the webpage requirements listed above, DIR may cancel the Contract without penalty.**

- H. **Appendix A, Section 7.8, Services Warranty and Return Policies**, is hereby deleted and replaced in its entirety as follows:

Order Fulfiller and Successful Respondent will adhere to Successful Respondent's then-currently published policies concerning product and service warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated customers for like products and services. Warranty and returns for third-party products may also be subject to separate, additional policies and terms set forth by the applicable third-party, in accordance with Section 11 of the Contract, provided said policies and terms were provided to Customers prior to acceptance by Customer of the third-party products. Successful Respondent and Order Fulfiller will assign any such warranty and return rights to Customer, to the extent applicable.

- I. **Appendix A, Section 8.1, Purchase Orders**, is hereby deleted and replaced in its entirety as follows:

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

- J. **Appendix A, Section 10.1.1, Indemnities by Successful Respondent**, is hereby deleted and replaced in its entirety as follows:

A. Successful Respondent shall defend and indemnify DIR, the State of Texas, and Customers, AND/OR THEIR OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUCCESSORS, ASSIGNEES, AND/OR DESIGNEES ("Indemnified Parties") FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED REASONABLE COSTS, ATTORNEY FEES, AND EXPENSES arising out of, resulting from a claim brought by a third party based upon:

- i) any negligent acts or omissions, or willful misconduct of Successful Respondent or its employees, agents, or subcontractors in

connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract;

- ii) any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights (an "Infringement") in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract; and
- iii) tax liability, unemployment insurance or workers' compensation or expectations of benefits by Successful Respondent, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.

B. Successful Respondent shall defend Indemnified Parties and shall provide the remedies outlined in Section B below for any third-party claim directly arising from an accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to DIR data, Customer data (including, but not limited to, text, audio, video or image files, provided by Customer to Successful Respondent in connection with Customer's use of Successful Respondent's solutions, and data developed at Customer's specific request related to a statement of work or contract), confidential information of DIR or Customer, any personal identifying information, or any other protected or regulated data resulting from a breach by Successful Respondent of its security obligations as set forth in the Contract or Customer's Purchase Order (a "Data Breach"), provided Customer has complied with any data protection requirements to which it has agreed in writing. Any third-party claim outlined in this Section B is referred to herein as a "Data Breach Claim."

Successful Respondent shall indemnify the Indemnified Parties against the following arising from the Data Breach Claim:

- i) final judgement entered by the court of competent jurisdiction, or fine levied by the supervisory authority or regulator;
- ii) a final settlement of the Data Breach Claim;

- iii) actual and reasonable expenses notifying affected individuals of the loss, destruction, or unauthorized access of data, as such notice is required by applicable law; and
- iv) one (1) year of credit monitoring services for individuals affected by the unauthorized access of data.

C. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE SUCCESSFUL RESPONDENT TO DEFEND OR INDEMNIFY INDEMNIFIED PARTIES FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF INDEMNIFIED PARTIES.

D. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WHICH WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. FOR NON-STATE AGENCY CUSTOMERS, THE DEFENSE SHALL BE COORDINATED BY CUSTOMER'S LEGAL COUNSEL. SUCCESSFUL RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER AND TO DIR OF ANY SUCH CLAIM.

K. **Appendix A, Section 10.1.2, Infringements**, is hereby deleted and replaced in its entirety as follows:

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

- (1) any designs, specifications or requirements provided by Customer, or on Customer's behalf by a third party;
- (2) modification of a Cisco product by Customer, or on Customer's behalf pursuant to Customer's specific instructions;
- (3) the amount or duration of use made of a Cisco product, revenue Customer earned, or services Customer offered;

- (4) combination, operation, or use of the Cisco product with non-Cisco products, software, content or business processes; or
- (5) Customer's failure to change or replace the Cisco product as required and properly notified by Successful Respondent.

B. If Successful Respondent becomes aware of an actual or potential claim of an Infringement, or Customer provides Successful Respondent with notice of an actual or potential claim of an Infringement, Successful Respondent may (or in the case of an injunction against Customer, shall), at Successful Respondent's sole expense: (i) procure for 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.

- L. **Appendix A, Section 10.2, Property Damage**, is hereby deleted and replaced in its entirety as follows:

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY TANGIBLE PROPERTY (NOT INCLUDING DATA) OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF SUCCESSFUL RESPONDENT, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, SUCCESSFUL RESPONDENT SHALL PAY COMMERCIALY REASONABLE THIRD PARTY COSTS OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. (IN ADDITION TO COSTS OF PRIVATE CONTRACTORS OR SUPPLIERS, REPAIR OR REPLACEMENT COSTS OF A GOVERNMENTAL ENTITY EMPLOYED TO PERFORM SUCH SHALL MEET THE DEFINITION OF "THIRD PARTY COSTS"). SUCH COSTS SHALL BE ACCURATELY DOCUMENTED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY SUCCESSFUL RESPONDENT NINETY (90) CALENDAR DAYS AFTER THE DATE OF SUCCESSFUL RESPONDENT'S RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE AND REQUIRED DOCUMENTATION OF THE AMOUNT DUE. THE FOREGOING SHALL CONSTITUTE CUSTOMER'S, OR STATE'S, AS APPLICABLE, SOLE AND EXCLUSIVE REMEDY FOR SUCH PROPERTY DAMAGE CLAIMS.

M. Appendix A, Section 10.11, Background and/or Criminal History

Investigation, is hereby deleted and replaced in its entirety as follows:

Prior to commencement of any services, background and/or criminal history investigation of Successful Respondent's employees and Third-Party Providers who will be providing services to the Customer under the Contract may be performed by the Customer or the Customer may require that Successful Respondent or Order Fulfiller relay the confirmation of a successful background check status. Should any employee or Third-Party Provider of Successful Respondent who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or Third-Party Provider in question.

N. Appendix A, Section 10.12, Limitation of Liability, is hereby deleted and replaced in its entirety as follows:

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

B. Successful Respondent's aggregate liability to each individual purchasing Customer for damages of any kind under the Contract shall not exceed two times (2x) the total value of the individual purchasing Customer's Purchase Order under the Contract. Such value includes all amounts to be paid over the life of the Purchase Order to Successful Respondent by such Customer as described in the Purchase Order.

C. Notwithstanding the foregoing or anything to the contrary herein, any limitation of Successful Respondent's liability contained herein shall not apply to: claims of bodily injury; disclosures of confidential information (excluding a Data Breach, as defined in Section 10.1.1.B); violations of intellectual property rights including but not limited to patent, trademark, or copyright infringement; and violation of State or Federal law including any penalty of any kind lawfully

assessed as a result of such violation (excluding a Data Breach, as defined in Section 10.1.1.B).

- O. **Appendix A, Section 10.15, Required Insurance Coverage**, is hereby deleted and replaced in its entirety as follows:

A. As a condition of the Contract, Successful Respondent shall provide certificates of insurance as evidence that it is maintaining the required insurance within five (5) business days of execution of the Contract if Successful Respondent is awarded services which require that Successful Respondent's employees perform work at any Customer premises or use vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, Successful Respondent shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide certificates of insurance as evidence that it is maintaining the required insurance to such Customer within five (5) business days following the execution of the Purchase Order. Successful Respondent may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to DIR and the Customer. If Successful Respondent's services under the Contract will not require Successful Respondent to perform work on Customer premises, or to use vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Successful Respondent may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing the Certification of Off-Premise Customer Services in the form provided by DIR, which shall serve to meet the insurance requirements.

B. All required insurance must be issued by companies that have an A rating and a minimum Financial Size Category Class of VII from AM Best, and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be included as additional insureds on the required commercial general liability and business automobile liability coverage for liabilities that fall within Successful Respondent's contractual and indemnity obligations pursuant to this Contract. Required coverage must remain in effect

through the term of the Contract and each Purchase Order issued to Successful Respondent thereunder. The insurance requirements are as follows:

- P. **Appendix A, Section 10.15.1, Commercial General Liability**, is hereby deleted and replaced in its entirety as follows:

Commercial General Liability must include \$1,000,000.00 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000.00; Personal Injury and Advertising Liability of \$1,000,000.00; Products/Completed Operations aggregate Limit of \$2,000,000.00 and Damage to Premises Rented: \$50,000.00. 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 Successful Respondent's contractual and indemnity obligations pursuant to this Contract; and
- D. Waiver of Subrogation, but only to the extent of liabilities falling within Successful Respondent's contractual and indemnity obligations pursuant to this Contract.

- Q. **Appendix A, Section 10.15.3, Business Automobile Liability Insurance**, is hereby deleted and replaced in its entirety as follows:

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 Successful Respondent's contractual and indemnity obligations pursuant to this Contract;

- B. Additional insured, but only to the extent of liabilities falling within Successful Respondent's contractual and indemnity obligations pursuant to this Contract.

R. **Appendix A, Section 11.2.1.1, Termination for Non-Appropriation by Customer**, is hereby deleted and replaced in its entirety as follows:

Customers 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, Successful Respondent 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 Successful Respondent offers. In the event of such termination, Customer will not be in default or breach under the Purchase Order or the Contract, nor shall it be liable for any further payments ordinarily due under the Contract (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.

S. **Appendix A, Section 11.2.3, Termination for Convenience**, is hereby deleted and replaced in its entirety as follows:

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 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 or return and discontinue using the product or services in accordance with the payment and return provisions contained in this Contract.

- T. **Appendix A, Section 11.2.4.2, Purchase Order**, is hereby deleted and replaced in its entirety as follows:

Customer or Successful Respondent 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, 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 thirty (30) 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 or terminate a Purchase Order without advance notice in the event Successful Respondent fails to comply with applicable laws or regulations, if such non-compliance relates to vendor provision of goods or services to the Customer.

- U. **Appendix A, Section 11.3, Force Majeure**, is hereby deleted and replaced in its entirety as follows:

DIR, Customer, Order Fulfiller or Successful Respondent may be excused from performance under the Contract or a Purchase Order for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order (each such event, an "Event of Force Majeure"), provided that the party experiencing such 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 or impact 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 Section, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by such Customer that Successful Respondent will not be able to deliver services in a timely manner to meet the business needs of such Customer.

- V. **Appendix A, Section 13, Warranty**, is hereby deleted and replaced in its entirety as follows:

13 [Reserved]

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

CISCO SYSTEMS, INC.

Authorized By: Signature on File

Name: Jenn Baenziger

Title: Authorized Signatory

Date: 12/20/2024

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

Authorized By: Signature on File

Name: Lisa Massock

Title: Chief Procurement Officer

Date: 1/7/2025

Office of General Counsel: Signature on File

Date: 1/7/2025