

PARTICIPATING ADDENDUM NO. 4723

WSCA NASPO COOPERATIVE
PURCHASING ORGANIZATION
DATA COMMUNICATION PRODUCTS AND SERVICES
Administered by the State of Utah (hereinafter "Lead State")

MASTER AGREEMENT
CISCO SYSTEMS, INC.
Utah Contract Number AR233
(hereinafter "Contractor" or "Cisco")

And

STATE OF OREGON, acting by and through the
DEPARTMENT OF ADMINISTRATIVE SERVICES,
ENTERPRISE GOODS AND SERVICES,
PROCUREMENT SERVICES
(hereinafter "Participating State" or "DAS PS")

Page 1 of 19

1. Scope: Contractor and the Division of Purchasing and General Services, an agency of the Lead State have executed State Cooperative Contract, Contract Number AR233 for Data Communications Products and Services 14-19 ("WSCA-NASPO Master Agreement" or "Master Agreement"). The Master Agreement is incorporated into this addendum ("Participating Addendum") as if set forth at length. This Participating Addendum covers the Data Communications Products and Services contracts led by the State of Utah for use by state agencies and other entities located in the Participating State/Entity authorized by that state's statutes to utilize State/Entity contracts with the prior approval of the State's Chief Procurement Official. Capitalized terms not defined in this Participating Addendum shall have the meaning set forth in the Master Agreement. To the extent of a conflict of terms between the Master Agreement and this Participating Addendum, the following order of precedence shall apply:

- a. This Participating Addendum, including its Attachments;

Attachment A: State Specific Constitutional and Statutory Requirements

Attachment B: State Specific Purchasing Guidelines

Exhibit B-1: Form Purchase Order

Attachment C: Additional Insurance Requirements

- b. The Master Agreement and its exhibits and attachments pursuant to its order of precedence and any Amendments thereto that have been reviewed and approved in writing by the State of Oregon for incorporation by reference into this Participating Addendum; and any other Product or Service specific terms, conditions or provisions found online at Contractor's website that are referenced in the Master Agreement;
- c. A Purchase Order or Contract entered into between Authorized Purchaser and Contractor, subject to the limitation set forth in Attachment B, Section 1.4.

2. Participation: Use of specific WSCA-NASPO cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **State/Entity** contracts are subject to the prior approval of the respective State

Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

The State of Oregon is an active member of WSCA and has the authority to enter into this Participating Addendum. Pursuant to ORS 279A.050(2), the Director of the Oregon Department of Administrative Services (DAS) has all of the rights, powers and authority necessary to carry out the provisions of the Public Contracting Code (ORS chapters 279A, 279B, and 279C) for state agencies. In addition, DAS (as any contracting agency in Oregon) may participate in, sponsor, conduct, or administer a joint cooperative procurement for the procurement of any goods, services or public improvements and may establish a contract or price agreement through an interstate procurement pursuant to the provisions of ORS 279A.200 through ORS 279A.225.

The following entities are eligible to purchase under this Participating Addendum:

- A) State Agencies who are subject to the procurement authority of DAS PS;
 - B) State Agencies not subject to the procurement authority of DAS PS, but who have been given permission to use this Participating Addendum; and
 - C) ORCPP Members.
- (collectively "Authorized Purchasers").

3. Participating State Modifications or Additions to Master Agreement: The State Specific Terms and Conditions set forth in Attachment A are hereby incorporated and made a part of this Participating Addendum.

4. Lease Agreements: Lease agreements are permitted under this Participating Addendum.

5. Primary Contacts: The primary contacts for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Angelene Feril
Address	170 West Tasman Drive, San Jose, CA 95134
Telephone	(408) 424-0712
Fax	(408) 608-1729
E-mail	aferil@cisco.com

Participating State/Entity

Name	Kimberly Leeker
Address	1225 Ferry St. SE U140 Salem, OR 97301
Telephone	(503) 378-4297
Fax	(503) 373-1626
E-mail	Kimberly.LEEKER@das.state.or.us

The parties will keep and maintain current at all times a primary point of contact for administration of this Participating Addendum.

6. Subcontractors: Contractor's Fulfillment Partners, as defined in the Master Agreement, that are authorized in the State of Oregon as shown on the dedicated Contractor's (cooperative contract) website, are approved to provide sales and service support to Authorized Purchasers, e.g. for direct order taking, processing, fulfillment or provisioning. The Fulfillment Partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

Subject to approval of the Participating State/Entity, and at the sole discretion of Contractor,

Contractor may add Fulfillment Partners at any time during the term of this Participating Addendum. Contractor may designate a minimum of two Fulfillment Partners and no set maximum number of Fulfillment Partners to provide sales and services support. Contractor, in its sole discretion, is not required to add, and may delete upon thirty (30) days prior written notice, any Fulfillment Partner who does not meet Contractor's established qualifying criteria, or where the addition of the entity would violate any state or federal law or regulation.

7. Purchase Orders or Contracts: Authorized Purchasers may, from time to time, place Purchase Orders or enter into Contracts under this Participating Addendum pursuant to the Participating State's -State Specific Purchasing Guidelines set forth in Attachment B, incorporated and made a part of this Participating Addendum. Any Purchase Order placed or Contract entered into by an Authorized Purchaser for a Product, Services or both available from the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Purchase Order or Contract agree in writing that another contract or agreement applies to such Purchase Order or Contract.

Authorized Purchasers may place orders directly and only through Contractor's approved Fulfillment Partners or through Contractor for Products or Services as authorized under this Participating Addendum. Only those Fulfillment Partners approved and listed during the term of Participating Addendum at Contractor's website are authorized to directly provide quotes, receive Purchase Orders or Contracts, invoice Customers, and receive payment from purchasers on Contractor's behalf.

Except as otherwise set forth in the qualifying criteria, Contractor will not, directly or indirectly, restrict any Fulfillment Partner's participation or ability to quote pricing for an Authorized Purchaser. The approved Fulfillment Partners will not offer less favorable pricing discounts than the contract discounts established by Contractor under the Master Agreement. However, the Fulfillment Partner may offer any additional incremental discounts to Authorized Purchaser, and such additional discounts if offered, may be provided in the discretion and as the sole legal obligation of the approved Fulfillment Partner to the Authorized Purchaser. Contractor is not responsible for any discount promised by a Fulfillment Partner, nor is Contractor liable for any damages arising from the failure of a Fulfillment Partner to honor any promised discount, beyond the base level discounts set forth in the Master Agreement.

In the event a Fulfillment Partner refuses to honor any promises, negotiations, or representations made to Participating State, Contractor shall cooperate with and assist Participating State to the extent it is able in its reasonable efforts to enforce the promises, negotiations, or representations of the Fulfillment Partner.

The Master Agreement number and the State Contract Number must appear on every Purchase Order placed or Contract entered into under this Participating Addendum.

8. Product and Services Offering: The full suite of product and service offerings available under the Master Agreement may be procured under this Participating Addendum.

9. Term: The term of this Participating Addendum begins on the later of June 1, 2014, or the date of last signature below. The term shall continue for a period ending on the Termination Date of the Master Agreement or when this Participating Addendum is terminated in accordance with the Master Agreement, whichever shall occur first.

10. Notices: Notwithstanding anything contained in the Master Agreement to the contrary, all notices required or permitted under this Participating Addendum will be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile or electronic mail (in the case of Contractor to **Agreement-notice@cisco.com**); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. All communications will be sent to the addresses set forth Section 5 of this Participating Addendum (and notices to Contractor will be further addressed to the Office of the General Counsel, Attn: Contract Notice) or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph. In the absence of such an address from DAS PS for this Participating Addendum or for a Contract from Authorized Purchaser, notice should be sent to the address to which the last invoice under this Participating Addendum or a Contract, as applicable, was sent before notice is served.

Notwithstanding the foregoing, notices regarding changes in pricing, Software license terms, policies or programs may be by posting on Cisco.com or by e-mail or fax.


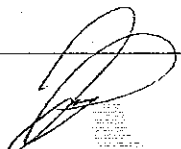
11. Insurance: Contractor shall obtain and shall maintain throughout the term of this Participating Addendum the additional insurance required by DAS PS as set forth in Attachment C. Within ten (10) Business Days of the Effective Date of this Participating Addendum, Contractor shall provide to DAS PS a certificate of insurance in compliance with Attachment C. No Purchase Orders may be placed or accepted or Contracts executed until proof is provided that these requirements have been met.

12. Vendor Collected Administrative Fee. (if applicable) 1.0%.

13. Entire Agreement: This Participating Addendum and the Master Agreement (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the parties hereto.

14. Tax Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury, to the best of his/her knowledge: (a) the number shown in the Participating Addendum is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; and (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon Tax Laws. (For purposes hereof, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.)

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

Participating State: State of Oregon, acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services	Contractor: Cisco Systems, Inc.
By: 	By: 
Name: <u>Debbie Dennis</u>	Name: <u>Juan Pablo Brockmann</u>
Title: <u>State Procurement Services Manager</u>	Title: <u>Director, Finance</u>
Date: <u>6-20-14</u>	Date: <u>June 18, 2014</u>
	FEID:

APPROVED BY LEGAL

Oregon Department of Justice
Approval via email by Karen J. Johnson 4/24/2014

ATTACHMENT A

State Specific Constitutional and Statutory Requirements

1. **Definitions.** The following terms have the meanings set forth below. Capitalized terms not defined in this Participating Addendum have the meaning ascribed to them in the Master Agreement and its exhibits.

"Authorized Purchaser", "Customer", "Purchaser" or "You" means a State Agency of the State of Oregon or any ORCPP member that enters into a Contract with Contractor under this Participating Addendum.

"Business Days" means Monday through Friday, 8:00 am to 5:00 pm Pacific Time, excluding State of Oregon holidays.

"Contract" means the agreement between Authorized Purchaser and Contractor formed by the Authorized Purchaser's issuance of a Purchase Order or other ordering document that incorporates by reference the terms and conditions of the Master Agreement and this Participating Addendum.

"DAS PS" means the State of Oregon acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services.

"Master Agreement" means the State of Utah, Contract No. AR233 between Contractor and the State of Utah, on behalf of the member states of the National Association of State Procurement Officials and the Western States Contracting Alliance, and its exhibits and attachments, which together with this Participating Addendum sets forth terms, conditions and requirements for purchase by Authorized Purchasers of the products and services described therein. Any amendment(s) to the Master Agreement must be reviewed and approved in writing by the State of Oregon before such amendment(s) can be incorporated by reference into this Participating Addendum. The Master Agreement includes the following documents:

- WSCA-NASPO Master Agreement Terms and Conditions;
- The Statement of Work;
- The Solicitation; and
- Contractor's response to the Solicitation.

"ORCPP" means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the goods and services available under a price agreement entered into by the State. ORCPP eligible entities include:

- Units of Local Government such as cities, counties, school districts, and special districts
- Oregon University Systems and its individual members
- Qualified Rehabilitation Facilities
- Residential programs under contract with the Oregon Department of Human Services
- United States governmental agencies
- American Indian tribes and agencies of American Indian tribes
- Certain qualified public benefit corporations

DAS PS maintains a list of current ORCPP members at:

<http://www.oregon.gov/DAS/ECS/ps/ORCPP/orcppMemberList.pdf>

"Price Agreement" means this Participating Addendum between the State of Oregon and Contractor.

"Purchase Order" means the purchase order submitted to Contractor by an Authorized Purchaser that incorporates this Participating Addendum by reference and specifies the quantity and type of goods or services that Contractor will provide to the Authorized Purchaser under the terms of the Master Services Agreement and this Participating Addendum.

"Qualified Rehabilitation Facility" means those organizations defined under ORS 279.835 through ORS 279.855.

"State" means the State of Oregon for the purposes of this Participating Addendum.

"State Agency" means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except:

- (a) The Legislative Assembly, the courts and their officers and committees; and
- (b) The Public Defense Services Commission.

2. Exclusivity. Notwithstanding any provision in the Master Agreement, this Participating Addendum is not exclusive. Authorized Purchaser may acquire the Products, Services, Advanced Services, or other goods or services similar to the Products, Services and Advanced Services from other providers.

3. Payment Provisions. Contractor or its Fulfillment Partner shall send all invoices to Authorized Purchaser at the address specified on the Purchase Order or Contract or to any other address as Authorized Purchaser may indicate in writing to Contractor, according to the following provisions:

3.1 For purchases of Products and subscription-based consulting and maintenance services (such as SMARTnet), invoices for payment will be provided to Authorized Purchaser within thirty (30) calendar days of a) successful delivery to the Authorized Purchaser of the billed Product; or b) receipt of a Purchase Order for Services, as applicable; provided, however, that Contractor or its Fulfillment Partner shall not send an invoice for any goods for which Authorized Purchaser refuses delivery for cause, e.g., goods are damaged in transit or Authorized Purchaser returns due to such goods not matching what the Authorized Purchaser ordered.

3.2 For hourly or fixed price, milestone based personal or consulting services, invoices for payment for work completed and accepted by Authorized Purchaser will be provided on a monthly or fixed price basis and payment will be made within thirty (30) days of completion of the associated milestones/intervals set forth in the Purchase Order or Contract.

3.3 Payment will be due thirty (30) days after Authorized Purchaser's receipt of the invoice, provided, however, no interest charges or late payment charges accrue until forty-five (45) calendar days have passed following Authorized Purchaser's receipt of the invoice. After forty-five (45) calendar days, Contractor may assess overdue account charges on the unpaid, undisputed balance of any invoice up to two-thirds (2/3) of one percent (1%) per month or the maximum amount allowed by law.

Authorized Purchaser is solely responsible for payment of Products, Services, or both delivered to Authorized Purchaser, except as provided in and as limited by the terms of the Participating

Addendum. Where DAS (or any of its subdivisions) is responsible for or otherwise handles procurements on behalf of another Authorized Purchaser, Authorized Purchaser for whom DAS is handling procurement is solely responsible for payment. DAS is only responsible for payment of Products or Services that DAS has procured a) on its own behalf and for its own use, or b) where indicated by DAS on the Purchase Order. In the event that DAS submits a Purchase Order on behalf of another Authorized Purchaser where DAS indicates that the Authorized Purchaser is responsible for payment, DAS shall submit a copy of the underlying order approval from the Authorized Purchaser, along with the Purchase Order.

3.4 All payments are subject to ORS 293.462.

4. Funds available and authorized/non-appropriation. Authorized Purchaser represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Contract issued under this Participating Addendum. Contractor is not entitled to receive payment under this Participating Addendum or any Contract from any part of Oregon state government other than the Authorized Purchaser under that Contract. Contractor acknowledges and agrees that the State shall bear no liability on Contracts entered into for purchases by non-State Agencies, which liability the State expressly disclaims. With regard to non-State Agencies, Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Products or Services and the resulting contractual relationship, if any, with each such contracting party.

4.1 State Agencies as Authorized Purchasers. A State Agency's payment obligations under this Participating Addendum are conditioned upon the State Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow the State Agency, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Contract issued under this Participating Addendum.

Nothing in this Participating Addendum or Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

5. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF).

5.1 Volume Sales Reports (VSRs).

5.1.1 Contractor shall submit a Volume Sales Report (VSR) to DAS PS no later than forty five (45) calendar days from the end of each calendar quarter, which contains:

- Complete and accurate details of all receipts (sales and refunds) for the reported period;
- The information as identified in the DAS PS document titled Volume Sales Report Template Data Requirement, Format and Layout; and
- Such other information as DAS PS may reasonably request.

Contractor shall send a VSR to DAS PS each quarter, whether or not there are sales. When no sales have been recorded for the quarter, a report must be submitted stating "No Sales for the Quarter".

5.1.2 Data Medium and Delivery Medium. Contractor shall provide VSRs in MS Excel (.xls) format. VSRs must be submitted by e-mail. Delivered print outs of VSRs are not acceptable. Hard copies of VSRs on CDs are only acceptable if the size of the file precludes transmission by email.

Approval from the Contract Administrator must be obtained for deviations from these requirements.

5.1.3 Receipt/Acceptance. The first VSR submitted by the Contractor must be submitted to the DAS PS Contract Administrator for review and approval. Approved first VSRs and subsequent VSRs must be submitted to vcaf.reporting@state.or.us. A separate section follows describing the administrative charge if it is applicable. The Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Price Agreement shall not preclude DAS PS from challenging the validity thereof at any time.

5.1.4 DAS PS may terminate this Participating Addendum if VSRs are not received as scheduled on in the prescribed format.

5.2 Vendor Collected Administrative Fee (VCAF).

5.2.1 Vendor Collected Administrative Fee (VCAF) Percentage. The Vendor Collected Administrative Fee (VCAF), is a charge equal to one percent (1.0 %) of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter.

5.2.2 VCAF Amount / Payment Due Date. During the term of this Participating Addendum and for the sales during the last calendar quarter of the term of this Participating Addendum, Contractor shall remit VCAF payments to DAS PS within forty-five (45) calendar days after the end of each calendar quarter.

5.2.3 Contractor's proposed prices shall reflect all Contractors charges to Authorized Purchasers, provided, however, Contractors shall not reflect the VCAF fee as a separate line item charge to Authorized Purchasers. For the purposes of this Participating Addendum, quarter's end March 31, June 30, September 30, and December 31. DAS PS will invoice the Contractor for the VCAF on a State generated invoice from the information submitted on the VSR. Contractor is responsible for timely reporting and payment, regardless of entity that actually reports or makes VCAF payment as follows:

5.2.3.1 Payment Format.

VCAF payments will be made by way of Automated Clearing House (ACH) transactions, a form of electronic transaction known as Electronic Funds Transfer (EFT) authorized for State business. ACH Debit transactions are initiated by DAS PS through the existing ACH Network as adhered to by the Oregon State Treasurer. These payment transactions will occur from a bank account of Contractor's choosing no less than one (1) and no more than five (5) business days following the forty fifth (45th) calendar day after the end of a calendar quarter. To allow this preferred method of payment, Contractor must agree to submit a signed electronic debit authorization to DAS PS. Alternatively, Contractor can elect to make VCAF payments by way of an ACH Credit whereby Contractor initiates transfer of funds from a bank account of Contractor's choosing to the bank for DAS PS after Contractor has received from DAS PS a completed authorization agreement for ACH Credits. Contractor must comply with the policies and procedures of the Oregon State Treasurer relative to ACH payments. These payment transactions must occur no later than the forty fifth (45th) day after the end of a calendar quarter.

5.2.3.2 Interest. Any payments Contractor makes or causes to be made to DAS PS after the due date as indicated on the invoice accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. DAS PS's right to interest on late payments does not preclude DAS PS from exercising any

of its other rights or remedies pursuant to this Participating Addendum or otherwise with regards to Contractor's failure to make timely remittances.

5.3 Audit. Upon reasonable notice and at Contractor's premises, DAS PS, or a person authorized by it, may audit Contractor's records (as defined in Section 19 below) and other pertinent data, to determine and verify the figures reported in any VSRs furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less and the cost of the audit.

6. Warranties. Any standard manufacturer's warranties that are commercially offered by Contractor with any Product or Service purchased pursuant to this Participating Addendum operate only to expand upon, and may not otherwise limit or remove, the express warranty protections under the Master Agreement.

7. Indemnities. Participating State's and Authorized Purchaser's indemnity obligations set forth in this Participating Addendum, are subject to the conditions and limitations of the Oregon Constitution, Article XI, section 7, and the Oregon Tort Claims Act, ORS 30.260 through 30.300. Nothing in this paragraph is intended to create any implied indemnity obligations. Participating State's and Contractor's indemnity obligations are only as set forth in this Participating Addendum at Master Agreement, Attachment A, Clauses 11 and 12, and in this document under Attachment A, Clause 7.

WHERE REQUESTED TO COOPERATE IN THE DEFENSE OF ANY CLAM PURSUANT TO THE MASTER AGREEMENT, PARTICIPATING STATE OR AUTHORIZED PURCHASER SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE.

CONTRACTOR SHALL SELECT COUNSEL AND SHALL BEAR ALL COSTS OF SUCH COUNSEL; PROVIDED THAT CONTRACTOR'S COUNSEL MUST BE APPOINTED AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS.

PARTICIPATING STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME PARTICIPATING STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; PROVIDED THAT, IN THE EVENT THE PARTICIPATING STATE TAKES OVER THE DEFENSE: (A) CONTRACTOR SHALL BE ENTITLED, AT ITS OWN EXPENSE, TO BE PRESENT AND PARTICIPATE IN ANY MEETINGS, HEARINGS OR PROCEEDINGS IN CONJUNCTION WITH THE DEFENSE OR SETTLEMENT OF ANY SUCH CLAIM; (B) THE PARTICIPATING STATE AGREES TO CONSULT WITH AND IN GOOD FAITH REASONABLY CONSIDER IN ITS DEFENSE OR SETTLEMENT OF ANY SUCH CLAIM THE RECOMMENDATIONS OF CONTRACTOR'S LEGAL COUNSEL, AND (C) ANY SETTLEMENT, JUDGMENT OR AWARD MUST BE APPROVED BY CONTRACTOR AND CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY THE PARTICIPATING STATE AGAINST ANY SETTLEMENT, JUDGMENT OR AWARD REACHED BY THE PARTICIPATING STATE AFTER ASSUMING ITS OWN DEFENSE UNLESS THE STATE HAS OBTAINED CONTRACTOR'S PRIOR WRITTEN CONSENT TO SUCH SETTLEMENT, JUDGMENT OR AWARD. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING.

NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF PARTICIPATING STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED; EXCEPT THAT SUCH CONSENT IS NOT NECESSARY WHERE ANY SETTLEMENT OR COMPROMISE IS NOT CONTRARY TO OREGON LAW, AND (1) INCLUDES A RELEASE OF THE PARTICIPATING STATE FROM ANY LIABILITY

ARISING OUT OF SUCH CLAIM, OR (2) IS PURELY FOR A MONETARY AMOUNT, OR (3) ONLY REQUIRES THE PARTICIPATING STATE TO DISCONTINUE USING ANY PRODUCTS PROCURED UNDER THIS PARTICIPATING ADDENDUM.

8. Effect of Term and Termination of Participating Addendum. Termination under any provision of this Participating Addendum does not extinguish or prejudice State's or an Authorized Purchaser's right to enforce this Participating Addendum or a Purchase Order or Contract with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the State or an Authorized Purchaser to indemnification by Contractor as covered in the Master Agreement and subject to the Limitation of Liability therein. If this Participating Addendum or a Purchase Order or Contract is terminated, the State or an Authorized Purchaser will pay Contractor in accordance with the terms of this Participating Addendum and the Master Agreement for goods delivered and accepted by the Authorized Purchaser. This section supplements, but does not amend the Term and Termination Section 7 of the Master Agreement.

9. Confidential Information and Public Records Law. Participating State's and Authorized Purchaser's obligations under this Participating Addendum are subject to the Oregon Public Records Laws, ORS 192.410 through ORS 192.505, and all applicable statutory exemptions from disclosure for Contractor's information or deliverables under this Participating Addendum apply to the maximum extent provided by law. Notwithstanding any provisions in the Master Agreement to the contrary, Participating State or Authorized Purchaser has no obligation to keep any 'trade secret' information obtained from Contractor confidential unless such information is Trade Secret, as defined in ORS 192.501(2). Contractor will use reasonable efforts to label information subject to exemption to the extent practical. Should the Participating State or Authorized Purchaser be required to release or disclose any information otherwise protected under ORS 192.410 through ORS 192.505, the Participating State or Authorized Purchaser will notify Contractor prior to release or disclosure in sufficient time to enable Contractor to take any legal steps it deems necessary to prevent release.

10. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Products and Services under this Participating Addendum and any Purchase Order or Contract, including the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 through 606A.628, to the extent applicable to this Participating Addendum and the provisions of Section 6103(b) of the Internal Revenue Code, the requirements of IRS Publication 1075, and the Privacy Act of 1974, 5 U.S.C. §552a et. seq., related to federal tax information.

Authorized Purchaser's performance under a Purchase Order or Contract is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230, and 279B.270.

11. Recycled Products. Contractor, to the maximum extent economically feasible in the performance of this Participating Addendum and any Purchase Order or Contract, will use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

12. Governing Law. This Participating Addendum and resulting Contracts are governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Participating Addendum, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs the Goods sold under this Participating Addendum.

13. Jurisdiction and Venue. Any claim, action, suit or proceeding (collectively, "Proceeding") between Participating State or any other agency or department of the State of Oregon, and Contractor, that arises from or relates to this Participating Addendum or a Purchase Order or Contract under this Participating Addendum, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Proceeding must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in this section will be construed as a waiver of the State of Oregon's sovereign immunity with respect to any Claim, whether brought under State or Federal law, or in State or Federal Court.

Any Proceedings between Contractor and an Authorized Purchaser other than the State of Oregon or State agency that arise from or are related to individual Purchase Orders or Contracts or this Participating Addendum will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Authorized Purchaser resides or has its principal office, or at Authorized Purchaser's option, within such other county as Authorized Purchaser will be entitled to proceed under the venue laws of Oregon to bring or defend Proceeding. If any such Proceeding must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

14. Dispute Resolution. Any dispute between the parties that is not resolved through informal discussions may be submitted to mediation upon the written consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. Notwithstanding any provision of the Master Agreement, the parties specifically disclaim any right to arbitration of disputes.

15. Attorneys Fees. Neither party to this Participating Addendum is entitled to obtain judgment from the other party for attorney fees, court and investigative costs, or any other fees or expenses it has incurred in any litigation between the parties or in defense of any claim asserted by a third party.

16. Disclosure of Social Security Number. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385, OAR 125-246-0330(2)(d), and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal, and local tax laws.

17. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Participating Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. An Authorized Purchaser may withhold final payment under a Purchase Order or Contract until Contractor has provided the Oregon Department of Revenue with the required information.

18. Independent Contractor. Contractor shall act at all times as an independent contractor and not as an agent or employee of Authorized Purchaser. Contractor has no right or authority to incur or create any obligation for or legally bind Authorized Purchaser in any way. Contractor is not an "officer", "employee", or "agent" of Authorized Purchaser (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements,

representations, or commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

19. Access to Records. With respect to the audit rights set forth in the Master Agreement, Attachment A, Clause 24, pursuant to OAR 166-300-0015(7), Contractor shall retain, maintain and keep accessible all required records relevant to this Participating Addendum for a minimum of six (6) years. Contractor will ensure that all Fulfillment Partners designated under this Participating Addendum comply with this provision.

20. Amendments. Except as provided in this section, no waiver, consent, modification or change of terms of this Participating Addendum ("Amendment") is binding upon either party unless such amendment is in writing, is signed by both parties to the Participating Addendum. Amendments are effective only in the specific instance and for the specific purpose given. Amendments may include without limitation, changes in Products or Services requirements, extensions of time and consideration changes for Contractor associated with the additional Products or Services requirements.

Any appropriately approved and executed amendment to the Master Agreement that the Participating State has not directly negotiated or signed is only effective upon the Participating State thirty (30) days after the Participating State receives notice of the amendment. During this thirty (30) day period, should the Participating State elect not to be bound by the executed amendment to the Master Agreement, a) the Participating State will provide a written notice to Contractor within such thirty (30) day period stating that the Master Agreement amendment will not be effective against the Participating State, and b) the parties will in good faith either i) negotiate a mutually acceptable amendment; or ii) provide notice pursuant to Master Agreement of a termination for convenience.

The failure of either party to enforce any provision of this Participating Addendum is not a waiver by such party of that or any other provision.

Notwithstanding the foregoing, the State has determined that during the term of this Participating Addendum the parties may need to modify selected terms, conditions, price(s) and types of Products or Services under circumstances related to the following illustrative, although not exhaustive, categories of anticipated amendments:

- a. Amendments to add new Products, Services or both reasonably related to the scope of the Solicitation and associated rates;
- b. Amendments to adjust the Products, Services or both rates;
- c. Amendments changing the Products, Services or both specifications or requirements;
- d. Amendments for extensions of time.

Any amendment to the Master Agreement addressing one of the foregoing categories is immediately effective upon the Participating State without further approval. Any amendment that provides for additional Products, Services or both may only provide for Products, Services, or both reasonably related to the scope of work or Services described in the Solicitation or the Master Agreement.

ATTACHMENT B

Participating State Specific Purchasing Guidelines

1. Purchase Orders. Authorized Purchasers shall not change or alter the terms, conditions, or prices of this Participating Addendum. Contractor shall not accept any Purchase Order that does not comply with the following requirements:

1.1. State Agencies. All State Agencies will use a Purchase Order substantially in the form attached hereto as Exhibit B-1 to order Services under this Participating Addendum unless otherwise authorized by DAS PS. Operative provisions in Purchase Orders are limited to:

- designation of Authorized Purchaser and its authorized representative and contact information;
- itemization of Products and price;
- delivery schedule;
- delivery location;
- if Services are ordered, a detailed Statement of Work;
- if applicable, service location; and
- invoicing address.

Mandatory Purchase Order or Contract Language: "THIS PURCHASE IS PLACED AGAINST STATE OF UTAH MASTER AGREEMENT NO. AR233 AND STATE OF OREGON PRICE AGREEMENT #4715. THE TERMS AND CONDITIONS (T's & C's) CONTAINED IN THIS STATE OF OREGON PARTICIPATING ADDENDUM APPLY TO THIS PURCHASE AND SUPERCEDE ALL OTHER T's AND C's, EXPRESS OR IMPLIED."

1.2. ORCPP Participants. ORCPP participants may use their own ordering form(s) under this Participating Addendum. ORCPP Participants shall include the following mandatory purchase authorization language on the front page of each Purchase Order or Contract submitted to Contractor or a Fulfillment Partner for Products and/or Services ordered under this Participating Addendum:

Mandatory ORCPP Language: "THIS PURCHASE IS PLACED AGAINST STATE OF UTAH MASTER AGREEMENT NO. AR233 AND STATE OF OREGON PRICE AGREEMENT #4715. THE TERMS AND CONDITIONS (T's & C's) CONTAINED IN THIS STATE OF OREGON PARTICIPATING ADDENDUM APPLY TO THIS PURCHASE AND SUPERCEDE ALL OTHER T's AND C's, EXPRESS OR IMPLIED."

1.3 Verification of Authorized Purchasers. Contractor is responsible for verifying that it provides Products, Services or both under this Participating Addendum only to Authorized Purchasers. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/DAS/EGS/ps/ORCPP/orcppMemberList.pdf> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.


1.4 Purchase Orders or Contracts. No language in a Purchase Order or Contract submitted by an Authorized Purchaser will vary, amend, modify, or add terms or conditions to this Participating Addendum, provided further that the provisions of each Purchase Order or Contract apply only to the Purchase Order or Contract between Contractor and Authorized Purchaser and not to this Addendum or any other Purchase Order or Contract. Any Purchase Order or Contract provisions that vary, amend, modify or add to the terms and conditions in this Addendum must be in writing and signed by the Authorized Purchaser and Contractor.

2. Sales to Unauthorized Purchasers. Authorized Purchaser's delivery of a Purchase Order or Contract to Contractor constitutes an affirmative representation by the Authorized Purchaser that Authorized Purchaser has the legal authority to place the Purchase Order or Contract and be legally bound by the terms of this Participating Addendum, which representation is made to induce Contractor to accept the Purchase Order or Contract. Contractor shall be entitled to maintain an action, at law or equity, against Authorized Purchaser and to recover any damages it suffers as a result of Authorized Purchaser's misrepresentation of authority.

3. Term and Termination. The term of any Purchase Order or Contract under this Participating Addendum commences on the Effective Date of the Purchase Order or Contract and continues for a minimum period of one year, unless another term is specified. Customer may renew such term upon written notice to Contractor.

Exhibit B-1

Form Purchase Order

		<h1 style="text-align: center;">STATE OF OREGON</h1>			PURCHASE ORDER (PO) NO.		PAGE				
Agency				PO Date		Delivery Date		Bid Number		Requisition No.	
Contractor Name and Address						Bill To					
Contractor FEIN				BPO/Contract Number				Agency Contact/Phone			
Ship To						FOB					
						Terms					
Item	Description					Quantity	U/M	Unit Price		Extended Amt.	
Special Terms and Conditions: THIS PURCHASE IS PLACED AGAINST STATE OF UTAH MASTER AGREEMENT NO. AR233 AND STATE OF OREGON PRICE AGREEMENT #4715. THE TERMS AND CONDITIONS (T's & C's) CONTAINED IN THE STATE OF OREGON PARTICIPATING ADDENDUM APPLY TO THIS PURCHASE AND SUPERCEDE ALL OTHER Ts AND Cs, EXPRESS OR IMPLIED.								Sub Total			
								Freight			
								Total			
Authorized Agent/Approved Date								Total			

ATTACHMENT C

ADDITIONAL INSURANCE REQUIREMENTS

Contractor shall obtain at Contractor's expense the insurance specified in this Attachment C prior to performing under this Participating Addendum and shall maintain it in full force and at its own expense throughout the duration of this Participating Addendum and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS PS.

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in Oregon Revised Statute (ORS) 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

EMPLOYERS' LIABILITY.

If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage.

ii. **PROFESSIONAL LIABILITY**

☒ **Required by DAS PS** ☐ **Not required by DAS PS.**

☐ **Professional Liability.** Professional Liability Insurance covering any damages Contractor shall obtain and maintain at its own expenses for the duration of this Contract Professional Liability Insurance with a combined single limit, or the equivalent, as set forth below. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. Full limits can be obtained by the purchase of one primary policy or a primary and excess policy as needed to provide the full policy limits. Such policy shall include coverage for losses arising from the breach of information security or cyber liability (including Technology Errors & Omissions, Network Security and Privacy Liability and Media Liability), whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage shall insure damage caused by error, omission, or negligent acts, including all prior acts without limitation, related to the professional services to be provided under this Contract. The Policy shall be amended to include Independent Contractors providing Professional Services on behalf of or at the direction of Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, regulatory actions, known wrongful acts, contractual liability, privacy policy, and insured versus insured.

Contractor shall provide proof of insurance of not less than the following amounts as determined by the DAS PS:

☒ Per occurrence limit for any single claimant:

July 1, 2013 to June 30, 2014: \$1,900,000.
 July 1, 2014 to June 30, 2015: \$2,000,000.
 July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.260 to 30.300.

Per occurrence limit for multiple claimants:

July 1, 2013 to June 30, 2014: \$3,800,000.
 July 1, 2014 to June 30, 2015: \$4,000,000.
 July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.260 to 30.300.

State Court Administrator website:

http://courts.oregon.gov/OJD/courts/circuit/tort_claims_act.page

iii. **COMMERCIAL GENERAL LIABILITY.**

☒ **Required by DAS PS** ☐ **Not required by DAS PS.**

☒ **Commercial General Liability.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverage's that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the DAS PS:

Bodily Injury/Death and Property:

Per occurrence and annual aggregate limit:

July 1, 2013 to June 30, 2014: \$3,800,000.
 July 1, 2014 to June 30, 2015: \$4,000,000.
 July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.260 to 30.300.

State Court Administrator website:

http://courts.oregon.gov/OJD/courts/circuit/tort_claims_act.page

iv. **AUTOMOBILE LIABILITY.**

☒ **Required by DAS PS** ☐ **Not required by DAS PS.**

Automobile Liability. Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the DAS PS:

Bodily Injury/Death and Property Damage:

Per occurrence and annual aggregate limit:

July 1, 2013 to June 30, 2014: \$3,800,000.
 July 1, 2014 to June 30, 2015: \$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.260 to 30.300.

State Court Administrator website:

http://courts.oregon.gov/OJD/courts/circuit/tort_claims_act.page

vi. EXCESS/UMBRELLA INSURANCE.

A combination of primary and excess/umbrella insurance is acceptable. If Contractor is using excess/umbrella insurance to meet the minimum insurance requirement, Contractor's certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

B. ADDITIONAL INSURED. The Commercial General Liability, Automobile Liability and, if applicable, Umbrella Liability insurance required under this Contract shall include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees and agents as Additional Insured's but only with respect to Cisco's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. "TAIL" COVERAGE. If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and DAS PS's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to DAS PS, upon DAS PS's request, certification of the coverage required under this exhibit.

D. CERTIFICATE(S) OF INSURANCE. Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify that State of Oregon, its officers, employees and agents are included as Additional Insured's on the Commercial General Liability, Automobile Liability insurance and, if applicable, Umbrella Liability insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any. Should any of the required insurance be cancelled or nonrenewed, Contractor shall replace such insurance so that no lapse in coverage occurs, and shall provide Agency with a revised Certificate(s) of Insurance evidencing same.

