

STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER AR-233

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

Cisco Systems, Inc

Name

170 West Tasman Drive

Address

San Jose

CA

95134

City

State

Zip

LEGAL STATUS OF CONTRACTOR

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

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

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

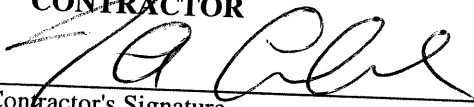
6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

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

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

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

CONTRACTOR



Contractor's Signature

FRANK A. CALDERONI

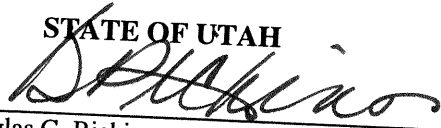
VP, WW SALES FINANCE

Type or Print Name and Title

Sept 27, 2007

Date

STATE OF UTAH



Douglas G. Richins

Director, Div. of Purchasing & General Svs.

OCT 01 2007

Date



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

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

Attachment A – Addendum A

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

A. Manufacturer Product Line(s)

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

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

B. State of Utah/WSCA Contract Manager

Debbie Gundersen
State of Utah

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

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

C. Remittance Address

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

D. Contractor Requirements

1. Contractor Responsibility

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

2. Serving Subcontractors

If Contractor or its Fulfillment Partners are using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of this Contract, servicing subcontractors may not directly accept purchase orders or payments for products or services from Purchasers under the terms and conditions of the contract. Only Contractor or Fulfillment Partners authorized by Cisco and listed on the WSCA website may directly accept purchase orders, invoice or receive payments for products or services under the terms and conditions of the contract. The authorized Purchaser has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

3. WSCA Administration Fee

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

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

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

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

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

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

10. Product Revision Requests

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

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

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

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

E. Contract Scope of Equipment and Related Services

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

1. Discounts off Manufacturers Price List

a. Pricing Discounts

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

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

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

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

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

b. WSCA Member-State Coverage
Cisco will serve all WSCA states.

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

2. Resolution of Customer Problems

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

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

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

3. Escalation Procedures

Refer to Section 2, above.

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

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

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

5. Fulfillment Partners (Resellers)

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

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

Revision Date: September 10, 2007

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

Attachment B

WSCA Terms and Conditions (Revised)
Standard Contract Terms and Conditions
Western States Contracting Alliance

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

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

- 1.5. “Equipment” shall mean Cisco tangible hardware offerings incorporated within the scope of this Agreement and associated with communications as listed on Attachment A, Section A.
- 1.6. “Fulfillment Partner” (also referred to as “Reseller”) shall mean a third party contractor qualified and authorized by Cisco, and approved by the Participating State under a *Participating Addendum*, who may, to the extent authorized by Cisco, fulfill any of the requirements of this Agreement including but not limited to providing Products and Services under this Agreement at the Prices established in this Agreement and billing Purchasers directly for such Products and Services. Cisco may, upon written notice to the Participating State, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Agreement or to bind Cisco to any additional terms and conditions.
- 1.7. “Local Public Body” shall mean a political subdivision of the Participating State, and the agencies, public instrumentalities and institutions thereof, including, without limitation, all cities, towns, counties, courts, special districts, and educational institutions (K-12 or higher education).
- 1.8. “Participating Addendum” shall mean a written, bilateral agreement executed and delivered by and between Cisco and a Participating State that expressly incorporates the terms of this WSCA Master Agreement, and any other mutually agreeable terms set forth in the *Participating Addendum*. Upon execution, the term WSCA Master Agreement will be deemed to incorporate the *Participating Addendum* for Participating States. (For purposes of meeting the foregoing execution requirement, the State of Utah will be deemed to have executed a *Participating Addendum* upon execution of this WSCA Master Agreement.)

A Local Public Body may execute a *Participating Addendum* in its own name (and independent of whether the state in which it is located itself executes a *Participating Addendum*) only with the express, written approval of Cisco and the WSCA Contract Manager. In such event, the Local Public Body will be deemed to have accepted and assumed the rights and obligations of a “Participating State”, “Purchaser” and/or “Customer” under its *Participating Addendum*.

- 1.9. “Participating State” shall mean a member of WSCA authorized under state law to participate under this Agreement who subsequently executes a *Participating Addendum*, or any other state or Local Public Body authorized by the WSCA Contract Manager and Cisco to be a party to the resulting Agreement who subsequently executes a *Participating Addendum*. “Participating State” shall be deemed to refer to the State of Utah when acting as a Participating State in its sovereign capacity (and not in its capacity as the WSCA Contract Manager).

- 1.10. "Price" shall mean charges, costs, rates, and/or fees charged for the Products and Services under this Contract and shall be paid in United States dollars.
- 1.11. "Product(s)" shall mean any Contractor-supplied communications Equipment, Software and documentation within the scope of this Agreement as referenced on Attachment A, Section A, and listed on Cisco's then-current Global Price List.
- 1.12. "Purchase Order," "Order" or "Order Document" shall mean any official document and attachments thereto specifying the Products and/or Services to be purchased from Contractor, the issuance of which document shall be deemed to constitute Purchaser's acceptance of and agreement to be bound by the terms of this Agreement.
- 1.13. "Purchaser" (also referred to as "Customer") shall mean: (a) the State of Utah when acting as a Participating State in its sovereign capacity (and not as the WSCA Contract Manager), (b) any office, department, commission, council, board, committee, institution, legislative body, agency, public authority, public benefit corporation, other government corporation or public educational institution of a Participating State or a Local Public Body within such Participating State, provided that such entity is authorized, under applicable laws, rules and/or regulations of the Participating State, (i) to purchase Product(s) and Services pursuant to this Agreement solely by execution of the applicable *Participating Addendum*, and (ii) to legally bind such body to the terms of such agreement solely by the issuance of a Purchase Order, Order or Order Document in accordance with and pursuant to this Agreement, and (iii) has been authorized by the WSCA Contract Manager and Cisco to participate under this WSCA Master Agreement.
- 1.14. "Services" shall mean those services within the scope of Attachment A, Section A, and listed on Cisco's then-current Global Price List, including consulting, training, installation and maintenance services, and/or other services related to the Products being acquired and further described at cisco.com and which are subject to the terms of service set forth in Attachment D.
- 1.15. "Servicing subcontractor" shall mean a third party subcontractor of Cisco or a Fulfillment Partner.
- 1.16. "Software" shall mean the object code version of computer programs licensed pursuant to this Agreement. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Equipment that is necessary for the proper operation of the Equipment is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. For purposes of this Agreement, "Software" shall include (and the terms and conditions of this Agreement shall apply to) any upgrades, updates, bug fixes or modified versions (collectively,

"Upgrades") or backup copies of the Software licensed or provided to Customer by Cisco, or an authorized distributor for which Customer has paid the applicable license fees.

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

6. **CASH DISCOUNT TERMS:** *Not Applicable.*
7. **TAXES:** See the “Prices; Taxes” in Attachment C, Section 2.
8. **MODIFICATION OR WITHDRAWAL OF PROPOSALS:** *Intentionally Omitted.*
9. **INTELLECTUAL PROPERTY INFRINGEMENT:**
 - 9.1. Cisco will have the obligation and right to defend any claim, action, suit or proceeding (“IPR Claim”) brought against Purchaser so far as it is based on a claim that any Product supplied under this Agreement infringes Third Party IPR (as defined below). Cisco will indemnify Purchaser against any final judgment entered in respect of such an IPR Claim by a court of competent jurisdiction and against any settlements arising out of such an IPR Claim. Cisco’s obligations to defend the IPR Claim and indemnify the Purchaser are conditional upon:
 - 9.1.1. Purchaser notifying Cisco promptly in writing of the IPR Claim or threat thereof;
 - 9.1.2. Purchaser giving Cisco full and exclusive authority for the conduct of the defense and settlement of the IPR Claim and any subsequent appeal; and
 - 9.1.3. Purchaser giving Cisco all information and assistance reasonably requested by Cisco in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.
 - 9.2. For the purposes of this Agreement, Third Party IPR means a United States copyright existing as at the date of Purchase or a United States patent issued as at the date of Purchase Order.
 - 9.3. If an IPR Claim has been made, or in Cisco’s reasonable opinion is likely to be commenced, Purchaser agrees to permit Cisco, at its option and expense, either to: (a) procure for Purchaser the right to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing; or (c) immediately terminate both parties’ respective rights and obligations under this Agreement with regard to the Product, in which case Purchaser will return the Product to Cisco and Cisco will refund to Purchaser the price originally paid by Purchaser to Cisco for the Product, as depreciated or amortized by an equal annual amount over three years from date of original shipment.
 - 9.4. Notwithstanding the foregoing, Cisco has no liability for, and Purchaser will defend and indemnify Cisco against, any IPR Claim arising from:
 - 9.4.1. the combination, operation, or use of a Product supplied under this Agreement with any product, device, or software not supplied by Cisco;

- 9.4.2. the amount or duration of use which Purchaser makes of the Product, revenue earned by Purchaser from services it provides which utilize the Product, or services offered by Purchaser to external or internal customers;
 - 9.4.3. the alteration or modification of any Product supplied under this Agreement from and after the date such Product is so supplied and such alteration or modification is not made by Cisco;
 - 9.4.4. Cisco's compliance with Purchaser's designs, specifications, or instructions; or
 - 9.4.5. Purchaser's use of the Product after Cisco has informed Purchaser of modifications or changes in the Product required to avoid such an IPR Claim if the alleged infringement would have been avoided by implementation of Cisco's recommended modifications or changes.
- 9.5. THIS SECTION STATES THE ENTIRE OBLIGATION OF CISCO AND ITS SUPPLIERS, AND THE EXCLUSIVE REMEDY OF PURCHASER, IN RESPECT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS. THIS INDEMNITY OBLIGATION AND REMEDY ARE GIVEN TO PURCHASER SOLELY FOR ITS BENEFIT AND IN LIEU OF, AND CISCO DISCLAIMS, ALL WARRANTIES, CONDITIONS AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO ANY PRODUCT.
10. **AWARD:** (*Intentionally Omitted*).
11. **NON-COLLUSION:** By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition.
12. **TERM AND CANCELLATION:**
- 12.1. Term**
- This WSCA Master Agreement shall commence on the Effective Date and continue thereafter through the Termination Date of May 31,2010 (the "Initial Term"), unless sooner terminated, as provided in this WSCA Master Agreement.
- The WSCA Master Agreement may be extended and amended after the Initial Term upon mutual written agreement by the parties prior to the expiration of any then current term. The WSCA Master Agreement is renewable on a bi-annual or annual basis, up to a maximum of four total

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

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

12.2. Termination for Convenience

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

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

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

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

12.3. Termination for Non-Appropriation of Funds.

Purchaser under a *Participating Addendum* shall have no liability to Contractor beyond funds that are appropriated and made available to the Purchaser by the applicable legislative body.

If sufficient funds are not appropriated by legislative action to a Purchaser as to any future period, Purchaser may terminate its Order(s) prospectively as to such future performance impacted by and to the extent of non-appropriation, or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser shall notify Contractor in writing of such non-appropriation within thirty (30) calendar days of final legislative action.

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

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

12.4. Termination for Default:

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

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

12.4.2. Participating Addendum: If either party to a *Participating Addendum* (including the State of Utah when acting in its sovereign capacity under this Agreement) materially breaches any of the provisions of a *Participating Addendum*, the non-breaching party may terminate the *Participating Addendum* as follows: (a) immediately upon providing written notice to the breaching party if the breach is not capable of being cured, and (b) thirty (30) calendar days after providing written notice to the breaching party if the breaching party fails to cure such breach within such thirty (30) calendar day period. Notwithstanding the foregoing, a *Participating Addendum* may be terminated immediately by Contractor for cause in the event of Purchaser's breach of the following Sections in Attachment C: Section 4 (Software License), Section 14 (Export Restrictions), or Section 5 (Confidential Information).

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

12.5. Rights On Termination or Expiration

12.5.1. Upon termination or expiration of this agreement or a *Participating Addendum*, (a) Cisco reserves the right to cease all further delivery of Product or Services, (b) all outstanding invoices become due and payable within thirty (30) days of termination, and (c) all rights and licenses of Customer under this Agreement shall terminate, subject to the terms of this Section. If Cisco agrees to complete delivery of any further Products or Services due against any existing accepted Purchase Orders then Customer shall pay for such Products or Services in advance within thirty (30) days.

12.5.2. Except for a termination of this Agreement resulting from Customer's breach of Attachment C, Section 4 (Proprietary Rights and Software Licensing), Section 5 (Confidential Information), or Section 14 (Export, Re-Export, Transfer & Use Controls), upon termination or expiration of this Agreement, Customer may continue to use, in accordance with the terms and conditions of this Agreement and/or the Participating Addendum, Products provided to it by Cisco prior to the date of termination or expiration provided payment has been made in full for such Products.

12.5.3. Upon termination or expiration of this Agreement, Customer shall immediately return to Cisco all Confidential Information (including all copies thereof) then in Customer's possession, custody or control (except that customer may retain one archival copy for records retention purposes only as required by law); provided that, except for a termination resulting from Customer's breach of Attachment C, Section 4 (Proprietary Rights and Software Licensing), Section 5 (Confidential Information), or Section 14 (Export Restrictions), Customer may retain a sufficient amount of such Confidential Information and material to operate its installed base of Products.

12.5.4. In the event of any termination pursuant to this section, and unless otherwise required by law or court of competent jurisdiction, Purchaser shall remain obligated to comply in perpetuity with the provisions of Attachment C: Section 4 (Software License), Section 14 (Export Restrictions), or Section 5 (Confidential Information) for purchased product.

12.6. Validity of Orders

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

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

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

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

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

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

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

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

16. **REPORTS:** Contractor shall submit quarterly reports to the WSCA Contract Manager showing the quantities and dollar volume of purchases of product and services by each Participating State [and its Purchasers]. The due dates of each quarterly contract usage report are April 30, July 31, October 31 and January 31. The State of Utah, as WSCA Contract Manager, represents and warrants to Contractor that it is authorized to collect data on purchases under this Agreement. The Purchaser recognizes that this data is public information. Cisco will use commercially reasonable efforts to provide the information set forth on *Attachment B*, Exhibit D (Form of Quarterly Report) and shall be fully indemnified by the State of Utah from any liability to Purchasers under this Agreement for providing Purchasers' data to the State of Utah. Contractor is obligated to produce the quarterly reports in the format specified by WSCA in *Attachment B*, Exhibit D.

17. **INSURANCE; HOLD HARMLESS; GENERAL INDEMNITY; LIMITATION OF LIABILITY; CONSEQUENTIAL AND OTHER DAMAGES:**

17.1. **General Liability Insurance.** Contractor shall maintain Commercial General Liability insurance with bodily injury and property damage limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall (a) provide for contractual liability coverage, (b) provide for cross liability coverage, and (c) name the other party and its subcontractors, as well as the directors, officers, employees, agents, successors and assigns of all of them, as additional insureds, but only to the extent of liabilities falling within the indemnity obligations of the other party pursuant to the terms of Subsection 17.2. Nothing in this section shall prohibit any applicable party from providing any or all of the insurance coverages required on a self-insured basis.

17.2. **General Indemnity**

Subject to governmental immunities of the Participating States, each party to this Agreement and to each *Participating Addendum*, as the case may be, shall defend, indemnify and hold harmless the other, its corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), including without limitation those based on contract or tort, arising out of or in connection with a claim, suit or proceeding brought by a third party based upon bodily injury (including death) or damage to tangible personal property (not including lost or damaged data) arising from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors,

employees, agents, successors and assigns of any of them. In the event that the indemnified party's or a third party's negligent or intentional acts or omissions contributed to cause the injury or damage for which a claim of indemnity is being asserted against the indemnifying party hereunder, the damages and expenses (including, without limitation, reasonable attorneys' fees) shall be allocated or reallocated, as the case may be, between the indemnified party, the indemnifying party and any other party bearing responsibility in such proportion as appropriately reflects the relative fault of such parties, or their subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them, and the liability of the indemnifying party shall be proportionately reduced.

The foregoing indemnification obligations are conditioned upon the indemnified party promptly notifying the indemnifying party in writing of the claim, suit or proceeding for which the indemnifying party is obligated under this Subsection, cooperating with, assisting and providing information to, the indemnifying party as reasonably required, and granting the indemnifying party the exclusive right to defend or settle such claim, suit or proceeding; provided that any such settlement or compromise includes a release of the indemnified party from all liability arising out of such claim, suit or proceeding.

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

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

19. **GOVERNING LAWS:**

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

20. **SHIPPING AND DELIVERY - Products**

- 20.1. After receipt and acceptance by Cisco of Customer's Purchase Order(s), Cisco will use commercially reasonable efforts to ship all direct purchase orders designated for shipment to U.S. locations within thirty (30) days for all Products. Please note that the following circumstances may affect lead times: (i) new products purchased within the first three (3) months of release of the product which are subject to Cisco's then current published lead-times, (ii) third-party stand-alone products which are not a component of equipment resold by Cisco, (iii) end-of-life products where the termination of the product has been announced by Cisco, (iv) products which have been line-stopped due to software discrepancies, reconfiguration, industry-wide product shortages, or alleged infringement claims, or (vi) situations where government rated orders create delays in lead-times.

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

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

obligation with respect to such non-receipt shall be to promptly provide the information to the Customer after such notification.

- 20.3. If Cisco has reason to believe that the actual shipment date will occur later than the original shipment date acknowledged by Cisco for reasons caused by Cisco, Cisco shall use commercially reasonable efforts to promptly provide additional information to Customer including by electronic posting of the expected period of delay and, upon request, of the steps available, if any, to minimize the delay. If the extended delivery date is anticipated to be more than thirty (30) calendar days beyond the originally scheduled delivery date, the parties will work in good to resolve any ordering issues pursuant to the order escalation process.
 - 20.4. Shipping terms are FOB destination, shipping and handling prepaid by Contractor. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Acceptance by Purchaser shall be deemed to have occurred upon delivery of the applicable Products to the applicable Purchaser. Title and risk of loss shall pass to Purchaser upon delivery.
 - 20.5. If Purchaser requests delivery of Products to Purchaser's forwarding agent or other representative, Purchaser assumes responsibility for compliance with applicable export laws and regulations.
 - 20.6. Contractor is not liable for damage or penalty for delay in delivery or for failure to give notice of delay. Contractor shall not have any liability in connection with Product shipment other than as set forth in this Section 20.
 - 20.7. All sales are final. Except as provided in Cisco's Limited Warranty (see below), Cisco only permits the return of un-opened products due to Cisco's shipping or order processing error, or damage in transit. No other returns are authorized under this Agreement. Warranty returns will not be subject to any restocking charges.
21. **LIMITED WARRANTY:** All Products are sold with Cisco's standard limited warranty listed below:
- 21.1. Hardware. Cisco warrants that from the date of shipment by Cisco to Customer, and continuing for a period of the longer of (a) ninety (90) days or (b) the period set forth in the Warranty Card accompanying the Product, the Hardware will be free from defects in material and workmanship, under normal use. This limited warranty extends only to the original user of the Product. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be, at Cisco's or its service center's option, shipment of a replacement within the period and according to the replacement process described in the Warranty Card, or a refund of the purchase price, if the Hardware is returned to the party supplying it to Customer, if different than Cisco, freight and

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

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

disclaimer shall apply even if the above-stated warranty fails of its essential purpose.

- 21.5. The above warranty DOES NOT apply to any beta software, any software made available for testing or demonstration purposes, any temporary software modules or any software for which Cisco does not receive a license fee. All such software is provided AS IS without any warranty whatsoever.”
22. **AMENDMENTS:** The terms of this WSCA Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of both the State and Cisco.
23. **ASSIGNMENT/SUBCONTRACT:**
- 23.1. Neither party shall not assign, sell, or transfer its rights and responsibilities under this Agreement (other than the right to receive any amount due, which shall be freely assignable upon written notice to customer), in whole or in part, without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, Cisco shall have the right to assign all or part of this Agreement as part of a merger, corporate reorganization, or sale of assets or to a majority-owned or majority-controlled subsidiary or affiliate and to subcontract Services to third parties provided that Cisco remains responsible for the performance of such Services by subcontractors done in the normal course of their business obligations and duties to Cisco. However, in all cases notwithstanding subcontracting, the customer will deal only with invoices and payment through either Cisco or the Fulfillment Partners listed on the individual *Participating Addendum*. Any allowed assignee or merged entity shall be subject to all the terms of this Agreement.
- 23.2. Contractor may, with prior written consent from Participating States, which consent shall not be unreasonably withheld, enter into subcontracts with third parties as “Fulfillment Partners”. Fulfillment Partners are Subcontractors who may provide Products and Services under this Agreement at the Price Discounts established in this Agreement and bill Purchasers directly for such Products and Services.
- Fulfillment Partners, where directed by Cisco, are required to report to the WSCA Contract Manager, account for and submit the WSCA Contract Administration Fee, along with Contract Activity Reports.
- 23.3. Cisco as well as Fulfillment Partners participate in the Federal Communication Commission’s E-rate discount program established under the authority of the Federal Telecommunications Commission Act of 1996 and may accept and process E-Rate transactions under their own E-rate registration numbers.

24. **NONDISCRIMINATION:** Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. This Section only applies to the extent applicable to the provision of Products and Services under this Agreement. Contractor shall include this provision in every subcontract with its Fulfillment Partners relating to purchases of Product and Services by Purchasers.
25. **SEVERABILITY:** If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or otherwise unenforceable, such provision shall be null and void and shall be deemed deleted from this Agreement. The remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the provision that is deemed deleted. Notwithstanding the foregoing, if this paragraph becomes applicable, and, as a result, the value of this Agreement is materially impaired for either party, as determined by the affected party in its reasonable discretion, then the affected party may declare the Agreement terminated upon thirty (30) days written notice to the other party.
26. **INSPECTIONS:** See the "Demonstration or Evaluation Equipment" Section in Attachment C.
27. **PAYMENT:** Upon and subject to credit approval by Contractor, payment is net thirty (30) days from invoice date and shall be made in U.S. currency. Invoices for Products ordered without implementation services shall be rendered by Contractor on or after the date of delivery of such Products to the Purchaser. If, at any time, Purchaser is delinquent in payment, or is otherwise in breach of this Agreement, Cisco may, without prejudice to other rights, withhold shipment (including partial shipments) of any order or require Purchaser to prepay for further shipments. Any sum not paid by Purchaser, when due shall bear interest until paid at a rate of 1% per month (12% per annum) or the maximum legal rate, whichever is less. Purchaser grants Contractor a security interest in Products purchased under this Agreement to secure payment for those Products purchased which security interest shall expire upon full payment in accordance with the terms. If requested by Contractor, Purchaser agrees to execute financing statements to perfect this security interest. Payments may be made via a State or

political subdivision "Purchasing Card" to Fulfillment Partners under this Agreement.

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

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

33. **CONFLICT OF INTEREST:** The contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to entering into this Agreement.
34. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor. This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of this Agreement. Each party hereto is an independent contractor. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
35. **POLITICAL SUBDIVISION PARTICIPATION:** See “Definitions” Section.
36. **DEBARMENT:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any governmental department or agency.
37. **RECORDS ADMINISTRATION:** See “Audit of Records” Section below.
38. **AUDIT OF RECORDS:**
Contractor shall maintain complete, accurate and truthful records of purchases and amounts billable to and payments made by Purchaser hereunder directly through Contractor in accordance with generally accepted accounting principles and practices for audit purposes only. Contractor shall retain such records for at least a period of four (4) years from the date of termination of this Agreement, or longer if expressly required by the law of the applicable Participating State.
The Participating State will give Contractor thirty (30) days advance written notice to perform an audit of Contractor’s records, identified above, as it pertains only to such Participating State’s Purchaser(s). Except for compelling circumstances, Participating State’s audits are limited to a commercially reasonable frequency per Participating State, and such audit will be conducted during Contractor’s normal business hours and shall not unduly interrupt or interfere with Contractor’s normal business operations, and provided further that in the event that such audit is conducted by a third party, such third party shall, prior to conducting such audit, to the extent permitted by law, execute a

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

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

Revision Date: September 10, 2007

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

Attachment C

Contractor Terms and Conditions

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

- 2.4. All stated prices are exclusive of any taxes, fees and duties or other similar amounts, however designated, and including without limitation value added, sales and withholding taxes which are levied or based upon such prices, charges or upon this Agreement. Purchaser will pay sales and use taxes, if any, imposed on the Products and Services acquired under this Agreement, or furnish proof of its tax-exempt status upon request. Contractor will pay all other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. In the event that the Purchaser is exempt from property and sales taxes, it will not be charged same.

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

- 3.1. Cisco reserves the right to require that purchases be made through Fulfillment Partners. Where so required by Cisco, Purchasers shall not order Products or Services directly from Cisco and shall order same from Fulfillment Partner. Purchaser shall purchase Products by issuing a written or electronic Purchase Order, signed or (in the case of electronic transmission) sent by its authorized representative, indicating specific Products, quantity, unit price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and any other special instructions.
- 3.2. Any contingencies on Purchaser's Purchase Orders are not binding upon Contractor. The terms and conditions of this Agreement prevail, regardless of any additional or conflicting terms on the Purchase Order, or other correspondence from Purchaser to Contractor and any additional or conflicting terms are deemed rejected by Contractor unless Cisco has expressly agreed to such terms in writing. Mere acceptance or processing of a Purchase Order, Order or Order Document containing such terms shall not constitute such express consent.
- 3.3. All Purchase Orders are subject to Contractor's reasonable acceptance (including performing any related credit checks). Contractor shall use commercially reasonable efforts to accept or reject orders in writing within ten (10) days from receipt, or within three (3) Business Days, if orders are placed electronically.
- 3.4. Purchaser may defer Product shipment up to thirty (30) days from the originally scheduled shipping date, provided written notice is received by Contractor at least ten (10) days before the originally scheduled shipping date. Cancelled orders, rescheduled deliveries or Product configuration changes made by Purchaser less than ten (10) days before the original shipping date are subject to Contractor's acceptance and a charge of fifteen percent (15%) of the total invoice amount relating to the affected Product(s). Contractor reserves the right to reschedule delivery due to configuration changes made within ten (10) days of scheduled shipment.

No cancellation shall be accepted by Cisco where Products are purchased with implementation Services, including but not limited to design, customization or installation Services, except as may be set forth in the agreement or Statement of Work under which the Services are to be rendered. Notwithstanding anything to the contrary, if Cisco is delayed in shipping the Product for thirty (30) days or more from the original shipping date, the Customer may cancel the order without charge.

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

4. SOFTWARE LICENSE:

- 4.1. License. Conditioned upon compliance with the terms and conditions of the license granted herein, Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees.

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

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

- 4.2. General Limitations. This is a license, not a transfer of title, to the Software and Documentation, and Cisco retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Cisco, its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Accordingly, except as otherwise expressly provided under this

Agreement, Customer shall have no right, and Customer specifically agrees not to:

- 4.2.1. transfer, assign or sublicense its license rights to any other person or entity, or use the Software on unauthorized or secondhand Cisco equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
- 4.2.2. except as approved in writing by Cisco, make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
- 4.2.3. reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;
- 4.2.4. use or permit the Software (other than embedded in the Product) to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Cisco; or
- 4.2.5. except and to the extent expressly required by a Participating State's applicable records laws or final court order (provided that the Participating State provides: (1) prior written notice to Cisco of such obligation and (2) the opportunity to oppose such disclosure, provision or otherwise making available), disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

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

4.3. Software, upgrades/updates and Additional Copies.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE

FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR WHO OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

- 4.4. Proprietary Notices. Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in this Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Cisco.
 - 4.5. Term and Termination of License. This license granted herein shall remain effective until terminated. Customer may terminate the license at any time by destroying all copies of Software and any Documentation except as to the minimum number of copies required by law to keep for archival records purposes only. Customer's rights under this license will terminate immediately if Customer fails to comply with any material provision of this license and Cisco will give Customer notice of such non-compliance. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control.
 - 4.6. Customer Records. Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal Business Hours to verify compliance with this license. In the event such audit discloses non-compliance with this license, Customer shall promptly pay to Cisco the appropriate license fees, plus the reasonable cost of conducting the audit. In all other circumstances, the audit fees shall be paid by Cisco.
5. **CONFIDENTIAL INFORMATION.** Notwithstanding anything contained in the Agreement to the contrary, the following shall govern the obligations with respect to Confidential Information under this Agreement.
- 5.1. Definitions.
 - 5.1.1. Customer "Confidential Information" includes information regarding Customer's network operations, technical architecture, operations and plans and security data.
 - 5.1.2. Cisco "Confidential Information" includes information regarding Cisco's hardware, software and service products, technical, financial and marketing data, and information posted on password protected areas on Cisco.com.
 - 5.1.3. Information (other than that on Cisco.com) disclosed by the disclosing party in written or other tangible form will be considered Confidential Information only if it is clearly marked

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

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

- extracts thereof and certify to its destruction within fifteen (15) days of receipt of such notice.
- 5.7. Each party shall retain all right, title and interest to its own Confidential Information. By conveying Confidential Information, the disclosing party does not grant any license under any trademark, patent or copyright, or application for same, which is now or thereafter may be obtained by such party.
 - 5.8. The receiving party shall not reverse-engineer, decompile, or disassemble any software or remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information disclosed to it.
 - 5.9. EXCEPT AS TO THE EXPRESS WARRANTIES PROVIDED ELSEWHERE IN THIS AGREEMENT, CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" WITH ALL FAULTS AND IN NO EVENT, SHALL THE DISCLOSING PARTY BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION.
 - 5.10. Notwithstanding termination of this Agreement as described in Section 12 of Attachment B, the obligations of the receiving party with respect to Confidential Information received prior to termination shall continue for three (3) years from the date the Confidential Information was received.
 - 5.11. In the event of any threatened or actual breach of any of the obligations hereunder, a disclosing party may seek injunctive relief, in addition to any other available legal or equitable remedies.
 - 5.12. Customer agrees that aspects of the Software and associated documentation, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of Cisco. Customer shall not: disclose, provide, or otherwise make available, such trade secrets or copyrighted material, in any form to any third party, without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets and copyrighted material. Title to Software and documentation shall remain solely with Cisco.
 - 5.13. Accordingly, the Software and Associated documentation shall not be disclosed to any third party without first notifying Cisco and affording Cisco the opportunity, as allowed by law, to seek judicial protection from disclosure of such confidential, trade secret and proprietary information to a third party.
 - 5.14. The parties mutually agree that the following documents do not constitute "Confidential Information" pursuant to this Section 5:
 - WSCA Master Agreement, including Attachments A-E
 - Exhibit A - Pricing & Discounts

- Information expressly required to be contained on an Ordering Document as detailed in Section 3.1, above

6. **CONTRACTOR ACCOUNT MANAGER.** Contractor shall appoint an Account Manager for the State of Utah under this Agreement who will provide oversight of Contractor activities conducted hereunder. Contractor's Account Manager will be the principal point of contact for the State concerning Contractor's performance under this Agreement. Contractor shall notify the WSCA Contract Manager, in writing, when there is a new Contractor Account Manager assigned to this Agreement.

WSCA reserves the right to request a change in Contractor Account Manager or contractor's representatives if the assigned Account Manager is not, in the reasonable opinion of WSCA's Contract Manager, meeting its needs adequately as defined by the terms of this Agreement. Contractor and WSCA shall discuss and take mutually acceptable actions to help resolve any issues with the assigned Account Manager. The Contractor Account Manager information is listed on the Agreement Cover Sheet.

7. **ENTIRE AGREEMENT.** Notwithstanding anything contained in the Agreement to the contrary, this Agreement is the complete agreement between the parties and replaces any and all prior oral or written communications between the parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. This Agreement shall only be modified by a written document executed by the parties' authorized representative.

8. **COUNTERPARTS:** Notwithstanding anything contained in the Agreement to the contrary, this Agreement may be executed in several counterparts (and is enforceable if and when executed and delivered by facsimile and/or email transmission), each of which will be deemed to be an original, and all of which, when taken together, will constitute one and the same instrument.

9. **SURVIVAL:** Notwithstanding anything contained in the Agreement to the contrary, the following shall govern the survival of terms under this Agreement. All purchase transactions executed pursuant to the authority of this Agreement shall be bound by all of the terms, conditions, Price Discounts set forth herein, notwithstanding the expiration of the Initial Term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

10. **PRODUCT CHANGES:** Notwithstanding anything contained in the Agreement to the contrary, modifications which Cisco deems necessary to comply with specifications, changed safety standards or governmental regulations, to make the Product non-infringing with respect to any patent, copyright or other proprietary

interest, or to otherwise improve the Product may be made at any time by Cisco without prior notice to or consent of Purchaser or WSCA and such altered Product shall be deemed fully conforming. Cisco shall employ commercially reasonable efforts to announce, including by electronic posting, Product discontinuance or changes other than those set forth in the previous sentence in accordance with Cisco's End of Life Policy which is found at the following URL: http://www.cisco.com/en/US/products/products_end-of-life_policy.html. Purchaser may make a last-time purchase of such Products as set forth in such policy.

11. **NO WAIVER.** No waiver of rights under this Agreement or any Participating Addendum by any party hereunder or thereunder shall constitute a subsequent waiver of this or any other right under such agreement.
12. **NOTICES.** Notwithstanding anything contained in the Agreement to the contrary, all notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile or electronic mail (in the case of Cisco to Agreement-notice@cisco.com), (provided that the original document is placed in air mail/air courier or delivered personally, within seven days of the facsimile electronic notice); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or six (6) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the cover sheet of this Agreement or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph. Notwithstanding the above, notices regarding general changes in pricing, policies or programs may also be by posting on Cisco.com or by e-mail or fax.
13. **ATTORNEYS' FEES.** Notwithstanding anything contained in the Agreement to the contrary, in any suit or proceeding related to this Agreement, the prevailing party will have the right to recover from the other its reasonable costs, fees and expenses of attorneys incurred in connection with the suit or proceeding, including any reasonable appeal costs, fees and expenses. This provision shall be severable from other provisions of this Agreement, and shall survive and not be merged into any such judgment unless such fees are expressly merged into such judgment.
14. **EXPORT RESTRICTIONS:** Notwithstanding anything contained in the Agreement to the contrary, the Products and technology or direct products thereof (hereafter referred to as "Products and Technology"), supplied by Contractor under this Agreement are subject to export controls under the laws and regulations of the United States. Purchaser shall comply with such laws and regulations governing use, export, re-export, and transfer of Cisco Products and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco, and each Participating State

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

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

WSCA AR-233

EXHIBIT A

WSCA MASTER AGREEMENT LIST PRICE & WSCA DISCOUNT

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

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

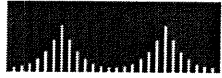
<u>Product</u>	35%
<u>Smartnet Maintenance</u>	
1 year:	10%;
3 year prepaid commit:	17%
<u>Professional Services/AS/Training</u>	10%

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

WSCA AR-233

EXHIBIT B

CISCO SYSTEMS

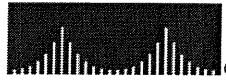


® (1) **Demo Equipment Loaner Agreement**

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

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

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



® Demo Equipment Loaner Agreement

Date _____

Cisco Quote No. _____

Customer Contact Name _____

Marketplace No.: MP

Company Name _____

Street Address _____

City, State, Zip Code _____

Contact Phone No. _____

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

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

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

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

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

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

TYPE IN Account Manager/Channel Account Manager Name HERE
Address
City, State, Zip Code
Telephone No.

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

AGREED TO AND ACCEPTED
THIS

DAY OF

By:

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

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



Master Agreement for Demo / Evaluation (Try and Buy)

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

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

TERMS AND CONDITIONS

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

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

- 1) **Delivery; Return.** Cisco will ship the Products to Customer at no charge. Customer shall return the Products *prior to* the end of the last day of the Trial Period to the Cisco Demo Depot (at the address provided). The standard Trial Period for the Demo Program, during which the Customer can test the Products before being required to return the Products, is forty-five (45) days. Return of the Products will be at Cisco's expense using the pre-paid shipping waybill(s) provided with the Products. The shipping waybill(s) must reference the "sales order number" which is contained in the "return shipping documents" provided with the Products. If Customer fails to return the Products to the Cisco Demo Depot within five (5) days of the end of the Trial Period and in accordance with the aforementioned process, Customer will be invoiced for the WSCA discounted price of the Products established under the WSCA Master Agreement which shall be paid in full upon 30 days of receipt of the invoice.
- 2) **License; Warranty.** Cisco is granting Customer a limited, royalty-free, non-exclusive, non-transferable license to use, but not to redistribute, the Products solely for purposes of demonstration and solely during the Trial Period. Any right not granted hereunder is specifically reserved by Cisco, including, but not limited to the right to copy, modify, embed, or sell the Products or any parts thereof. Customer also agrees that all use of

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

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

- 1) TAB Assumptions; Ordering; Returns. The TAB Program allows certain qualified end-user customers to (i) submit a Trial Order to Cisco for any Cisco Product, (ii) receive shipment of the Products from Cisco and (iii) defer payment for a limited period of time while the Customer tests the Products in a non-production environment ("Trial"). The standard Trial Period for the TAB Program during which the Customer can test the Products before being invoiced is ninety (90) days. A fundamental assumption of the TAB Program is that the Customer will retain the Product upon the conclusion of the Trial Period, thereby converting the transaction into a sale. If, however, during the Trial Period Customer decides to return the Products to Cisco, it must do so at its own expense with an RMA number and RMA instructions obtained from the appropriate Cisco Account Manager. If the Product has not been returned before conclusion of the Trial Period, then, upon the conclusion of the Trial Period, Cisco will automatically invoice Customer for the Product. For all Products ordered by Customer under this TAB Program, the shipping terms shall be Ex Works per Incoterms 2000 at Cisco's site, San Jose, California, or other Cisco-designated shipping location. Risk of loss shall pass from Cisco to Customer upon delivery to the common carrier or Customer's representative at the delivery point per the applicable shipping term. Cisco will retain title to the Products until expiration of the Trial Period.

- 2) CRS Special Provisions. For Trials of Cisco's CRS-1 Router(s) (the "CRS") in particular, there is an additional fundamental assumption of the TAB Program applicable only to Trials of the CRS. For CRS Trials, at the same time that Customer submits its Trial Order for the Trial of the CRS, Customer will also submit a purchase order for Cisco Support Services for the CRS Pilot Program (the "CRS Services") for the CRS, which CRS Services term shall begin on the date of receipt of the CRS and continue for the Trial Period. A description of, and terms pertaining to, the CRS Services may be found at: <http://www.cisco.com/legal/services.html>. Customer shall be invoiced for such CRS Services upon conclusion of the Trial Period or after ninety (90) days from initial shipment of the CRS from Cisco, whichever is sooner. For Trials of the CRS only, Cisco shall, during the applicable Trial Period, provide installation services as per the Services described at <http://www.cisco.com>.

- 3) License; Warranty. Customer's use of the Products shall be governed by the terms contained in Cisco's Standard End User License Agreement, as set forth in the Contract Terms. Notwithstanding anything to the contrary herein, this remainder of this Section shall apply during the Trial Period to all Products other than the CRS ordered by Customer via the TAB Program. During the Trial Period, the Products shall be covered by Cisco's standard limited warranty for such Product (set forth in the Warranty Statement accompanying the Product), except that Customer's sole and exclusive remedies, and Cisco's entire liability, for a warranty claim during the Trial Period shall be limited to repair of the Product or shipment of a replacement. Upon expiration of the Trial Period for a particular Product, Cisco's standard limited warranty for such

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

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

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

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

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

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

("Customer")

CISCO SYSTEMS, INC. ("Cisco")

Authorized Signature

Name

Title

Date

Authorized Signature

Name

Title

Date

WSCA AR-233

EXHIBIT C

Fulfillment Partners

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

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

WSCA AR-233

EXHIBIT D

REQUIRED FORMAT OF QUARTERLY REPORT

ATTACHMENT C, EXHIBIT D

Western States Contracting Alliance (WSCA) - (Ref. WSCA Master Agreement No. AR-233)
 Quarterly Contract Sales Volume and Administrative Fee Reporting Form - Exhibit D

Authorized Signature (see 'Certification' below) and Date

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

Partner or Reseller Company Name and Address: _____

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

Small Business	<input type="checkbox"/>	Small Disadvantaged Business	<input type="checkbox"/>	Woman Owned - Small Business	<input type="checkbox"/>	Minority Owned - Small Business	<input type="checkbox"/>	Veteran Owned - Small Business	<input type="checkbox"/>
Reporting Period:	Calendar Year	Q1	Q2	Q3	Q4				
	YYYY	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec				
				X					

Name of BUYING ENTITY (Customer) and AGENCY CODE NO. Authorized to Purchase under Participating Addendum or State Contract	Buyer's Contact Name & E-mail	Buyer's Purchase Order (PO) Number	PO Date	Channel Purchase Order No. and Cisco Sales Order No.	Description of Items Purchased			Net Purchase Price			Revenue recognized for this reporting period			Total Fee Due to State (applicable fee rate 0.5%)	
					Product Part No.	Services	Training	Product Part No.	Services	Training	Product	Services	Training		
								0.00			0.00			0.00	

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

Sub-Totals:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1) Net value of ALL applicable orders received this reporting period:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Net value of ALL applicable payments received this reporting period:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Fee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00



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

Attachment D

Cisco Master Services Agreements

June, 2007

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

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

MASTER SERVICES AGREEMENT
Cisco Systems, Inc.

This Agreement is entered into between Cisco Systems, Inc. ("Cisco"), a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134 and the State of Utah, acting as the Contract Manager for the Western States Contracting Alliance ("WSCA"), on behalf of their Public Sector Customers formed under the laws of United States ("Customer") having its principal place of business at State of Utah, Division of Purchasing and General Services, State Office Building, Capitol Hill, Room 3150, Salt Lake City, UT 84114-1061, United States, and is entered into as of the date of last signature below (the "Effective Date").

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

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

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

Cisco Systems, Inc.

("Customer")

("Cisco")





Authorized Signature

Authorized Signature

DOUGLAS RICHINS

FRANK A. CALDERONI

Print Name

Print Name

DIRECTOR OF PURCHASING

VP, WW SALES FINANCE

Title

Title

OCT 01 2007

Sept 27, 2007

Date

Date

MASTER SERVICES AGREEMENT - TERMS AND CONDITIONS

1. **Definitions** are those set out in the Glossary of Terms at the end of the Agreement.
2. **Scope.** This Agreement describes the terms and conditions for (a) Purchases by Customer of Services, and (b) delivery by Cisco of the Services according to the options ordered by Customer or otherwise provided by Cisco to Customer. Cisco will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid, (ii) a valid Software license has been granted, and (iii) Customer provides information requested by Cisco such as valid serial numbers, site location, contract number, and Product type.
3. **Orders.** Where payment is directly to Cisco or its Fulfillment Partners, Customer shall, upon and subject to credit approval by Cisco, purchase Services by issuing a Purchase Order. Each Purchase Order must be signed, if requested by Cisco, or (in the case of electronic transmission) sent, by an authorized representative, indicating the specific Services, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference if any, and any other special instructions. No contingency contained on any Purchase Order shall be binding upon Cisco. The terms of this Agreement shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms are deemed rejected by Cisco.
4. **Pricing.** For Direct Purchases, and subsequent Equipment List renewals, prices for Services shall be (a) those specified in Cisco's then-current Price List less any applicable contract discount in effect under the WSCA Master Agreement at the time of acceptance of the Purchase Order by Cisco, or (b) those set forth in a written price quotation submitted by Cisco or its Fulfillment Partner, if at or below the stated contract discount. All stated prices are exclusive of taxes, fees and duties or other amounts in accordance with the WSCA Master Agreement. Any taxes related to Services purchased pursuant to this Agreement shall be paid by

Customer or Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible. In the event that Customer is unable to provide valid and applicable serial number(s) for Product and Cisco agrees to provide Services, then Service fees payable by Customer shall be at Cisco's then-current time and materials or non contract service rates.

Subject to the price discount floor established by Cisco under the WSCA Master Agreement, for Indirect Purchases, Fulfillment Partners are free to determine their resale prices unilaterally. Customer understands that no employee or representative of Cisco or anyone else has any authority to determine such resale prices, or to limit the Fulfillment Partners' pricing discretion with respect to Services.

5. **Payment.** For Purchases of Services, upon and subject to credit approval by Cisco, payment terms shall be net thirty (30) days from the date of invoice. Unless otherwise agreed by Cisco, all payments shall be made in U.S. currency. Any sum not paid by Customer when due shall bear interest from the due date in accordance with the terms for interest on late payments under the WSCA Master Agreement.
6. **Invoicing.** Fees for Services, other than those for which a SOW is required, shall be invoiced in advance of delivery of Services. The timing of invoices for Services provided pursuant to a SOW shall be set forth in the respective SOW.
7. **Term and Termination.**
 - (a) The term of any service order shall commence on the Effective Date of the Order and shall continue for a period of one year, or such other multi-year period as set forth in the purchase order or SOW. Such term will be renewed automatically for successive one year terms unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current term.
 - (b) The term of an Equipment List shall commence on the date set forth on such

Equipment List, which may be up to sixty (60) days following the date of Purchase Order acceptance by Cisco. The term of an Equipment List shall be for a period of one year and shall be renewed automatically for successive one year terms, unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.

- (c) The term of each SOW shall be stated in the SOW.

This Master Service Agreement may be terminated in accordance on the same terms as set forth in the WSCA Master Agreement, Attachment B. Any Equipment List or SOW may be terminated immediately by either party upon written notice:

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

If Services fees are not paid when due and payment has not been received within thirty (30) days after notice from Cisco of such past due payment, Cisco may withhold the provision of Services until all amounts past due are paid in full, and/or terminate immediately this Agreement, any Equipment List and SOW.

Cisco reserves the right to make changes to the scope and content of the Services or part thereof, including terminating the availability of a given Service, at any time upon ninety (90) days' prior notice. Such changes will become effective upon renewal of the affected Equipment Lists and SOWs. If Customer does not agree to a change of scope or content, Customer may terminate any affected Equipment List or SOW by notifying Cisco at least sixty (60) days prior to the expiration of the then current one year term of the Equipment List or SOW. In such case, Cisco shall continue to provide Services until the next expiration date of the affected Equipment List or SOW.

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

Upon termination of the Agreement, any Equipment List or SOWs, Customer shall pay Cisco for all work performed under the affected Equipment Lists or SOWs up to the effective date of termination at the agreed upon prices, fees and expense reimbursement rates.

Firm orders for services under this Master Services Agreement placed and accepted prior to expiration of the contract term, even if involving a multi-year commitment) remain valid in accordance with the contract terms which shall remain binding as to such prior orders only for the term stated therein, and shall not otherwise constitute an extension of the Master Services Agreement.

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

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

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

- 9. Warranty.** ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER IN ACCORDANCE WITH INDUSTRY STANDARDS EXPECTED OF A COMPANY PROVIDING PROFESSIONAL SERVICES IN THE NETWORKING INDUSTRY. EXCEPT AS SPECIFIED IN THIS SECTION, CISCO HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, ACCURACY, (B) ARISING FROM

ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT CISCO'S OPTION, RE-PERFORMANCE OF THE SERVICES; OR TERMINATION OF THIS AGREEMENT OR THE APPLICABLE EQUIPMENT LIST OR SOW AND RETURN OF THE PORTION OF THE SERVICE FEES PAID TO CISCO BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES.

10. Limitation of Liability and Consequential Damages Waiver.

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

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

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

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

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

This license shall be governed by (i) the terms and conditions attached to the Software or, in the absence of such terms, by the license posted at http://www.cisco.com/en/US/products/prod_warr_anties_item09186a008025c927.html and (ii) the Agreement.

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

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

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

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

- 12. Ownership.** Cisco shall at all times retain all right, title and interest in and to all pre-existing Intellectual Property owned by Cisco as of the Effective Date and all Intellectual Property in and to the Services, Cisco Products, Deliverables and Data Collection Tools or other Intellectual Property provided or developed by Cisco or a third party on Cisco's behalf thereafter. Customer shall at all times retain all right, title and interest in and to all pre-existing Intellectual Property owned by Customer as of the Effective Date and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter without the benefit of any of Cisco's Intellectual Property. Third Party Products shall at all times be owned by the applicable third party.

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

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

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

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

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

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

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

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

17. Subcontracting. Cisco reserves the right to subcontract Services to a third party organization including Fulfillment Partners or Servicing Subcontractors (as defined in the WSCA Master Agreement, Attachment B) to provide Services to Customer; provided that invoicing and/or payments will only be handled by and through Cisco and its authorized Fulfillment Partners.

Any such subcontract shall not relieve Cisco of any of its obligations under this Agreement.

If Contractor or its Fulfillment Partners are using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of this Contract, servicing subcontractors may not directly accept purchase orders or payments for products or services from Purchasers under the terms and conditions of the contract. Only Contractor or Fulfillment Partners authorized by Cisco may directly accept purchase orders, invoice or receive payments for products or services under the terms and conditions of the contract. The authorized Purchaser has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

18. Inventory Review. From time-to-time Cisco may perform an inventory review of Customer's installed base and review serial numbers and other records (upon reasonable advance notice) to validate entitlement. Cisco will charge a Service fee if it finds that unauthorized Services are being provided. This Service fee includes amounts which should have been paid, interest, and attorneys' and audit fees. Attorneys' and audit fees will only be payable by the customer where the discrepancy exceeds 5% of the amount otherwise due and payable. Cisco requires that Customer take all necessary action (for example, disabling passwords) to ensure that any former employees and contractors do not access or use the Service.

19. Notices. Notwithstanding anything contained in the Agreement to the contrary, all notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile or electronic mail (in the case of Cisco to Agreement-notice@cisco.com), (provided that the original document is placed in air mail/air courier or delivered personally, within seven days of the facsimile electronic notice); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or six (6) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications will be

sent to the addresses set forth on the cover sheet of this Agreement or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph. Notwithstanding the above, notices regarding general changes in pricing, policies or programs may also be by posting on Cisco.com or by e-mail or fax.

- 20. Entire Agreement.** This Master Services Agreement, in addition to the general provisions of the WSCA Master Agreement pertinent to Services, is the complete agreement between the parties concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties, except as agreed between the parties. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein. This Agreement may only be modified by a written document executed by the parties hereto.
- 21. No Waiver.** The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
- 22. Severability.** In the event that one or more terms of this Agreement becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such term shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of this Agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this Agreement by written notice with immediate effect to the other.
- 23. Attorneys' Fees.** In any suit or proceeding relating to this Agreement the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such

judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive expiration or termination and shall not be merged into any such judgment unless the judgment expressly precludes survivability.

- 24. No Agency.** This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of this Agreement. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
- 25. Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "Counterpart Image") shall be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. In the event that a party delivers a Counterpart Image in place of an originally-executed counterpart, such party shall retain the originally-executed counterpart in its files for at least the duration of the Term hereof.
- 26. Headings.** Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.
- 27. Survival.** Sections 5 (Payment), 7 (Term and Termination), 8 (Confidentiality), 9 (Warranty), 10 (Limitation of Liability and Consequential Damages Waiver), 11 (License), 12 (Ownership), 13 (Force Majeure), 14 (Applicable Law and Jurisdiction), 15 (Export Control), 18 (Inventory Review), 19 (Notices), 20 (Entire Agreement), 21 (No Waiver), 22 (Severability), 23 (Attorneys' Fees), 24 (No Agency), 27 (Survival), the Glossary of Terms and the Services-Not-Covered exhibits shall survive the termination or expiration of this Agreement.

EXHIBIT A GLOSSARY OF TERMS

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

Additional Services means installation of new Hardware, system additions, Hardware upgrades, dispatch of a field engineer, or non-mandatory engineering changes otherwise within the scope of the WSCA Master Agreement, Attachment A. Advance Replacement means shipment of replacement Field-Replaceable Unit (FRU) before receiving failed or defective FRU.

Advanced Services means the proactive Services within the scope of the WSCA Master Agreement, Attachment A, and as set forth in the AS Service Description(s) found at <http://www.cisco.com/go/servicedescriptions> throughout the term of the agreement and/or SOW(s) selected by the Customer. Advanced Services does not include Cisco's core maintenance services, such as Smartnet or Software Application Services, nor does it apply to the purchase, support or maintenance of any Products.

Advanced Services Engineer means the Cisco engineer appointed to be the main point of contact for a Customer purchasing Advanced Services. Application Software means non-resident or standalone Software Products listed on the Price List and within the scope of the WSCA Master Agreement, Attachment A, that include but are not limited to Cisco Systems® Network management Software, security Software, IP telephony Software, Internet appliance Software, Cisco® Intelligent Contact Management Software, IP Contact Center Software, and Cisco Customer Interaction Suite Software.

Business Days means the generally accepted days of operation per week within the relevant region where the Services shall be performed, excluding local holidays as observed by Cisco. Cisco.com (<http://www.cisco.com>) is the Cisco Website for its suite of online services and information.

Confidential Information means proprietary and confidential Information received by Cisco or Customer in connection with the Agreement and their relationship. Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, Software source documents, data, Customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party, as well as, in the case of Cisco, any information posted on Cisco.com.

Customer as defined in the WSCA Master Agreement, Attachment B, means the entity purchasing Services for its own internal use either directly or through an Fulfillment Partner.

Data Collection Tools means Hardware or Software tools that support Cisco's ability to provide troubleshooting on critical cases, data analysis, and report generation capabilities.

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

Deliverable means, with respect to each SOW, the items specified as deliverables in the SOW.

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

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

Documentation is user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials and other information relating to Products or

Services offered by Cisco, whether distributed in print, electronic, CD-ROM or video format.

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

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

Feature Set Upgrade means a separately licensed and priced Software release that contains an enhanced configuration or feature set.

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

Four-hour Response means:

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

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

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

Indirect Purchases means purchases of Services by Customer through an Fulfillment Partner.

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

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

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

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

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

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

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

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

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

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

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

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

Price List means the price list for services applicable in the country where the Services are ordered or delivered.

Product means both Cisco Hardware and/or Software which are generally available.

Purchase Order or P.O. means a written or electronic order from Customer to Cisco for the Services to be provided by Cisco under this Agreement.

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

RMA means Return Material Authorization. Services means one or more of the services options selected by the Customer in its Purchase Order and described at:
<http://www.cisco.com/go/servicedescriptions>
Services Descriptions mean the detailed descriptions of the Services purchased by Customer which are incorporated in the MSA by reference.

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

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

Statement of Work (SOW) means the documents agreed upon by the parties that define Services and deliverables to be provided.

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

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

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

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

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

Two-hour Response means:

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

Update means Cisco Software Maintenance Releases, Minor Releases and Major Releases containing the same configuration or feature set as originally acquired, unless the Customer has upgraded the applicable Hardware or Software to a configuration or feature set other than what was originally acquired, and the applicable license fee

for that upgrade has been paid. Updates do not include Feature Set Upgrades.

WSCA shall mean the Western States Contracting Alliance (WSCA). WSCA is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Rights and obligations under this contract are limited to those Participating States who execute a Participating Addendum with Cisco.

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

“WSCA Master Agreement” (also referred to as “Agreement” or “Contract”) shall mean the underlying purchasing agreement executed by and between the State of Utah (“State”), as WSCA Contract Manager acting on behalf of WSCA, and Cisco, as now or hereafter amended.

EXHIBIT B
CISCO SEVERITY AND ESCALATION GUIDELINES

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

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

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

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

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

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

Cisco Escalation Guideline

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

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

EXHIBIT C SERVICES NOT COVERED

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

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

The non-entitlement policies posted at http://www.cisco.com/en/US/products/prod_warranties_listing.html are hereby incorporated into this Agreement by this reference.

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

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

This Advanced Services Agreement ("Agreement") is entered into between Cisco Systems, Inc. ("Cisco"), a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134 and the State of Utah, acting as the Contract Manager for the Western States Contracting Alliance ("WSCA"), on behalf of their Public Sector Customers formed under the laws of United States ("Customer") having its principal place of business at State of Utah, Division of Purchasing and General Services, State Office Building, Capitol Hill, Room 3150, Salt Lake City, UT 84114-1061, United States, and is entered into as of the date of last signature below (the "Effective Date").

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

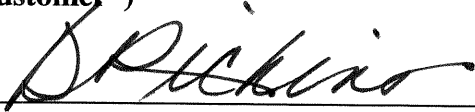
The parties have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below are on the date of signature authorized to execute this Agreement.

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

Cisco Systems, Inc.

("Customer")

("Cisco")



Authorized Signature

Authorized Signature

DOUGLAS G. RICHINS

FRANK A. CALDERONI

Print Name

Print Name

DIRECTOR OF PURCHASING

VP, WW SALES FINANCE

Title

Title

OCT 01 2007

Sept 27, 2007

Date

Date

ADVANCED SERVICES AGREEMENT TERMS AND CONDITIONS

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

- a. **Payment.** All Purchase Orders are subject to credit approval and, subject thereto, payment terms are net thirty (30) days from the date of invoice. Unless otherwise agreed by Cisco, all payments shall be made in tUS currency. Any sum not paid by Customer when due shall bear interest for late payments in accordance with the terms of the WSCA Master Agreement.
- b. **Invoicing.** As set forth below, Cisco will invoice Customer depending on the type of Advanced Services:
 - (i) AS Service Description-based Advanced Services Invoicing. Unless otherwise agreed by the parties, Cisco will invoice Advanced Services performed under an AS Service Description in advance of performance of such Advanced Services.
 - (ii) SOW-based Advanced Services Invoicing. Cisco will invoice Customer upon completion of each Milestone as defined in the SOW, per the SOW's Milestone schedule. Invoices may contain multiple Milestones. The SOW Milestone schedule supersedes any Milestones identified in a Purchase Order; nevertheless, unless otherwise mutually agreed upon via a change management procedure, the total invoiced amounts for SOW Milestones shall not exceed the total amount of Customer's Purchase Order. If a SOW does not contain a Milestone schedule, Cisco will invoice Advanced Services performed under such SOW as set forth in such SOW.
- d. Cisco shall have a lead-time of up to thirty (30) days from acceptance of Purchase Order for scheduling of Advanced Services.
- e. This WSCA Advanced Services Agreement may be terminated in accordance with the provisions for termination of the WSCA Master Agreement. Any Advanced Services being performed hereunder, may be terminated immediately by either party upon written notice:
 - (iv) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching party if the breaching party fails to cure such breach within such period;
 - (v) if the other party: (w) ceases, or threatens to cease to carry on business as a going concern; or (x) becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or (y) a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets; or (z) an event similar to any of the foregoing occurs under applicable law; or
 - (vi) if, except as provided in Section 16 (Assignment) below, either party assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under this Agreement, any AS Service Description or any SOW, without the prior written consent of the other party, or in the event of a sale of all or substantially all of such party's assets, or transfer of a controlling interest in such party to an unaffiliated third party. Notwithstanding the foregoing: (y) Cisco reserves the right to subcontract Advanced Services to any Affiliate or third party organization to provide Advanced Services to Customer, and (z) Cisco may assign this Agreement or all or any portion of its rights and obligations hereunder, to any Affiliate of Cisco.

7. Term and Termination.

- a. The term of any Advanced Service order under this Agreement shall commence on the Effective Date of the Order and shall continue for a period of one (1) year. Such term will be renewed automatically for successive one (1) year terms unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current year term.
- b. The term of each non-SOW based Advance Service shall commence on the date specified in the associated Purchase Order and continue: (i) until completion of the specified Advanced Service in the event a MCC is not required; or (ii) until the MCC has been signed off by Customer in the event a MCC is required.
- c. The term of each SOW shall commence on last date of signature of the SOW and continue until last Milestone completion, unless otherwise specified in the SOW.
- f. If Advanced Services fees are not paid when due and payment has not been received within thirty (30) days after notice from Cisco of such past due payment, Cisco may withhold the provision of Advanced Services until all amounts past due are paid in full, and/or immediately terminate this

Agreement or any Advanced Services provided hereunder.

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

8. Confidentiality.

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

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

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

9. Warranty.

- a. ALL ADVANCED SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, CISCO HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION: (I) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, OR ACCURACY, OR (II) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY.
- b. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT CISCO'S OPTION, RE-PERFORMANCE OF THE ADVANCED SERVICES; OR TERMINATION OF THIS AGREEMENT OR THE APPLICABLE ADVANCED SERVICES AND RETURN OF THE PORTION OF THE ADVANCED SERVICE FEES

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

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

10. Limitation of Liability and Consequential Damages Waiver.

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

11. License.

- a. Nothing in any AS Service Description and/or any SOW shall amend the licenses provided with any Cisco hardware or software products. The provisions in this Section 11 apply only to those Advanced Services, Deliverables and other Intellectual Property detailed in any AS Service Description and/or any SOW.
- b. Cisco grants to Customer a worldwide, non-exclusive and non-transferable license to use for Customer's internal business use only: (i) Software provided as a result of Advanced Services, if any, (ii) the Deliverables specified in each AS Service Description and/or SOW (in object code form if Software), if any, and (iii) Data Collection Tools, if any. This license grant does not include the right to sublicense.
- c. This license shall be governed by: (i) the terms and conditions attached to the Software or in the absence of such terms by the license posted at http://www.cisco.com/en/US/products/prod_warran_ties_item09186a008025c927.html and (ii) this Agreement.
- d. Customer agrees that it is licensed to use Software: (1) only on Hardware; or (2) in the case of Application Software, on third party hardware, (except as otherwise authorized in the Software Documentation); or (3) in the case of Data Collection Tools, in object code form only, on the Data Collection Tool on which such Software is provided.
- e. The license is perpetual, provided Customer is not in breach of this Agreement. Notwithstanding the above, the license for Data Collection Tools is valid until the earlier of: (i) the expiration or termination of the Advanced Services under which the Data Collection Tool was provided; or (ii) Cisco's request to Customer that the Data Collection Tool(s) be returned to Cisco.
- f. Except as expressly authorized, Customer shall not (and shall not permit a third party to): download more than one copy of the Software, copy, in whole or in part, any Software, Deliverable or Data Collection Tool, make error corrections or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Software, Deliverable or Data Collection Tool which is software to human-readable form; or transfer, sublicense, rent, lease, distribute, sell, or create derivative works of any Deliverables. There are no implied licenses and all rights not expressly granted herein are reserved to Cisco.
- g. When Customer updates or upgrades a copy of Software to a new release, Customer shall not use (except for a limited period of parallel testing) the new Software release and the corresponding copy of the previous Software release concurrently.

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

12. Ownership. As between Customer and Cisco, Cisco shall at all times retain all right, title and interest in and to all pre-existing Intellectual Property owned by Cisco as of the Effective Date and all Intellectual Property in and to the Advanced Services, Products, Deliverables and Data Collection Tools or other Intellectual Property provided or developed by Cisco or a third party on Cisco's behalf thereafter. As between Customer and Cisco, Customer shall at all times retain all right, title and interest in and to all pre-existing Intellectual Property owned by Customer as of the Effective Date and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter without the benefit of any of Cisco's Intellectual Property. Third Party Products shall at all times be owned by the applicable third party.

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

14. Applicable Law and Jurisdiction.

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

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

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

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

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

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

17. Notices. Notwithstanding anything contained in the Agreement to the contrary, all notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile or electronic mail (in the case of Cisco to Agreement-notice@cisco.com), (provided that the original document is placed in air mail/air courier or delivered personally, within seven days of the facsimile electronic notice); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or six (6) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written

verification of receipt. All communications will be sent to the addresses set forth on the cover sheet of this Agreement or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph. Notwithstanding the above, notices regarding general changes in pricing, policies or programs may also be by posting on Cisco.com or by e-mail or fax.

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

[Appendix A, Glossary of Terms, Follows]

- 18. Entire Agreement.** This Agreement, including the general provisions of the WSCA Master Agreement applicable to Services, is the complete agreement between the parties concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties, except as agreed between the parties. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein. This Agreement may only be modified by a written document executed by the parties hereto.
- 19. No Waiver.** The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
- 20. Severability.** In the event that one or more terms of this Agreement becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such term shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of this Agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this Agreement by written notice with immediate effect to the other.
- 21. Attorneys' Fees.** In any suit or proceeding relating to this Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive expiration or termination and shall not be merged into any such judgment unless expressly precluded by such judgment.
- 22. Survival.** Sections 6 (Payment and Invoicing), 7 (Term and Termination), 8 (Confidentiality), 9 (Warranty), 10 (Limitation of Liability and Consequential Damages Waiver), 11 (License), 12 (Ownership), 13 (Force Majeure), 14 (Applicable Law and Jurisdiction), 15 (Export Control), 17 (Notices), 18

APPENDIX A GLOSSARY OF TERMS

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

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

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

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

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

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

Cisco.com (<http://www.cisco.com>) is the Cisco Website for its suite of online services and information.

Confidential Information means proprietary and confidential information received by Cisco or Customer in connection with the Agreement and their relationship. Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party, as well as, in the case of Cisco, any information posted on Cisco.com.

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

Data Collection Tools means Hardware or Software tools that support Cisco's ability to provide troubleshooting on critical cases, data analysis, and report generation capabilities.

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

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

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

contains an enhanced configuration or feature set.

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

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

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

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

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

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

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

required for all SOW-based Advanced Services.

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

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

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

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

Participating State means a member of WSCA authorized under state law to participate under this Agreement who subsequently executes a Participating Addendum, or any other state or Local Public Body authorized by the WSCA Contract Manager and Cisco to be a party to the resulting Agreement who subsequently executes a Participating Addendum. "Participating State" shall be deemed to refer to the State of Utah when acting as a Participating State in its sovereign capacity (and not in its capacity as the WSCA Contract Manager).

Price List means the price list for services applicable in the country where the Advanced Services are ordered or delivered.

Product means both Cisco Hardware and/or Software which are generally available.

Purchase Order or P.O. means a written or electronic order from Customer to Cisco for the Advanced Services to be provided by Cisco under this Agreement.

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

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

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

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

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

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

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

Customer has upgraded the applicable Hardware or Software to a configuration or feature set other than what was originally acquired, and the applicable license fee for that upgrade has been paid. Updates do not include Feature Set Upgrades.

WSCA shall mean the Western States Contracting Alliance (WSCA). WSCA is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Rights and obligations under this contract are limited to those Participating States who execute a Participating Addendum with Cisco.

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

“WSCA Master Agreement” (also referred to as “Agreement” or “Contract”) shall mean the underlying purchasing agreement executed by and between the State of Utah (“State”), as WSCA Contract Manager acting on behalf of WSCA, and Cisco, as now or hereafter



Appendix 3 - Letter of Agency

DATE

To Whom It May Concern

Subject: Letter of Agency

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

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

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

Sincerely,

Customer Signature

Customer Name/Title (Please Print)



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

Attachment E

CISCO BID PROPOSAL

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

Revision Date: September 10, 2007

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