

STATE TERM CONTRACT

THIS CONTRACT ("Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, Office of Information Technology, at 30 East Broad Street, 40th Floor, Columbus, Ohio, 43215 and Cisco Systems, Inc. ("Contractor"), with offices at 170 West Tasman Drive, San Jose, California, 95134.

BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State may enter into a contract with the manufacturer provided that the manufacturer offers its products and ancillary services at the same prices that the manufacturer offers those products and services to the US Government under the GSA's Multiple Award Schedule program or SmartBuy program. If the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract, the State may accept the prices that the manufacturer offers to its most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

However, if the Contractor is not the manufacturer of the products or services under this Contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor is an authorized dealer in the manufacturer's products or services. The letter also must assure the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract to meet the State's needs under the Contract during the initial term and any extensions. Further, the letter must identify each of the manufacturer's product and service that the Contractor will supply under this Contract. The letter also must contain an assurance of the availability through the dealer of repair services and spare parts for products covered by this Contract for five years from the date of purchase. It also must contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a perpetual license fee of less than \$10,000.00 per copy.) The dealer must submit the letter, signed by an authorized representative of the manufacturer, with the executed copies of this Contract.

This Contract, including the Contractor's End User License Agreement attached hereto as Exhibit II, establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Cooperative Purchasing Member as defined herein may acquire the Contractor's products or services at the pricing identified below. This Contract, however, only permits such; it is not a requirements contract and does not obligate any State agency or Cooperative Purchasing Member to acquire the Contractor's products or services.

TERMS AND CONDITIONS

1 - TERM

- 1.1 TERM.** This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until June 30, 2023. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.
- 1.2 CONTRACT RENEWAL.** The State may renew this Contract by issuing written notice to the Contractor of the decision to do so. Renewals will be initiated by the State in writing at least 30 days before the expiration of the then current term. This expiration and renewal procedure will also apply to the end of any subsequent contract term.

2 - PRICING AND PAYMENT

- 2.1 CERTIFICATION OF ACCURACY.** By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:

- The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;
- The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or
- The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

If the Contractor is offering prices based on its most favored customer prices, the Contractor represents that it does not have a GSA Multiple Award Schedule or SmartBuy contract.

If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor represents that the information in the letter is accurate and that a duly authorized representative of the manufacturer signed the letter.

The Contractor further certifies that the above representations will apply and be true with respect to all future pricing information submitted to revise this Contract.

- 2.2 PRICE ADJUSTMENTS.** If the Contractor has relied on its GSA Multiple Award Schedule pricing or its GSA SmartBuy pricing, the State will be entitled to any price decreases that the Contractor offers to the GSA for any of its products and services during the term of this Contract. The Contractor must notify the State of any reduction in its GSA Multiple Award Schedule or SmartBuy pricing within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

If the Contractor has relied on its most favored customer pricing, the State will be entitled to a price decrease any time the Contractor sells a product or a service to any of its similarly situated customers that it holds a direct contract with for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor sells a product or provides a service to any similarly situated customer that it holds a direct contract with for less than it is then available to the State under this Contract, the Contractor must notify the State of that event within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

The Contractor also must notify the State within 30 days of any general reduction in the price of any product or service covered by this Contract, even if the general reduction does not place the price of the product or service below the price available to the State under this Contract. The purpose of this notice of a general reduction in price is to allow the State to assess the value the State believes it is receiving under this Contract in light of the general reduction. If the State believes it is appropriate, the State may ask to renegotiate the Contract price for the products and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, then on written notice to the Contractor, the State may immediately remove the affected products and services from this Contract.

- 2.3 PRICELIST.** The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. Any custom materials resulting from the Contractor's services also are called "Deliverables" in this Contract. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, a description of the Contractor's products and services, and the prices for those products and services, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following pricelist:

[Insert Description of Price List \(Name, Date\), but Not Actual Price List](#)

The Contractor will not sell to the State any notebook computers with less than a 1.60 GHz internal clock speed. Additionally, the Contractor will not sell to the State any PCs or servers using CPUs with less than a 3.0 GHz internal clock speed. And except in the case of operating systems licensed in conjunction with desktop PCs, notebook computers, PDAs, and similar personal computing devices that the OEM does not distribute without an operating system, the Contractor will not sell or license any Microsoft software to the State. If any of the foregoing items are listed in the Contractor's pricelist, they are deleted for purposes of this Contract.

- 2.4 NOTIFICATION OF PRICE INCREASES.** If this Contract permits any price increases, the Contractor must notify the State of the requested price increase before the effective date of the price increase. Increases will become effective upon State approval of the request. Purchase orders in process will not be subject to price increases. Contractor may request price increases and the addition of new products to the price list no more than once per quarter beginning the effective date of this Contract. The maximum price increase per product per quarter is not to exceed 5% and the price increase must be mutually agreed upon between the Contractor and the State before the effective date of the increase. Justification of any price increases may be required at the State's request. Emergency requests for product additions to the price list outside of the quarterly request will be reviewed individually and must also be mutually agreed upon before becoming effective.
- 2.5 PAYMENT DUE DATE AND PROCESS.** In accordance with Section 126.30 of the Ohio Revised Code ("R.C."), payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date payment is issued by the State will be considered the date payment is made. Payment of an invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. At the time of Contract award, Contractor must be able to accept all forms of payment from the State.
- 2.6 INVOICE REQUIREMENTS.** The Contractor must submit an original invoice to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

- (a) Name and address of the Contractor as designated in this Contract;

- (b) State of Ohio Contract Number;
- (c) The Contractor's unique invoice number;
- (d) The Contractor's invoice remittance address as designated in this Contract;
- (e) The purchase order number authorizing the delivery of the Deliverables;
- (f) The State agency name and billing address;
- (g) Delivery location of the Deliverables;
- (h) A description of the Deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Deliverables;
- (i) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36);
- (j) For time and material services, the invoice must reflect labor hours actually worked and if applicable supplies used; and
- (k) Clear statement of total payment expected.

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, or if the Contractor fails to give proper notice of a price increase, the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and has accepted the Contractor's Deliverable.

- 2.7 NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.
- 2.8 OBM CERTIFICATION.** This Contract is subject to R.C. 126.07. Any orders under this Contract are void until the Director of the Office of Budget and Management ("OBM") certifies that there is a balance in the appropriation available to pay for the order.
- 2.9 CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.
- 2.10 TRAVEL EXPENSES.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule 126-1-02 of the Ohio Administrative Code (the "Administrative Code").
- 2.11 TAXES.** The State is exempt from sales tax and will not pay any such taxes.
- 2.12 OFFSET.** The State may set off any amounts the Contractor owes to the State under this or other contracts against any payments due from the State to the Contractor under this or any other contracts with the State.

3 - CONTRACT ADMINISTRATION

- 3.1 DEALERS AND DISTRIBUTORS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy State Chief Information Officer, Office of Information Technology. In doing so, the Contractor warrants that:
 - (a) The Contractor has provided the dealer with a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
 - (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
 - (c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.
 - (d) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.
 - (e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

Section 125.081 of the Ohio Revised Code requires state agencies to set-aside purchases for MBE and Executive Order 2008-13S encourages use of EDGE businesses. Therefore, the state encourages the Contractor to purchase goods and services from Ohio certified Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors.

- 3.2 AUDITS.** During the term of this Contract and for three years after termination, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Deliverables and to the pricing representations that the Contractor has made to acquire this Contract. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Deliverable.

Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principal place of business or the facilities where the Contractor substantially performed under this Contract. If this is not practical, the Contractor must assume the cost of collecting, organizing, and relocating the records, along with any technology needed for accessing the records, to its office nearest Columbus, Ohio whenever the State or any entity with audit rights requests access to the records. The Contractor must do so within 30 (thirty) days of receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

If any audit reveals any material misrepresentation or overcharge to the State, Contractor shall promptly reimburse the State for such overcharge, and the State will be entitled to recover its damages associated with the material representation, if any, including the cost of the audit.

- 3.3 INSURANCE.** Until all obligations under this Contract are satisfied, and without limiting Contractor's indemnification obligations herein, Contractor shall procure and maintain for the duration of the Contract the insurance policies set forth below. All insurance required shall be provided by insurers with a rating of not less than A-VII from A.M. Best or a comparable rating agency.

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit of \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold the State harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. No representation is made that the insurance requirements of this Contract are sufficient to cover the obligations of the Contractor under this Contract.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Status

Except for Workers' Compensation and Technology Professional Liability insurance, the State of Ohio, its officers, officials and employees are to be included as additional insureds with respect to liabilities that fall within Contractor's indemnity obligations under this Contract and that are covered by such insurance. Additional insured coverage can be provided in the form of an endorsement to the Contractor's insurance.

2. Primary Coverage

For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the State of Ohio, its officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with it.

3. Umbrella or Excess Insurance Policies

Umbrella or excess commercial liability policies may be used in combination with primary policies to satisfy the limit requirements above. Such Umbrella or excess commercial liability policies shall apply without any gaps in the limits of coverage and be at least as broad as and follow the form of the underlying primary coverage required above.

4. Notice of Cancellation

Contractor shall provide State of Ohio with 30 days written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State's available recovery under any of the policies required above. If any of the insurance required herein is cancelled or nonrenewed, Contractor shall replace such insurance so that no lapse in coverage occurs.

5. Waiver of Subrogation

All insurance required herein shall provide that the insurer waives its rights of subrogation against the State of Ohio for liabilities that fall within Contractor's indemnity obligations under this Contract.

6. Deductibles and Self-Insured Retentions

Deductibles and self-insured retentions shall be the sole responsibility of Contractor.

7. Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

- a. The Retroactive Date must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

Verification of Coverage. Contractor shall furnish the State of Ohio with one or more certificates of insurance as evidence that it is maintaining the insurance required herein. All certificates of insurance are to be received by the State of Ohio before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.

Subcontractors. If Contractor uses a subcontractor in connection with this Contract, Contractor shall require that such subcontractor maintains insurance of types and amounts that Contractor deems reasonable in light of the products and/or services to be provided by, and any other activities to be undertaken by, such subcontractor.

Special Risks or Circumstances. State of Ohio reserves the right to request changes to these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. In the event that State of Ohio makes such a request, the parties shall negotiate in good faith to make changes to these insurance requirements.

3.4 CONTRACT COMPLIANCE. Any State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and may monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any noncompliance with the terms of this Contract or the specifications of an order, the agency may document the noncompliance and give the Contractor written notice of the noncompliance for immediate correction. If the Contractor fails to cure the noncompliance, the agency may notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor form to help resolve the issue. Should the State determine that the form identifies an uncured breach of this Contract, the State may terminate this Contract and seek such other remedies as may be available to it.

3.5 COOPERATIVE PURCHASING MEMBERS. "Cooperative Purchasing Members" are entities that qualify for participation in the State's cooperative purchasing program under Section 125.04 of the Ohio Revised Code and that have completed the steps necessary to participate in that program. They may include Ohio political subdivisions, such as counties, townships, municipal corporations, school districts, conservancy districts, township park districts, park districts created under Chapter 1545 of the Ohio Revised Code, regional transit authorities, regional airport authorities, regional water and sewer districts, and port authorities. They may also include any Ohio county board of elections, state institutions of higher education, private fire companies, private, nonprofit emergency medical service organizations, and chartered non-public schools. Cooperative Purchasing Members may utilize this Contract. Whenever a Cooperative Purchasing Member utilizes this Contract to issue a purchase order, the Cooperative Purchasing Member will step into the shoes of the State under this Contract for purposes of its order, and, as to the Cooperative Purchasing Member's order, this Contract will be between the Contractor and the Cooperative Purchasing Member. The Contractor must look solely to the Cooperative Purchasing Member for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Cooperative Purchasing Member's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Cooperative Purchasing Member. Nothing in this Contract requires the Contractor to accept an order from a Cooperative Purchasing Member, if the Contractor reasonably believes that the Cooperative Purchasing Member is or will be unable to perform its obligations in relation to that order.

3.6 RECALLS. If a Deliverable is recalled, seized, or embargoed, or if the Contractor, a manufacturer, packer, processor, or regulatory body finds that a Deliverable has been misbranded, adulterated, or is unsafe, the Contractor must notify the State, through the Department of Administrative Services, Office of State Purchasing, as well as all agencies that have ordered the Deliverable, within 30 (thirty) business days after the Contractor learns of any of the above events. At the option of the State, the Contractor must either reimburse the State for the purchase price of each affected Deliverable or provide an equal or better replacement for each Deliverable at no additional cost to the State. The Contractor also must remove and replace all affected Deliverables within a reasonable time, as determined by the State. Further, at the option of the State, the Contractor may be required to reimburse the State for storage costs and handling fees, which the State may calculate from the time of delivery of each affected Deliverable to the Deliverable's actual removal. Furthermore, the Contractor must bear all costs associated with the removal and proper disposal of the affected Deliverables. The State will treat any failure to refund the purchase price or provide a suitable replacement within a reasonable time, not to exceed 30 days, as a default.

3.7 TERMINATION. The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to timely cure its default. The State also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the Contractor and not dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor violates any law or regulation while performing under this Contract or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In all of the foregoing cases, the termination will be for cause.

On written notice, the Contractor will have 30 days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract, the applicable orders, or both immediately upon written notice to the Contractor. Some provisions of this Contract may provide for a shorter cure period than 30 days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

The State also may terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations two times. After the second such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The two defaults do not have to relate to the same obligation or type of failure.

The State also may terminate this Contract or any order under this Contract for its convenience and without cause. And the State may terminate this Contract or any order under it if the Ohio General Assembly fails to appropriate funds for any order under this Contract. Further, if a third party is providing funding for an order, the State also may terminate this Contract or any order under it should that third party fail to release any funds related to this Contract or an order under it.

Any notice of termination will be effective as soon as the Contractor receives it. On receipt of the notice of termination, the Contractor will immediately cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor also must immediately prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for the affected orders by using another vendor or vendors on such commercially reasonable terms and conditions as it and the covering vendors may agree. The Contractor will be liable to the State for all costs related to covering for the affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract for those orders. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other event leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount the State determines that it owes the Contractor.

3.8 INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT. It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this Contract is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in R.C. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability

company, partnership, sole proprietorship, or other entity engaged in business”), Contractor shall have any individual performing services under this Contract complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link:

<https://www.opers.org/forms-archive/2018-10-PED-ACKN-Independent-Contractor-Worker-Acknowledgment-Form-fillable.pdf>.

Contractor’s failure to complete and submit the Independent/Worker Acknowledgement prior to commencement of the work, service or deliverable provided under this Contract shall serve as Contractor’s certification that it is a “business entity” as the term is defined in R.C. 145.037.

- 3.9 FORCE MAJEURE (EXCUSABLE DELAY).** Neither party will be liable for any delay in its performance that arises from causes beyond its or its subcontractor’s control and without its or its subcontractor’s negligence or fault. For purposes of this Section, the term “force majeure event” includes without limitation, the following: Acts of God, such as pestilence, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, droughts, severe weather. Additional circumstances and events include epidemics, explosions, restraining of government and people, war, strikes, and other similar events or causes.

If the State or the Contractor cannot perform any part of its obligations under this Contract because of force majeure, that party is excused from those obligations, to the extent that performance is prevented by the force majeure event and that party took all commercially reasonable steps to mitigate or avoid the effects of the force majeure event. If there is only a delay in performance, such delay may extend only for that time lost because of the force majeure event. At any time a party is unable to perform those above-referenced obligations, it must also do the following:

1. Promptly notify the other party, in writing, of any material delay in performance due to a specified force majeure event;
2. Provide detailed information of the force majeure event; and
3. Provide a proposed revised performance date to make up for performance delays due to the force majeure event. When applicable, the revised schedule must provide for performance time not to exceed the time lost as a result of the force majeure event.

4 - DELIVERY AND ACCEPTANCE

- 4.1 ACCEPTANCE.** The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the warranties in this Contract. The State will have up to 15 days after product delivery to do this. The State will not issue a formal letter of acceptance, and passage of 15 days post product delivery will imply acceptance, though the State will issue a notice of noncompliance if a Deliverables does not meet the warranties in this Contract.

If the State issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a noncompliance letter, the Deliverable will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the State will issue the acceptance letter within 15 days after all defects have been fixed.

- 4.2 TITLE.** Title to any Deliverable will pass to the State upon delivery of the Deliverable, and all risk of loss will remain with the Contractor until title to the Deliverable passes to the State.
- 4.3 DELIVERIES.** The Contractor must make all deliveries F.O.B. destination. The place of destination will be specified on the purchase order or other ordering document. Cost of freight must be paid by the Contractor unless otherwise stated.

5 - INTELLECTUAL PROPERTY

- 5.1 COMMERCIAL MATERIAL.** As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense and that is commercially available in the marketplace, subject to intellectual property rights, and readily susceptible to copying through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, source code, and documentation.

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in an Exhibit to this Contract, if that scope of license is different than the scope of license contained in this section for Commercial Materials.

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

For Commercial Software, the State will have the rights set forth in Exhibit II.

The State will treat any Commercial Software as Confidential Information, in accordance with the requirements of the Confidential Information section of this Contract, if the Commercial Software is clearly and conspicuously labeled as confidential or secret.

5.2 CUSTOM DELIVERABLES. All custom work done by the Contractor and covered by this Contract will belong to the State, with all rights, and title that comes into existence through the Contractor's work under this Contract being assigned to the State except that Contractor owns and will continue to own all right, title, and interest in and to all Contractor's intellectual property. The State grants the Contractor a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, sell and otherwise distribute all such custom work. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials"). The State grants to Contractor a perpetual, irrevocable, royalty free, worldwide right and license to all intellectual property in the State's Feedback (as defined below) to use and incorporate into any or all Services, products, Deliverables, data collection tools, reports, scripts and Contractor Pre-Existing Materials, and to use, make, have made, offer to sell, copy, distribute, and create derivative works of such intellectual property for any and all purposes whatsoever, and the State acknowledges that it will have no rights in or to any Services, products, Deliverables, data collection tools, reports, scripts or Contractor Pre-Existing Materials as a result of Contractor's use of any such intellectual property. For purposes of this Agreement, "State Feedback" means all oral or written communications regarding improvements or changes to any Services, products, Deliverables, data collection tools, reports, scripts or Contractor Pre-Existing Materials that the State provides to Contractor.

The Contractor grants the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing materials in a custom Deliverable, the Contractor must disclose that desire to the State and obtain written approval from the State for doing so in advance. On the request of the Contractor, the State will incorporate any proprietary notice that Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable.

Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

5.3 CONFIDENTIALITY. The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Contract.

If any Deliverables contain data, documentation, or other written information that is confidential in nature and properly labeled as such, then it also will be Confidential Information for purposes of this section. The State will keep all such Confidential Information in confidence and will not use it other than as authorized under this Contract. Nor will the State disclose any such Confidential Information to any third party without first obligating the third party to maintain the secrecy of the Confidential Information.

If one party discloses Confidential Information ("Disclosing Party") to the other party to this Contract ("Receiving Party"), the Receiving Party's obligation to maintain the confidentiality of the Confidential Information will not apply where such:

- (1) Was already in the possession of the Receiving Party without an obligation of confidence;
- (2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- (3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this Contract;
- (4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence;
- (5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- (6) Is released under a valid order of a court or governmental agency, provided that the Receiving Party:
 - (a) Notifies the Disclosing Party of the order immediately upon receipt of it; and
 - (b) Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

Except for Confidential Information that the Contractor delivers to the State and that is part of a Deliverable or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to temporary and permanent injunctive relief to enforce the provisions of this Contract without the necessity of proving actual damages. However, provision does not diminish or alter any right to claim and recover damages.

This Contract is not Confidential Information. All its terms and conditions, including pricing and any attachments, represent public information.

5.4 CONFIDENTIALITY AGREEMENTS. When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidential agreement and policy acknowledgements, and have a background check performed by the State before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor's and its subcontractors' personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.

5.5 PUBLICITY. The Contractor shall not do the following without prior, written consent from the State:

1. Advertise or publicize that the Contractor is doing business with the State;
2. Use this Contract as a marketing or sales tool; or
3. Affix any advertisement or endorsement, including any logo, graphic, text, sound, video, and company name, to any State-owned property, application, or website, including any website hosted by Contractor or a third party.

6 – TRANSACTION REPORTING

6.1 CONTRACTOR'S SALES REPORT. The Contractor must report the quarterly dollar value (in US currency rounded to the nearest whole dollar) of the sales under this Contract each calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sales reported must equal the price paid by all State agencies and Cooperative Purchasing Members for Deliverables under this Contract during the reporting period.

The Contractor must report the quarterly dollar value of sales to the State via the Internet using the Web form at the Department of Administrative Services, OIT vendor portal, <https://cm.ohio.gov>. If no sales occur, the Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

The Contractor also must submit a closeout report within 120 days after the expiration of this Contract. The Contract expires on the physical completion of the last, outstanding task or delivery order of the Contract. The closeout report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all Contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero sales in the closeout report.

If the Contractor fails to submit any sales report in a timely manner or falsifies any sales report, the State may terminate this Contract for cause.

6.2 CONTRACTOR'S REVENUE SHARE. The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the discounted state prices reflected on Exhibit I and reflected in the total amount charged to ordering agencies, and neither the Contractor nor dealers may add a surcharge or separate line item to orders under this Contract to cover the cost of the revenue share.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the Department of Administrative Services, Office of State Purchasing. The Contractor

also must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

The Contractor must make each check payable to "Treasurer, State of Ohio", and forward it to the following address:

Department of Administrative Services
L-3686
Columbus, OH 43260-3686

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may setoff any unpaid revenue share from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract for cause and seek damages for the breach.

7 - WARRANTIES AND LIABILITIES

7.1 WARRANTIES. The Contractor warrants that:

- (a) The recommendations, guidance, and performance of the Contractor and all Deliverables under this Contract will be in accordance with the industry's professional standards and the requirements of this Contract and without any material defects;
- (b) All work is the work solely of the Contractor or the Contractor's dealers or distributors named in this Contract;
- (c) The Deliverables will perform substantially in accordance with its user manuals, technical materials, and related writings;
- (d) The Deliverables comply with all governmental, environmental and safety standards;
- (e) The Contractor has the right to enter into this Contract;
- (f) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;
- (g) The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control;
- (h) The Contractor has good and marketable title to any products delivered under this Contract and in which title passes to the State; and
- (i) The Contractor has the right and ability to grant the license provided in any Deliverable in which title does not pass to the State.

The Contractor must notify the State in writing immediately upon the discovery of any breach of the warranties given above, or if any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed, not to exceed 30 days, or refund the amount of the compensation paid for the Deliverable.

7.2 WARRANTIES AND REPRESENTATIONS.

The Contractor warrants that for a period of 90 days from the Delivery Date or longer as stated in Documentation, or on www.cisco.com/go/warranty, the Software substantially complies with the Documentation.

The Contractor will use commercially reasonable efforts to deliver the Software free of Malicious Code.

The previous two paragraphs do not apply if the Software or the equipment on which it is authorized for use: (a) has been altered, except by the Contractor or its authorized representative; (b) has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this Contract or the Contractor's instructions; (c) is acquired on a no charge, beta or evaluation basis; or (d) has not been provided by an Approved Source as defined in the Contractor EULA in Exhibit II. Upon the State's prompt written notification to the Approved Source during the warranty period of the Contractor's breach of this section, the State's sole and exclusive remedy (unless otherwise required by applicable law) is, at the Contractor's option, either (i) repair or replacement of the applicable Software or (ii) a refund of the license fees paid or due for the non-conforming Software, excluding any amounts paid under a service level agreement/objective, if applicable.

Where the Contractor provides a refund of license fees paid for Software, the State must return or destroy all copies of the applicable Software. Except as expressly stated in this Section, to the extent allowed by applicable law, the Contractor expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition or other implied term as to merchantability, fitness for a particular purpose or non-infringement, or that the Software will be secure, uninterrupted or error free.

7.3 HARDWARE WARRANTY. If any computer hardware or other type of electrical equipment ("Hardware") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Hardware fully complies with all

applicable government environmental and safety standards applicable to the Hardware. The Contractor warrants that commencing from the date of shipment to the State (and in case of resale by a reseller, commencing not more than ninety (90) days after original shipment by Contractor), and continuing for a period of the longer of (a) ninety (90) days or (b) as otherwise set forth at <https://www.cisco.com/go/warranty>, the Hardware will be free from defects in material and workmanship under normal use. The date of shipment of a product by Contractor is set forth on the packaging material in which the product is shipped. This limited warranty extends only to the original user of the product. The State's sole and exclusive remedy and the entire liability of Contractor and its suppliers under this limited warranty will be, at Contractor's or its service center's option, shipment of replacement Hardware within the warranty period and according to the replacement process described in the warranty card (if any), or if no warranty card, as described on the Contractor Product Warranties web page <https://www.cisco.com/go/warranty> or a refund of the purchase price if the Hardware is returned to the party supplying it to the State, freight and insurance prepaid. Contractor replacement parts used in Hardware replacement may be new or equivalent to new. Contractor's obligations hereunder are conditioned upon the return of affected Hardware in accordance with Contractor's or its service center's then-current Return Material Authorization (RMA) procedures. This limited warranty does not apply if the Hardware (a) has been altered, except by Contractor or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes.

EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY CONTRACTOR, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THESE WARRANTIES GIVE THE STATE SPECIFIC LEGAL RIGHTS, AND THE STATE MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

7.4 INDEMNITY. The Contractor must indemnify the State for all liability and expense resulting from bodily injury to any person (including injury resulting in death), damage to tangible or real property, or disclosure of State data including personally identifiable information and State sensitive information arising out of the performance of this Contract, provided that such bodily injury, property damage, or disclosure is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, other contractors, or agents.

The Contractor will indemnify the State against any third-party claim that its valid use of the Software under its entitlement infringes a third party's patent, copyright or registered trademark (the "IP Claim"). The Contractor will indemnify the State against the final judgment entered by a court of competent jurisdiction or any settlements arising out of an IP Claim, provided that the State: (a) promptly notifies the Contractor in writing of the IP Claim; (b) fully cooperates with the Contractor in the defense of the IP Claim; and (c) grants the Contractor the right to control the defense and settlement of the IP Claim, and any subsequent appeal, upon consultation with and approval of the Ohio Attorney General. The Contractor will have no obligation to reimburse the State for attorney fees and costs incurred prior to the Contractor's receipt of notification of the IP Claim. The State, at its own expense, may retain its own legal representation.

If an IP Claim is made and prevents the State's exercise of the Usage Rights, the Contractor will either procure for the State the right to continue using the Software or replace or modify the Software with functionality that is at least equivalent. Only if the Contractor determines that these alternatives are not reasonably available, the Contractor may terminate the State's Usage Rights granted under this Contract upon written notice to the State and will refund to the State a prorated portion of the fee paid by the State for the Software for the remainder of the unexpired Usage Term.

The Contractor has no obligation to indemnify with respect to any IP Claim based on: (a) compliance with any designs, specifications, or requirements the State provided or a third party provided on the State's behalf; (b) the State's modification of any Software or modification by a third party; (c) the amount or duration of use made of the Software, revenue earned by the State, or services offered by the State; (d) combination, operation, or use of the Software with non-Contractor products, software or business processes unless (1) the combination is of a type reasonably contemplated for such product, software or business process; (2) the product, software or business process forms a material part of the IP Claim, and (3) the infringement could not be reasonably avoided by an alternative combination (a "Covered Combination"). Contractor shall only be responsible for its respective pro-rata share of calculable damages based on the value of Contractor's contribution into the Covered Combination relative to the total value of the Covered Combination (including, without limitation, the value contributed by other vendors or the State); (e) the State's failure to modify or replace the Software as required by the Contractor; or (f) any Software provided on a no charge, beta or evaluation basis.

This section states the Contractor's entire obligation and the State's exclusive remedy regarding any IP Claims against the State.

7.5 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

- (a) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; CORRUPTION OF DATA OR INTERRUPTION OR LOSS OF BUSINESS; OR LOSS OF REVENUES, PROFITS, GOODWILL OR ANTICIPATED SALES OR SAVINGS OF ANY KIND, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) TO THE EXTENT SUCH LIMITATIONS DO NOT IMPOSE AN UNLAWFUL INDEMNIFICATION OBLIGATION ON THE STATE, THE MAXIMUM AGGREGATE LIABILITY OF EACH PARTY UNDER THIS CONTRACT IS LIMITED TO: (A) FOR CLAIMS SOLELY ARISING FROM SOFTWARE LICENSED ON A PERPETUAL BASIS, TWO TIMES THE FEES PAID OR PAYABLE TO THE CONTRACTOR FOR THAT SOFTWARE; OR (B) FOR ALL OTHER CLAIMS, TWO TIMES THE FEES PAID OR PAYABLE TO THE CONTRACTOR FOR THE APPLICABLE SOFTWARE ATTRIBUTABLE TO THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY.
- (c) NOTWITHSTANDING THE FOREGOING LIMITATIONS AND TO THE EXTENT SUCH LIMITATION DOES NOT IMPOSE AN UNLAWFUL INDEMNIFICATION OBLIGATION ON THE STATE, CONTRACTOR'S MAXIMUM AGGREGATE LIABILITY FOR CONTRACTOR'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS IN THIS AGREEMENT OR ITS UNAUTHORIZED DISCLOSURE OF STATE DATA IS LIMITED TO TWO TIMES THE TOTAL FEES PAID OR PAYABLE TO THE CONTRACTOR UNDER THIS AGREEMENT ATTRIBUTABLE TO THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. FOR CLARITY, EXPENSES RELATED TO REMEDIATION OF A DATA BREACH OR SECURITY INCIDENT WILL BE CONSIDERED DIRECT DAMAGES. SUCH EXPENSES INCLUDE FINES AND PENALTIES AGAINST THE STATE, EXPENSES FOR LEGALLY REQUIRED NOTIFICATIONS TO INDIVIDUALS WHOSE INFORMATION WAS POTENTIALLY COMPROMISED, RESPONDING TO INQUIRIES RESULTING FROM THE NOTIFICATIONS, AND 12 MONTHS OF CREDIT MONITORING FOR IMPACTED INDIVIDUALS.

8 - MAINTENANCE

8.1 SOFTWARE MAINTENANCE.

For Commercial Software other than PC or PC-based server software costing less than \$10,000.00 per copy or license, the Contractor must provide maintenance during the warranty period to the State. At a minimum, that maintenance must be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. That maintenance program must include all new releases, updates, patches, and fixes to the Commercial Software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function and a commitment to promptly correct all material defects in the software provided that the State continues to stay current on its payment obligations for such maintenance.

Additionally, subject to the Contractor's standard End of Life and End of Support policies and provided that the State has a current and fully-paid support contract in place for Cisco support and maintenance, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the software for at least one year after the warranty period.

For Commercial Software designed for PC or PC-based server platforms and costing less than \$10,000.00 per copy or license, the Contractor must provide the same maintenance and user assistance during the warranty period at no additional cost to the State as the Contractor or the third-party licensor makes generally available at no additional charge to its other customers.

8.2 SOFTWARE UPGRADES. After an initial acquisition of a license in Commercial Software, the State may want to acquire a broader license than the original. Or the State may later want to migrate to another platform for the Commercial Software. When the Contractor or third-party licensor makes the broader license generally available to its customer base or makes the version of the Commercial Software that runs on the new platform to which the State wants to migrate, then the State will have a right to upgrade any of its licenses to that broader license or to acquire the version of the Software that is appropriate for the new platform that the State intends to use. In these cases, the Contractor will provide the broader license or other version of the Commercial Software in exchange for a prorated license fee that is based on the license fee set forth in the Contractor's pricelist in Exhibit I.

The foregoing will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$10,000.00, unless the Contractor or third-party licensor makes upgrade packages available for the Commercial Software to other customers.

8.3 EQUIPMENT MAINTENANCE. If this Contract involves computer or telecommunications hardware or other mechanical or electrical equipment ("Equipment") as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor must provide maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance also must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs in accordance with the manufacturer's published specifications. The Contractor must use its best efforts to perform all fault isolation and problem determination attributed to the Equipment. The following services are outside the scope of this Contract:

- (a) Maintenance to bring the Equipment into compliance with any law, rule, or regulation, if such law, rule, or regulation was not in effect on the acceptance date;
- (b) Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse, if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (If such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe in the Equipment's documentation, or causes other than ordinary use of Equipment;
- (c) Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices except as permitted in the Equipment's user documentation;
- (d) Maintenance or increased maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment;
- (e) Repairs needed to restore the Equipment to good operating condition if the Equipment has been damaged by anyone other than the Contractor's authorized service personnel repairing, modifying, or performing maintenance on the Equipment.

8.4 EQUIPMENT MAINTENANCE STANDARDS. Contractor offers various levels of maintenance services. Contractor has established the problem priority definitions as set forth in the applicable Service Descriptions available at: <https://www.cisco.com/c/en/us/about/legal/service-descriptions.html>. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

8.5 EQUIPMENT MAINTENANCE CONTINUITY. If the Contractor is unable to provide Equipment maintenance to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. The State will also be entitled to the following items from the Contractor:

- (a) All reasonable information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals, and system and unit schematics, with all changes noted;
- (b) A listing of suppliers capable of supplying necessary spare parts;
- (c) Adequate reasonable information to permit the State to have spare parts manufactured elsewhere; and
- (d) A listing of spare parts and their recommended replacement schedule to enable the State to create a centralized inventory of spare parts.

The State will treat as Confidential Information in accordance with the Confidentiality Section of this Contract any information in items (a) through (d) above that the Contractor rightfully identifies in writing as confidential. And when disclosure to a third-party is necessary for the State to continue the maintenance, the State will require any third-party to whom disclosure is made to agree to hold the Confidential Information in confidence and to make no further disclosure of it. Further, the State agrees that any such Confidential Information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed when such use is no longer needed.

8.6 PRINCIPAL PERIOD OF MAINTENANCE (GENERAL). Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be billable and must be included in the price of the maintenance.

8.7 MAINTENANCE ACCESS (GENERAL). For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

9 - ASSIGNMENT AND SUBCONTRACTING

9.1 ASSIGNMENT. The Contractor may not assign this Contract without the written consent of the State, which the State will not unreasonably withhold.

- 9.2 SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such subcontractor, the Contractor must submit a list identifying its known subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor.

10 – CONSTRUCTION

- 10.1 HEADINGS.** The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.
- 10.2 ENTIRE DOCUMENT.** This Contract, which includes the Contractor’s pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.
- 10.3 BINDING EFFECT.** This Contract will be binding on and benefits the respective successors and assigns of the State and the Contractor.
- 10.4 AMENDMENTS – WAIVER.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.
- 10.5 SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.
- 10.6 CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- 10.7 NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.
- 10.8 CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State’s right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State’s right to receive maintenance, warranty work, or other services for which the State has paid.
- 10.9 PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.
- 10.10 DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

11 - LAW AND COURTS

- 11.1 EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including R.C. 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: <http://business.ohio.gov/efiling/>.

- 11.2 DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.
- 11.3 OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor hereby certifies that all applicable parties listed in R.C. 3517.13 are in full compliance with R.C. 3517.13.

- 11.4 SECURITY AND SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.
- 11.5 LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.
- 11.6 UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under R.C. 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.
- 11.7 ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- 11.8 PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.** No State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in the Contract.
- The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure Form attached to this Contract as Exhibit III affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, if the Contractor changes the location(s) disclosed on the Affirmation and Disclosure Form, Contractor must complete and submit a revised Affirmation and Disclosure Form reflecting such changes.
- 11.9 REGISTRATION WITH THE SECRETARY OF STATE.** Contractor certifies that it is one of the following:
1. A company that is properly registered with the Ohio Secretary of State; or
 2. A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Sections 1703.01 to 1703.31 of the Ohio Revised Code, as applicable; or
 3. Exempt from registration requirements of the Ohio Secretary of State.
- 11.10 IRS 1075 REQUIREMENTS.** In order to protect risk of loss, breach, or misuse of Federal Tax Information ("FTI") held by government agencies, the Internal Revenue Service issued Publication 1075 which includes specific language to include in any State contract in which FTI may be disclosed.

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (4) The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment

must provide for the managerial, operations, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

- (7) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (8) The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (9) The agency will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

II. CRIMINAL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (See Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10). For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

- 11.11 BOYCOTTING.** Pursuant to R.C. 9.76(B), Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

To SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

CONTRACTOR Cisco Systems, Inc.

STATE OF OHIO,
DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF STATE PURCHASING

BY: 

Steve Kite
Authorized Signatory

E-SIGNED by Matt Whatley
BY: on 2021-04-09 13:24:30 GMT
MATTHEW WHATLEY, INTERIM DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: April 5th, 2021

DATE: _____

APPROVED BY LEGAL

Exhibit I

Pricelist too large to insert as Exhibit I. Original pricelist, dated 3/23/21, was received and recorded by the Department of Administrative Services, and is posted on the State of Ohio Procurement website with this Contract.”

Exhibit II – Contractor’s End User License Agreement



Cisco End User License Agreement

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Section 1. Scope and Applicability

This Exhibit II to State Term Schedule number **534612** (“STS”) between Cisco Systems, Inc. (“Cisco”) and the State of Ohio (“You”) is the End User License Agreement (“EULA”) between You and Cisco that covers Your use of the Software (“**Software or Cisco Technology**”). This EULA is subject to the terms of that STS and also incorporates any Product Specific Terms that may apply to the Cisco Technology You acquire. In the event of a conflict between the terms in any applicable Product Specific Terms and applicable Ohio law, the applicable Ohio law shall control. Additionally, in the event of a conflict between this EULA and any other terms referenced, linked or otherwise incorporated herein, the EULA shall control, and any other terms in conflict with Ohio law do not apply. Definitions of capitalized terms are in Section 13 (Definitions).

You agree to be bound by the terms of this EULA through your express agreement to this EULA. If You do not have authority to enter into this EULA or You do not agree with its terms, do not use the Cisco Technology. You may request a refund for the Software within 30 days of Your initial purchase provided You return the Software to the Approved Source and disable or uninstall it. This paragraph does not apply where You have expressly agreed to end user license terms with Cisco as part of a transaction with an Approved Source.

Section 2. Using Cisco Technology

- 2.1. License and Right to Use.** Cisco grants You a non-exclusive, non-transferable (except with respect to Software as permitted under the [Cisco Software Transfer and Re-Use Policy](#)) (a) license to use the Software for Your direct benefit during the Usage Term and as set out in Your Entitlement and this EULA (collectively, the “**Usage Rights**”).
- 2.2. Use by Third Parties.** You may permit Authorized Third Parties to exercise the Usage Rights on Your behalf, provided that You are responsible for (a) ensuring that such Authorized Third Parties comply with this EULA and (b) any breach of this EULA by such Authorized Third Parties.
- 2.3. Beta and Trial Use.** If Cisco grants You Usage Rights in the applicable Cisco Technology on a trial, evaluation, beta or other free-of-charge basis (“**Evaluation Software and Services**”), You may only use the Evaluation Software and Services on a temporary basis for the period limited by the license key or specified by Cisco in writing. If there is no period identified, such use is limited to 30 days after the Evaluation Software and Services are made available to You. If You fail to stop using and/or return the Evaluation Software and Services or the equipment on which it is authorized for use by the end of the trial period, You may be invoiced for its list price and agree to pay such invoice. Cisco, in its discretion, may stop providing the Evaluation Software and Services at any time, at which point You will no longer have access to any related data, information, and files and must immediately cease using the Cisco Technology. The Evaluation Software and Services may not have been subject to Cisco’s usual testing and quality assurance processes and may contain bugs, errors, or other issues. Except where agreed to in writing by Cisco, You will not put Evaluation Software and Services into production use. Cisco provides Evaluation Software and Services “AS-IS” without support or any express or implied warranty for any problems or issues, and Cisco will not have any liability relating to Your use of the Evaluation Software and Services other than as specifically set forth herein.
- 2.4. Upgrades or Additional Copies of Software.** You may only use Upgrades or additional copies of the Software beyond Your license Entitlement if You have (a) acquired such rights under a support agreement covering the applicable Software; or (b) You have purchased the right to use Upgrades or additional copies separately.
- 2.5. Interoperability of Software.** If required by law and upon Your request, Cisco will provide You with the information needed to achieve interoperability between the Software and another independently created program, provided You agree to any additional terms reasonably required by Cisco. You will treat such information as Confidential Information.
- 2.6. Subscription Renewal.** Usage Rights in Cisco Technology acquired on a subscription basis will renew for the renewal period indicated on the order You or Your Cisco Partner placed with Cisco (“**Renewal Term**”) upon issuance of a purchase order from you.
Your Approved Source will notify You reasonably in advance of any Renewal Term if there are fee changes. The new fees will apply for the upcoming Renewal Term. If you do not accept the fee changes, do not renew Your subscription, and Your subscription will terminate at the end of the current Usage Term.

Section 3. Additional Conditions of Use

- 3.1. Cisco Technology Generally.** Unless expressly agreed by Cisco, You may not (a) transfer, sell, sublicense, monetize or make the functionality of any Cisco Technology available to any third party; (b) use the Software on second hand or refurbished Cisco equipment not authorized by Cisco, or use Software that is licensed for a specific device on a

different device (except as permitted under [Cisco's Software License Portability Policy](#)); (c) remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks; (d) reverse engineer, decompile, decrypt, disassemble, modify, or make derivative works of the Cisco Technology; or (e) use Cisco Content other than as part of Your permitted use of the Cisco Technology.

3.2. No Cloud Services may be acquired under this EULA.

3.3. Evolving Cisco Technology.

Cisco may end the life of Cisco Technology, including component functionality ("EOL"), by providing written notice on [Cisco.com](#). If You or Your Cisco Partner prepaid a fee for Your use of the Cisco Technology that becomes EOL before the expiration of Your then-current Usage Term, Cisco will use commercially reasonable efforts to transition You to a substantially similar Cisco Technology. If Cisco does not have substantially similar Cisco Technology, then Cisco will credit You or Your Cisco Partner any unused portion of the prepaid fee for the Cisco Technology that has been declared EOL ("EOL Credit"). The EOL Credit will be calculated from the last date the applicable Cisco Technology is available to the last date of the applicable Usage Term. Such credit can be applied towards the future purchase of Cisco products.

3.4. Protecting Account Access. You will keep all account information up to date, use reasonable means to protect Your account information, passwords and other login credentials, and promptly notify Cisco of any known or suspected unauthorized use of or access to Your account.

3.5. Use with Third-Party Products. If You use the Cisco Technology together with third-party products, such use is at Your risk. You are responsible for complying with any third-party provider terms, including its privacy policy. Cisco does not provide support or guarantee ongoing integration support for products that are not a native part of the Cisco Technology.

3.6. Open Source Software. Open source software not owned by Cisco is subject to separate license terms as set out at [www.cisco.com/go/opensource](#). The applicable open source software licenses will not materially or adversely affect Your ability to exercise Usage Rights in applicable Cisco Technology.

Section 4. RESERVED

Section 5. Confidential Information and Use of Data

5.1. RESERVED.

5.2. How We Use Data. Cisco will access, process and use data in connection with Your use of the Cisco Technology solely as necessary to perform its obligations hereunder and in accordance with applicable privacy and data protection laws and the STS terms regarding the State's data. All such State data will be treated as Confidential Information under the STS. For further detail, please visit [Cisco's Security and Trust Center](#).

5.3. Notice and Consent. To the extent Your use of the Cisco Technology requires it, You are responsible for providing notice to, and obtaining consents from, individuals regarding the collection, processing, transfer and storage of their data through Your use of the Cisco Technology.

Section 6. Ownership

Except where agreed in writing, nothing in this EULA transfers ownership in, or grants any license to, any intellectual property rights. You retain any ownership of Your content and Cisco retains ownership of the Cisco Technology and Cisco Content. Cisco may use any feedback You provide in connection with Your use of the Cisco Technology as part of its business operations.

Section 7. RESERVED

Section 8. RESERVED

Section 9. RESERVED

Section 10. RESERVED

Section 11. Verification

During the Usage Term and for a period of 12 months after its expiry or termination, You will take reasonable steps to maintain complete and accurate records of Your use of the Cisco Technology sufficient to verify compliance with this EULA ("Verification Records"). Upon reasonable advance notice, and no more than once per 12 month period, You will, within 30 days from Cisco's notice, allow Cisco and its auditors access to the Verification Records and any applicable books, systems (including Cisco product(s) or other equipment), and accounts during Your normal business hours. If the verification process discloses underpayment of fees, You will pay such fees.

Section 12. General Provisions

12.1. RESERVED.

12.2. Third-Party Beneficiaries. This EULA does not grant any right or cause of action to any third party.

12.3. RESERVED.

12.4. RESERVED.

12.5. Cisco Partner Transactions. If You purchase Cisco Technology from a Cisco Partner, the terms of this EULA apply to Your use of that Cisco Technology and prevail over any inconsistent provisions in Your agreement with the Cisco Partner.

12.6. RESERVED.

12.7. Compliance with Laws. Each party will comply with all laws and regulations applicable to their respective obligations under this EULA. Cisco may restrict the availability of the Cisco Technology in any particular location or modify or discontinue features to comply with applicable laws and regulations.

12.8. Export. Cisco's Software, products, technology and services (collectively the "Cisco Products") are subject to U.S. and local export control and sanctions laws. You acknowledge and agree to the applicability of and Your compliance with those laws, and You will not receive, use, transfer, export or re-export any Cisco Products in a way that would cause Cisco to violate those laws. You also agree to obtain any required licenses or authorizations.

12.9. RESERVED.

12.10. RESERVED.

12.11. RESERVED.

12.12. RESERVED.

12.13. RESERVED.

12.14. RESERVED.

12.15. Translations. Cisco may provide local language translations of this EULA in some locations. You agree that those translations are provided for informational purposes only and if there is any inconsistency, the English version of this EULA will prevail.

12.16. RESERVED.

Section 13. Definitions

“Affiliate” means any corporation or company or government entity that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where “control” means to: (a) own more than 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

“Approved Source” means Cisco or a Cisco Partner.

“Authorized Third Parties” means Your Users, Your Affiliates, Your third-party service providers, and each of their respective Users permitted to access and use the Cisco Technology on Your behalf as part of Your Entitlement.

“Cisco” “we” “our” or “us” means Cisco Systems, Inc. or its applicable Affiliate(s).

“Cisco Content” means any (a) content or data provided by Cisco to You as part of Your use of the Cisco Technology and (a) content or data that the Cisco Technology generates or derives in connection with Your use. Cisco Content includes geographic and domain information, rules, signatures, threat intelligence and data feeds and Cisco’s compilation of suspicious URLs.

“Cisco Partner” means a Cisco authorized reseller, distributor or systems integrator authorized by Cisco to sell Cisco Technology.

“Delivery Date” means the date agreed in Your Entitlement, or where no date is agreed: (a) where Usage Rights in Software are granted separately: (i) for Software, the earlier of the date Software is made available for download or installation, or the date that Cisco ships the tangible media containing the Software, or (b) where Usage Rights in Software are granted together, the date Software is made available for download.

“Documentation” means the technical specifications and usage materials officially published by Cisco specifying the functionalities and capabilities of the applicable Cisco Technology.

“Entitlement” means the specific metrics, duration, and quantity of Cisco Technology that You commit to acquire from an Approved Source through individual acquisitions or Your participation in a Cisco buying program.

“Malicious Code” means code that is designed or intended to disable or impede the normal operation of, or provide unauthorized access to, networks, systems, Software or Cloud Services other than as intended by the Cisco Technology (for example, as part of some of Cisco’s security products).

“Product Specific Terms” means additional product related terms applicable to the Cisco Technology You acquire as set out at www.cisco.com/go/softwareterms.

“Software” means the Cisco computer programs including Upgrades, firmware and applicable Documentation.

“Upgrades” means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the Software.

“Usage Term” means the period commencing on the Delivery Date and continuing until expiration or termination of the Entitlement, during which period You have the right to use the applicable Cisco Technology.

“User” means the individuals (including contractors or employees) permitted to access and use the Cisco Technology on Your behalf as part of Your Entitlement.

“You” means the individual or legal entity purchasing the Cisco Technology.

Exhibit III

AFFIRMATION AND DISCLOSURE FORM

By the signature affixed hereto, the Contractor affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States, nor allow State data to be sent, taken, accessed, tested, maintained, backed-up, stored or made available remotely (located) outside of the United States unless a duly signed waiver from the State has been attained.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed and where data is located in the spaces provided below or by attachment. Failure to provide this information may result in no award. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

170 W. Tasman Drive

San Jose, CA 95134

(Address)

(City, State, Zip)

Name/Principal location of business of subcontractor(s):

[To be provided once Contract has been finalized]

2. Location where services will be performed by Contractor:

All services will be performed by Contractor in the State of Ohio and other US locations, with the exception of Cisco's maintenance and/or support services, which are under Cisco's global "Follow-the-Sun" delivery model.

3. Location where state data will be located, by Contractor:

Not applicable to Contractor's provision of services under this State Term Schedule.

Name/Location(s) where state data will be located by subcontractor(s):

Not applicable to Subcontractors' provision of services under this State Term Schedule.

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure Form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: 
Contractor Cisco Systems, Inc.

Print Name: Steve Kite

Title: Authorized Signatory

Date: April 5th, 2021

APPROVED BY LEGAL