



# STATE OF UTAH

## CONTRACT AMENDMENT

AMENDMENT # 1

To CONTRACT # MA2108

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between the State of Utah, Division of Purchasing referred to as STATE and, Cisco Systems, Inc. (formerly Tandberg), referred to as CONTRACTOR.

### THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

1. Contract period:

June 1, 2010 (original starting date)

May 31, 2013 (current ending date)

No Change \_\_\_\_\_ new ending date

2. Contract amount:

N/A (current contract amount)

N/A (amendment amount)

N/A new contract amount  
(add current amount to amendment amount)

3. Other changes: (attach other sheets if necessary):

A contract assignment form has been added to the contract to change the ownership of the contract from Tandberg to Cisco (attached).

Terms and Conditions on the original contract were amended to meet Cisco's business model (changes attached).

The Resellers allowed on this contract will be mutually determined between the State of Utah Division of Purchasing and Cisco. The Resellers shall mean third party contractors qualified and authorized by Cisco, and approved by the State of Utah, who may, to the extent authorized by Cisco, fulfill any of the requirements of this contract, including but not limited to, providing Cisco Video Conferencing Products and Services under this contract at the prices established in this contract and billing purchasers directly for their orders.

The Cisco Pricing schedule on this contract for Cisco Video Conferencing Products (Hardware, Software, Infrastructure, Accessories, Spare Parts) and Services will be as follows:

Products: 20%

SMARTnet Maintenance: 5%

Professional Services/AS/Training: 5%


4. **Effective Date of Amendment:** Date of last signature below.

All other conditions and terms in the original contract and previous amendments remain the same.

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

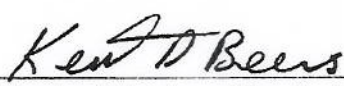
**CONTRACTOR**

**STATE**

  
\_\_\_\_\_  
Contractor's signature

\_\_\_\_\_  
Agency's signature

Leon Ma  
\_\_\_\_\_  
Type or Print Name and Title  
Controller Finance

  
\_\_\_\_\_  
Director, Division of Purchasing

3/7/2011  
\_\_\_\_\_  
DATE

2/16/11  
\_\_\_\_\_  
DATE



**State of Utah  
Contract Assignment  
State Contract # MA2108**

The parties agree to the following changes to Attachment A, Standard Contract Terms and Conditions (Revised):

1. Delete Section 8, Indemnity Clause, in its entirety and replace with the following:

**8. General Indemnity**

Subject to governmental immunities of the State, each party to this Agreement shall defend, indemnify and hold harmless the other, its corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), including without limitation those based on contract or tort, arising out of or in connection with a claim, suit or proceeding brought by a third party based upon bodily injury (including death) or damage to tangible personal property (not including lost or damaged data) arising from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them. In the event that the indemnified party's or a third party's negligent or intentional acts or omissions contributed to cause the injury or damage for which a claim of indemnity is being asserted against the indemnifying party hereunder, the damages and expenses (including, without limitation, reasonable attorneys' fees) shall be allocated or reallocated, as the case may be, between the indemnified party, the indemnifying party and any other party bearing responsibility in such proportion as appropriately reflects the relative fault of such parties, or their subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them, and the liability of the indemnifying party shall be proportionately reduced.

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

2. Delete Section 16, Warranty, in its entirety and replace with the following:

**Limited Warranty:** All Products are sold with Contractor's standard limited warranty listed below:

**16.1 Hardware.** Contractor warrants that from the date of shipment by Contractor to State, and continuing for a period of the longer of (a) one (1) year or (b) the period set forth in the Warranty Card accompanying the Product, the Hardware will be free from defects in material and workmanship, under normal use. This limited warranty extends only to the original user of the Product. 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 a replacement within the period and according to the replacement process described in the Warranty Card, or a refund of the purchase price, if the Hardware is returned to the party supplying it to State, if different than Contractor, freight and insurance prepaid. Contractor replacement parts, used in Hardware repair, may be new or equivalent to new. Contractor's obligations hereunder are conditioned upon the returned of affected Products, in accordance with Contractor's then-current Return Material Authorization (RMA) procedures.



16.2 Software. Contractor warrants that from the date of delivery by Contractor to State (but in case of resale by a Contractor 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) the period set forth in the Warranty Card accompanying the Product (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship, under normal use; and (b) the Software substantially conforms to its published specifications. The date of shipment of a Product by Contractor is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to the State who is the original licensee. State's sole and exclusive remedy and the entire liability of Contractor and its suppliers under this limited warranty will be, at Contractor or its service center's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to State, if different than Contractor. In no event, does Contractor warrant that the Software is error free or that State will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

16.3 Restrictions. This warranty does not apply if the Product (a) has been altered, except by Contractor, (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, misuse, negligence, or accident; or (d) is sold or, in the case of Software, licensed, for beta, evaluation, testing or demonstration purposes for which Contractor does not receive a payment of purchase price or license fee.

16.4 DISCLAIMER OF WARRANTY. EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. This disclaimer shall apply even if the above-stated warranty fails of its essential purpose.

The above warranty DOES NOT apply to any beta software, any software made available for testing or demonstration purposes, any temporary software modules or any software for which Contractor does not receive a license fee. All such software is provided AS IS without any warranty whatsoever.

3. Delete Section 14, Nonappropriation of Funds, in its entirety and replace with the following:

14. Termination for Non-Appropriation of Funds. Purchaser shall have no liability to Contractor beyond funds that are appropriated and made available to the Purchaser by the applicable legislative body.

If sufficient funds are not appropriated by legislative action to a Purchaser as to any future period, Purchaser may terminate its Order(s) prospectively as to such future performance impacted by and to the extent of non-appropriation, or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser shall notify Contractor in writing of such non-appropriation with a written thirty (30) calendar days notice. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract upon 30 days written notice.



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

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

4. Delete Section 21, in its entirety and replace with the following:

**REPORTS AND FEES:** The Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" for an amount equal to 1% of the net sales (net of any returns, credits, or adjustments) under this Contract for the period. If this fee is being added during a Contract renewal, the Contractors pricing to the State may be adjusted to offset for the equivalent fee amount. The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The Contractor and State Purchasing Analyst shall mutually agree on the format of the quarterly volume report. The report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address [salesreports@utah.gov](mailto:salesreports@utah.gov). The quarterly volume reports shall be due in accordance with the following schedule:

<u>CY Quarter</u>	<u>Activity Period</u>	<u>Due Dates</u>
Q1:	January 1 – March 31 <sup>st</sup>	May 31 <sup>st</sup>
Q2:	April 1 – June 30 <sup>th</sup>	August 31 <sup>st</sup>
Q3:	July 1 – September 30 <sup>th</sup>	November 30 <sup>th</sup>
Q4:	October 1 – December 31 <sup>st</sup>	February 28 <sup>th</sup>

5. Delete Section 30. Patents, Copyrights, Etc., in its entirety and replace with the following:

30. Intellectual Property Infringement:

30.1 Contractor will have the obligation and right to defend any claim, action, suit or proceeding ("IPR Claim") brought against Purchaser so far as it is based on a claim that any Product supplied under this Agreement infringes Third Party IPR (as defined below). Contractor will indemnify Purchaser against any final judgment entered in respect of such an IPR Claim by a court of competent jurisdiction and against any settlements arising out of such an IPR Claim. Contractor's obligations to defend the IPR Claim and indemnify the Purchaser are conditional upon:

- 30.1.1 Purchaser notifying Contractor promptly in writing of the IPR Claim or threat thereof;
- 30.1.2 Purchaser giving Contractor full and exclusive authority for the conduct of the defense and settlement of the IPR Claim and any subsequent appeal; and
- 30.1.3 Purchaser giving Contractor all information and assistance reasonably requested by Contractor in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.



30.2 For the purposes of this Agreement, Third Party IPR means a United States copyright existing as at the date of Purchase or a United States patent issued as at the date of Purchase Order.

30.3 If an IPR Claim has been made, or in Contractor's reasonable opinion is likely to be commenced, Purchaser agrees to permit Contractor, at its option and expense, either to: (a) procure for Purchaser the right to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing; or (c) immediately terminate both parties' respective rights and obligations under this Agreement with regard to the Product, in which case Purchaser will return the Product to Contractor and Contractor will refund to Purchaser the price originally paid by Purchaser to Contractor for the Product, as depreciated or amortized by an equal annual amount over three years from date of original shipment.

30.4 Notwithstanding the foregoing, Contractor has no liability for, and Purchaser will defend and indemnify Contractor against, any IPR Claim arising from:

30.4.1 the combination, operation, or use of a Product supplied under this Agreement with any product, device, or software not supplied by Contractor;

30.4.2 the amount or duration of use which Purchaser makes of the Product, revenue earned by Purchaser from services it provides which utilize the Product, or services offered by Purchaser to external or internal Customers;

30.4.3 the alteration or modification of any Product supplied under this Agreement from and after the date such Product is so supplied and such alteration or modification is not made by Contractor;

30.4.4 Contractor's compliance with Purchaser's designs, specifications, or instructions; or

30.4.5 Purchaser's use of the Product after Contractor has informed Purchaser of modifications or changes in the Product required to avoid such an IPR Claim if the alleged infringement would have been avoided by implementation of Contractor's recommended modifications or changes.

THIS SECTION STATES THE ENTIRE OBLIGATION OF CONTRACTOR AND ITS SUPPLIERS, AND THE EXCLUSIVE REMEDY OF PURCHASER, IN RESPECT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS. THIS INDEMNITY OBLIGATION AND REMEDY ARE GIVEN TO PURCHASER SOLELY FOR ITS BENEFIT AND IN LIEU OF, AND CONTRACTOR DISCLAIMS, ALL WARRANTIES, CONDITIONS AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO ANY PRODUCT.

6. In Section 32, Default and Remedies, delete the following from the last sentence and renumber accordingly:

"3. Impose liquidated damages, if liquidated damages are listed in the contract;"

7. The following shall be added as Section 42:

**42.1.1 Limitation of Liability.** EXCEPT FOR THOSE OBLIGATIONS UNDER SECTIONS 30 (INTELLECTUAL PROPERTY INFRINGEMENT) AND 8 (GENERAL INDEMNITY), NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF CONTRACTOR AND ITS SUPPLIERS TO ANY PURCHASER FOR CLAIMS ARISING UNDER THIS AGREEMENT, OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID TO CONTRACTOR FOR PRODUCTS OR FOR SERVICES WITH RESPECT TO SUCH PURCHASER DURING THE

TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

**42.2 Waiver of Consequential and Other Damages.** IN NO EVENT SHALL CONTRACTOR OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF CONTRACTOR OR ITS SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF.



# STATE OF UTAH CONTRACT ASSIGNMENT

STATE CONTRACT # MA 2108

1. PARTIES TO THE ASSIGNMENT:

ASSIGNOR (old contractor): Tandberg LLC (formerly Tandberg, Inc.)

ASSIGNEE (new contractor): Cisco Systems, Inc.

NEW VENDOR NUMBER:

(Assigned by the State of Utah)

Assignee please complete company information form:

Cisco Systems, Inc.		77-0059951	
Company Name		Federal Tax ID #	
170 West Tasman Drive	San Jose	CA	95134
Ordering Address	City	State	Zip Code
Send Directly to Cisco Authorized Resellers			
Remittance Address (if different from ordering address)		City	State Zip Code
<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Proprietorship	<input type="checkbox"/> Government
Company Type		Mimi Nguyen	
Company Contact Person			
408-527-2627	707-552-4824		
Telephone Number	Fax Number		
www.cisco.com	mimnguye@cisco.com		
Internet Home Page	Email Address		

2. CONTRACT SERVICES ASSIGNED TO ASSIGNEE (Brief Description):


Video Conferencing Products (Hardware, Software, Infrastructure, Accessories, Spare Parts) and Services Direct from Manufacturer (Solicitation No. DG10025).

3. ASSIGNEE agrees to perform all of ASSIGNOR'S contract responsibilities, and to abide by all contract provisions specified in this contract. ASSIGNOR will have no further responsibilities to perform under this contract and will make no claim for benefits arising from this contract after the effective date of this assignment.

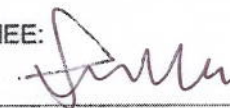
EFFECTIVE DATE: Date of last signature below.

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


ASSIGNOR:

 4/18/11  
Signature Date  
STEVEN PERI, Vice President  
Name and Title (type or print)

ASSIGNEE:

 3-7-11  
Signature Date  
Leon Ma  
Name and Title (type or print) **Chief of Finance**

APPROVED BY:

 2/16/11  
Division of Purchasing Date



**ATTACHMENT A**  
**Standard Contract Terms and Conditions (Revised)**  
**State of Utah, State Cooperative Contract**

Note: The following Sections have been changed: 5.1, 30, 31, and 40.

**1. AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

**2. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake Co.

**3. LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction proposed and furnished under this contract will comply fully with all applicable Federal and State laws and regulations.

**4. RECORDS ADMINISTRATION:** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**5. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation for Bids nor to the Multi-Step Process.

**5.1 Status Verification System**

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with UCA Section 63G-11-103.
2. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with Section 63G-11-103 and to comply with all applicable employee status verification laws." The Contractor will include the required provision on E-verify in all new contracts with subcontractors prior to the notice to proceed for the subcontractor to perform the work. On existing contracts with subcontractors, the Contractor will, within three months of signing this Contract, amend the contracts with subcontractors to include the required provision. The provision will be retroactive to the Effective Date of this Contract for existing contracts with subcontractors.
3. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-11-103.

**5.2 Indemnity Clause for Status Verification System**

1. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
2. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

**6. CONFLICT OF INTEREST:** Contractor certifies that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of the STATE or participating political subdivisions to secure favorable treatment with respect to being awarded this contract.

**7. INDEPENDENT CONTRACTOR:** Contractor will be an independent Contractor, and as such will have no authorization, express or implied to bind the STATE to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as expressly set forth herein. Compensation stated herein will be the total amount payable to the Contractor by the STATE. The Contractor will be responsible for the payment of all income tax and social security tax due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE will not be deemed to be employees or agents of the Contractor.

**8. INDEMNITY CLAUSE:** The Contractor will release, protect, indemnify and hold the STATE and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or



all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers.

**9. EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

**10. SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**11. RENEGOTIATION OR MODIFICATIONS:** The terms of this contract will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Director of Purchasing. Automatic renewals will not apply to this contract. Notwithstanding Sections 23 and 24 of these Terms and Conditions, the STATE may, at anytime during the life of this contract, implement an administrative fee up to 1% on the goods or services purchased under the terms of this contract. If the STATE elects to impose the administrative fee, a thirty day notice will be issued to the supplier. The notice will contain the effective date, instructions for implementation, and price adjustment provisions.

**12. DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

**13. TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

**14. NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

**15. TAXES:** Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is 11736850-010-STC. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.

**16. WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the STATE has relied on the Contractor's skill or judgment to consider when it advised the STATE about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the STATE has not been warned. Remedies available to the STATE include the following: The Contractor will repair or replace (at no charge to the STATE) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

**17. PARTICIPANTS:** This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) with the goods and/or services described in the bid/proposal.

**18. POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

**19. QUANTITY ESTIMATES:** The STATE does not guarantee to purchase any amount under the contract to be awarded. Estimated



quantities are for proposing purposes only and are not to be construed as a guarantee to purchase any amount.

**20. DELIVERY:** The prices proposed will be the delivered price to any state agency or political subdivision. Unless otherwise specified by the State, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without transportation charges.

**21. REPORTS:** The Contractor will submit quarterly reports to the State Purchasing Agent showing the quantities and dollar volume of purchases by each agency and political subdivision.

**22. PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.

**23. FIRM PRICES:** Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of bid/proposal opening.

**24. PRICE GUARANTEE, ADJUSTMENTS:** The contract pricing resulting from this bid/proposal will be guaranteed for the period specified. Following the guarantee period, any request for price adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price adjustment must include documentation supporting the request and demonstrating a logical mathematical link between the current price and the proposed price. Any adjustment or amendment to the contract will not be effective unless approved by the State Director of Purchasing. The STATE will be given the immediate benefit of any decrease in the market, or allowable discount. If stated in the solicitation, the STATE may implement an administrative fee up to 1% on the goods or services purchased under the terms of this contract.

**25. ORDERING AND INVOICING:** Orders will be placed by the using agencies directly with the Contractor. All orders will be shipped promptly in accordance with the delivery guarantee. The Contractor will then promptly submit invoices to the ordering agency. The STATE contract number and the agency ordering number will appear on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the STATE will be those prices on file with the Division of Purchasing. The STATE has the right to adjust or return any invoice reflecting incorrect pricing.

**26. PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card" (major credit card). All payments to the Contractor will be remitted by mail unless paid by Purchasing Card.

**27. MODIFICATION OR WITHDRAWAL OF BIDS/PROPOSALS:** Bids/proposals may be modified or withdrawn prior to the time set for the opening of bids/proposals. After the time set for the opening of bids/proposals, no bids/proposals may be modified or withdrawn.

**28. BID/PROPOSAL PREPARATION COSTS:** The STATE is not liable for any costs incurred by the offeror in bid/proposal preparation.

**29. INSPECTIONS:** Goods furnished under this contract will be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or not in compliance with bid/proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph will adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

**30. PATENTS, COPYRIGHTS, ETC.:** The Contractor agrees to indemnify, defend and hold harmless the Buyer and its officers, agents and employees from and against any and all suits, judgments, costs, damages, claims, demands, actions, proceedings, expenses (including, without limitation, attorneys' fees) or liabilities of any nature, that are asserted or brought against, or are incurred by, by any indemnified party arising from or relating to a claim that any product provided under this agreement infringes, misappropriates or otherwise violates any intellectual property right. The Contractor shall have no liability under this Section for any infringement based on the use of any products if the product is used in a manner or with equipment for which it was not reasonably intended.

**31. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State Director of Purchasing; except the Contractor may assign, transfer, or delegate the contract as a result of pending acquisition of the Contractor by Cisco, Inc. and any subsidiary or affiliate thereof.

**32. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the STATE to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The STATE will issue a written notice of default providing a period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the



opportunity to cure, the STATE may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future bid/proposal solicitations.

**33. FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The STATE may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

**34. HAZARDOUS CHEMICAL INFORMATION:** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

**35. NON-COLLUSION:** By signing the bid/proposal, the offeror certifies that the bid/proposal submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Solicitation, designed to limit independent proposing or competition.

**36. PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, as far as distribution of copies. Contractor gives the STATE express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

**37. PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).

**38. ENERGY CONSERVATION AND RECYCLED PRODUCTS:** The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this solicitation.

**39. CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Attachment A: State of Utah Standard Contract Terms and Conditions; 2. State of Utah Contract Signature Page(s); 3. Additional State Terms and Conditions; 4. Contractor Terms and Conditions.

**40. LOCAL WAREHOUSE AND DISTRIBUTION:** This term is intentionally deleted.

**41. ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

Revision date: 17 May 2010