

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

Master Agreement #: AR3227

Participating Addendum #: 65778

Contractor: **CISCO SYSTEMS, INC.**

Participating Entity: **STATE OF TENNESSEE**

The following products or services are included in this contract portfolio:

- *The full suite of product and service offerings available under the Master Agreement may be procured under this Participating Addendum.*
- *Software as a Service Cloud hosting offerings.*

The following products or services are not included in this agreement:

- IaaS and PaaS Cloud services

Master Agreement Terms and Conditions:

1. **Scope:** This addendum covers the *DATA COMMUNICATIONS PRODUCTS & SERVICES* led by the State of *Utah* for use by state agencies and other entities located in the Participating State [*or State Entity*] authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** This NASPO ValuePoint Master Agreement #AR3227 may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of *Tennessee*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
- b. Tennessee local governmental agencies;



**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

- c. members of the University of Tennessee or Tennessee Board of Regents systems;
- d. any private nonprofit institution of higher education chartered in Tennessee; and,
- e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Gigi Feril
Address:	170 W. Tasman Drive, San Jose, CA 95134
Telephone:	408-424-0712
Fax:	408-608-1729
Email:	nvp-help@cisco.com

Participating Entity

Name:	Michael Porter
Address:	312 Rosa L. Parks Avenue, Nashville, TN 37243
Telephone:	615-741-1192
Fax:	615-741-0684
Email:	michael.porter@tn.gov

4. **PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT**

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

This Participating Addendum with Tennessee State specific terms and conditions that are attached below as Attachment A Standard Terms and Conditions shall control in the event of a conflict. All references to "Contract" herein below shall collectively refer to the "Master Agreement" and this "Participating Addendum."

5. **Subcontractors:** All Contractor's Fulfillment Partners, as defined in the Master Agreement, authorized in the State of Tennessee, as shown on the dedicated Contractor's (cooperative contract) website, are approved to provide sales and service support to Participating Entities, 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 or maximum number of Fulfillment Partners to provide sales and services support. Contractor, in its sole discretion, is not required to add Fulfillment Partners. Notwithstanding the foregoing, Contractor may remove, at its sole discretion, upon ten (10) business days advance written notice, any Fulfillment Partner who does not meet Contractor's established qualifying criteria, or where the addition of the Fulfillment Partner would violate any state or federal law or regulation.

6. **Orders:** The Master Agreement number and the Participating Addendum Number must appear on every Purchase Order placed under this Participating Addendum.

Purchasers may place orders directly only through Contractor's approved Fulfillment Partners or through Contractor (only on an as-needed basis) 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, 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 a Customer. The approved Fulfillment Partners will not offer less favorable pricing discounts

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**Master Agreement #AR3227 Led by the State of **Utah**

than the contract discounts established by Contractor under the Master Agreement. However, the Fulfillment Partner may offer any additional incremental discounts to Participating State/Entity, 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 Participating State/Entity.

Any order placed by a Participating Entity or Purchasing Entity for a product and/or service under this 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 order agree in writing that another contract or agreement applies to such order. *For clarity, sales of Contractor's product or services by Contractor or an authorized reseller made under a separate contract, where the applicable quoting or ordering documents reference that separate contract, are not deemed to be sales under this Master Agreement.*


7. **Term:** The Term of this Participating Addendum shall be as set forth in Attachment A Special Terms and Conditions #1 below.
8. **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 Cisco 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 in Section 3 of this Participating Addendum (and notices to Cisco shall 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, or, in the absence of such an address from Customer, to the address to which the last invoice under this Participating Addendum was sent before notice is served.
9. **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.



**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

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

Participating Entity: State of Tennessee	Contractor: Cisco Systems, Inc.
Signature:	Signature: 
Name: Michael F. Perry	Name: Jenn Pate
Title: Chief Procurement Officer	Title: Authorized Signatory
Date: 04/28/2021	Date: April 23, 2021

APPROVED BY LEGAL

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**



Attachment A

All references to “Contract” hereinbelow shall collectively refer to the “Master Agreement” and “Participating Addendum.”, Supplemental Terms and Conditions

Standard Terms and Conditions

1. **Required Approvals.** The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
2. **Monitoring.** The Contractor’s activities conducted, and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
3. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
4. **HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.
 - a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. Subject to the limitation of liability as set forth herein, the Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
5. **Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member’s retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
6. **Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
7. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**Master Agreement #AR3227 Led by the State of **Utah**

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- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

8. **Force Majeure.** “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, global event rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

9. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
10. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
11. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
12. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
 - a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes attachment A and attachment B;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the NASPO RFP solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
13. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101, et seq., addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.



**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

14. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

15. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

Special Terms and Conditions

1. **Term of Contract.** The term of this Participating Addendum shall begin on the date of the last signature above and shall continue co-terminously with the Master Agreement until September 30, 2024, unless terminated earlier or extended in accordance with the terms of the Participating Addendum. ("Term").
2. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to 2 renewal options under the same terms and conditions, at the State's sole option.
3. **Estimated Liability.** The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be \$35,000,000 ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
4. **Compensation Firm.** The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The prices identified includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
5. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
6. **Invoice Requirements.** The Contractor or its Fulfillment Partner shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. Contractor or its Fulfillment Partner shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.
 - a) Each invoice, on Contractor's or its Fulfillment Partner letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 1. Invoice number (assigned by the Contractor or its Fulfillment Partner);
 2. Invoice date;
 3. Contract number (assigned by the State);
 4. Purchase order number (assigned by the State);

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

5. Customer account name: Purchasing Entity;
6. Customer account number (assigned by the Contractor to the above-referenced Customer);
7. Contractor/Fulfillment Partner's name;
8. Contractor/Fulfillment Partner's Tennessee Edison supplier ID number;
9. Contractor/Fulfillment Partner's contact for invoice questions (name, phone, or email);
10. Contractor/Fulfillment Partner's remittance address;
11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
13. Amount due for each compensable unit of good or service; and
14. Total amount due for the invoice period.

b) Contractor or its Fulfillment Partner 's invoices shall:

1. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
2. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed, excluding prepaid multi-year maintenance;
3. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal Property taxes, or income taxes; and
4. Include shipping or delivery charges only as authorized in this Contract.

The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

7. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
8. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Contract, to not constitute proper compensation for goods delivered or services provided.

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

9. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
10. **Prerequisite Documentation.** The Contractor and/or Fulfillment Partners shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
 - a) The Contractor and/or Fulfillment Partners shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor and/or Fulfillment Partners acknowledges and agrees that, once this form is received by the State, payments to the Contractor and/or Fulfillment Partners, under this or any other contract the Contractor and/or Fulfillment Partners has with the State of Tennessee, may be made by ACH; and
 - b) The Contractor and/or Fulfillment Partners shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.
11. **Purchase Order Release.** Agency submission of a purchase order to Contractor or its Fulfillment Partner authorizes Contractor to deliver goods or provide services.
12. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. Contractor shall provide goods or services required under this Contract within 30 days after receipt of a purchase order. All quotations shall be F.O.B. destination.
13. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Contractor:

CISCO SYSTEMS, INC.
Gigi Feril
170 W. Tasman Drive, San Jose, CA 95134
nvp-help@cisco.com
408-424-0712

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

State of Tennessee:

Michael Porter
Department of General Services, Central Procurement Office
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville TN 37243-1102

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

14. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
15. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
16. **Termination for Convenience.** The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
17. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

and the State may seek other remedies allowed at law or in equity for breach of this Contract.

18. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract. The Contractor shall have the opportunity to review any such additional information and/or additional terms and conditions prior to an assignment.

19. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

20. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

21. Equal Opportunity. During the performance of this Contract, the Contractor agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

1. Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
2. Layoff or termination;
3. Rates of pay or other forms of compensation; and
4. Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c) If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

22. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html>, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

23. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit not more than once per year, unless the State makes a reasonable written request for additional audits based solely on the grounds that (i) Contractor is not in compliance with applicable law; and/or (ii) the State has a good faith belief that Contractor is in breach of this Participating Addendum. The State, the Comptroller of the Treasury, or their duly appointed representatives shall provide written notice to Contractor of a request for an audit and the parties shall cooperate in good faith to schedule an audit date and time not less than thirty (3) days after Contractor's receipt of the written audit request. All audits shall be at the sole expense of the State, the Comptroller of the Treasury, or their duly appointed representatives, as applicable. The financial statements shall be prepared in accordance with generally accepted accounting principles.

24. Independent Contractor. The parties shall not act as employees, partners, joint ventures, or associates of one another. The parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.

25. Patient Protection and Affordable Care Act. To the extent applicable, the Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. Subject

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

to the Contractor's limitation of liability established in Section 27 herein, the Contractor shall indemnify the State and hold it harmless for any costs to the State arising from contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- 26. Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.
- 27. Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, lost or damaged data, anticipated savings, loss of use of any product or service, decrease in the value of any securities or cash position, time, money, opportunity, reputation, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- 28. Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

29. Statewide Contract Reports. All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.

a) Quarterly Reports: Contractor(s) will submit quarterly reports to the Contract Administrator no later than thirty (30) days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than January 30th). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by State Agencies, including State Agencies of the judicial or legislative branch, local governmental entities in the State of Tennessee, including but not limited to educational institutions, local governmental authorities, quasi-governmental bodies ("Other Governmental Bodies"), and certain not-for-profit entities under Tenn. Code Ann. § 33-2-1001. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:

1. Edison contract number
2. Contract line item number
3. Invoice date
4. Invoice number
5. Supplier part number
6. Item or bundle description
7. Quantity purchased
8. Unit of measure
9. Unit of measure description
10. Name of State Agency, Other Governmental Body or not-for-profit entity
11. Identity of purchaser: State entity or non-State entity
12. State Agency location or local governmental unit that placed order
13. Unit/Contract price per line item
14. List price as listed in supplier's catalog if catalog item
15. Subtotals for each category above
16. Grand totals for each category above

b) Diversity Business and Subcontractor Usage Reports: The Contractor shall submit quarterly reports of returns, credits, savings, net purchases, and percent of net purchases by subcontractors, small business enterprises, and businesses owned by minorities, women, persons with disabilities, and Tennessee service-disabled veterans. Such reports shall be submitted to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- c) **Custom Reports:** When requested by the State and agreed upon by Contractor in writing, the Contractor shall submit the custom report to the Contract Administrator within thirty (30) days of the request or upon a mutually agreed upon due date; provided, however, that Contractor can reasonably access the data for the custom report and complete the request without undue burden to its resources. Mutually agreed upon custom reports shall be limited to once a year during the term of this Contract.

30. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.

31. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
- b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
- c) any clarifications of or addenda to the Contractor's response seeking this Contract;
- d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;
- e) any technical specifications provided to respondents during the procurement process to award this Contract; and,
- f) the Contractor's response seeking this Contract.

32. Insurance. Contractor shall provide the State with one or more certificates of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least fifteen (15) calendar days after the renewal date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.



**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

The COI shall be signed by an authorized representative of the insurer. The COI shall list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) authorized by the TDCI to transact business in the State of Tennessee; and (b) rated A- VII or better by A. M. Best. If the Contractor uses a subcontractor in connection with this Agreement, the Contractor shall require such subcontractor to maintain the types and amounts of insurance that Contractor deems reasonable in light of the products and services to be provided by such subcontractor.

On any required commercial general liability, automobile liability or umbrella liability insurance, the Contractor agrees to include the State as an additional insured for liabilities that fall within Contractor's indemnity obligation under this Agreement and that are covered by such insurance. policies. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State

The deductible and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below. In such event, the State

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

and Contractor shall negotiate in good faith changes to these insurance requirements including but not limited to amendments, endorsements, types of coverages, and higher or lower limits of coverage depending on the nature of the work.

a. Workers' Compensation and Employer Liability Insurance.

1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
- ii. In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.

2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

- i. The Contractor employees fewer than five (5) employees;
- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

b. Commercial General Liability Insurance.

1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

2) The Contractor shall maintain bodily injury/property damage with a combined single-limit of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of two million dollars (\$2,000,000).

c. Professional Liability Insurance.

1) Professional liability insurance shall be written on an occurrence or claims-made basis. If this coverage is written on a claims-made basis, Contractor must maintain such insurance for at least two (2) years after the Term;

2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and

3) If the Contract involves the provision of services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

It is agreed that this requirement 32.c can be satisfied with the same insurance policy that satisfies requirement 32.d below, and that a single policy with limits of \$10,000,000 per claim and annual aggregate satisfies both requirements 32.c and 32.d

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance.

1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of copyright relating to software ; network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000), as part of the limit referenced in 32.d above, and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Automobile Liability Insurance.

1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).

2) The Contractor shall maintain bodily injury/property damage with a limit of one million dollars (\$1,000,000) per occurrence or per accident combined single limit and in the annual aggregate.

33. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

34. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

35. State of Tennessee Administrative Fee. A 1% administrative fee will be included in the cost of all goods and/or services purchased under this Contract. This 1% administrative fee will be rebated back to the State of Tennessee based on quarterly contract usage of all Authorized Users. The administrative fee is due to the State no later than sixty (60) days after the end of the specified reporting period, as detailed below:

Calendar Quarter 1 (Jan 1-Mar 31)
Calendar Quarter 2 (Apr 1-June 30)
Calendar Quarter 3 (July 1-Sep 30)
Calendar Quarter 4 (Oct 1-Dec 31)

Contractor shall submit payments to:

Ron Plumb, Director of Financial Management
Department of General Services
22nd Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243

Contract usage reports shall be submitted to:

Michael Porter

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

Technology Statewide Contract Team
Michael.Porter@tn.gov
Department of General Services – Central Procurement Office
3rd Floor, William R. Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Email: CPO.SWC@tn.gov

- 36. State Ownership of Goods.** The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties. Notwithstanding the foregoing, Cisco Software purchased under this Agreement shall be non-transferable other than as set forth in the Cisco Software Transfer and Re-Use Policy (https://www.cisco.com/c/dam/en_us/about/doing_business/legal/policy/Cisco_Software_Transfer_and_Relicensing_Policy.pdf).
- 37. Additional Lines, Items or Options.** At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a) After the Contractor receives a written request to add lines, items, or options, the Contractor shall have twenty (20) business days to respond with a written proposal. The Contractor's written proposal shall include:
 1. The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 2. Any pricing related to the new lines, items, or options;
 3. The expected effective date for the availability of the new lines, items, or options; and
 4. Any additional information requested by the State.
 - b) The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
 - c) To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
 - d) Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**Master Agreement #AR3227 Led by the State of **Utah**

- 38. Environmental Tobacco Smoke.** Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- 39. Partial Takeover of Contract.** The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- 40. Unencumbered Personnel.** The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.
- 41. Survival.** The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
- 42. Extraneous Terms and Conditions.** Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

43. SOW Project Quote Process for Deliverables-based Projects.

- a. In order to perform certain projects or tasks under this Contract, the State or Contractor may require use of a Statement of Work (SOW) to fully describe the services the State is seeking. A Statement of work (SOW) can include tasks such as analysis; planning; design; development; upgrades; onetime maintenance; installation; integration; and knowledge transfer.
- b. At a procuring End User's request, the Contractor shall provide the services to accomplish the requirements detailed in an SOW.
- c. In the SOW, the procuring End User will describe the project's requirements and shall accomplish the project within the anticipated time frame and total cost limitations provided that no changes are required and/or initiated by either party mid-project and captured via a Change Request.
- d. To the extent practicable and provided there are no changes required and/or initiated by either party mid-project, the Contractor shall make sure the project is completed within the anticipated time frame and total cost limitations. The Contractor agrees to provide additional resources as necessary to accomplish the project within the timeframes stated in the SOW.
- e. Project quote: The Contractor's response to a State-issued SOW shall include the following items:
 - i. A high-level overview of how the Contractor meets the SOW requirements and is able to provide the services requested in the SOW.
 - ii. Any Contractor assumptions on which the project quote is based cannot conflict with or seek to delete the terms and conditions of the Contract. In the event of a conflict, the Contract shall prevail. The Contractor shall not include their own terms and conditions as a part of the SOW response or quote, and any legal terms and conditions contained in Contractor's SOW response or quote shall be null and void.
 - iii. A firm, fixed total price that covers all costs to accomplish the project and shall be based on the pricing in the Attachment C cost schedule in the Master Agreement. This total price shall be the maximum amount of compensation that can be paid to the Contractor under this SOW; regardless of the resources required, the Contractor may charge the procuring End User no more than this total price to complete the project.

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

- iv. Other information as required by the SOW.

- f. SOW Project Amendment.
 - i. The SOW Project price can only be increased by a SOW Project amendment and/or Change Request, and the total increase, whether increased by a single SOW Project amendment or multiple SOW Project amendments cannot exceed seven percent (7%) of the original SOW Project price. At the procuring End User's option, the end date of the project may be extended by SOW Project amendment.

- g. SOW Project Termination.
 - i. The procuring End User may terminate for convenience any or all of the SOW Projects entered into by the procuring End User and the Contractor pursuant to this Contract by giving the Contractor fifteen (15) days written notice. The Contractor shall be entitled to receive equitable compensation for satisfactory authorized services completed as of the termination date.

 - ii. If the Contractor fails to properly perform their obligations under any SOW Project entered into by the procuring State agencies and the Contractor pursuant to this Contract, the State shall have the right, at its sole discretion, to terminate any or all of the Contractor's SOW Projects, and to withhold payments in excess of equitable compensation for completed services. The State will provide notification of termination of SOW(s) in writing. This notice shall: (1) specify in reasonable detail the nature of the failure; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than ten (10) business days from the date of the termination notice; and (3) specify the effective date of termination in the event the Contractor fails to correct. The Contractor must present the State with a written request detailing the efforts it shall take to resolve the problem and the time period for such resolution. Termination of SOW(s) shall not relieve Contractor of liability to the State for damages sustained by virtue of any act or omission of the Contractor.

This section shall not limit the State's right to terminate the Contract for convenience or cause in accordance with Special Terms and Conditions 16 and 17

44. Comptroller Audit Requirements.

Upon reasonable advance notice and at an agreed-upon time and location, the Contractor agrees to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control and/or privacy audits of the Contractor once per calendar year. Contractor will maintain an audit trail of transactions and activities in connection with this Contract following industry best practices. Contractor will provide to the State, the Comptroller of the Treasury, or their

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

duly appointed representatives reasonable access to Contractor personnel for the purpose of performing the information technology control audit. Any duly appointed representative must be a nationally recognized third party auditor who shall be required to agree to confidentiality terms directly with Contractor.

The information technology control audit will be limited to a review of relevant general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include an assessment of the Contractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with relevant technical and management personnel and review of paper or electronic documentation.

For any audit issues agreed by the State and Contractor as being material, the Contractor shall provide a corrective action plan to the State within a reasonable timeframe after receipt of the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

Contractor shall provide the State, the Comptroller of the Treasury, or their duly appointed representatives, information in its possession regarding Subcontractor(s), relevant to the audit, to the extent permitted by Contractor's confidentiality obligations.

45. Contractor Hosted Services Confidential Data, Audit, and Other Requirements.

"Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation that is processed by the Hosted Services or in connection with the Hosted Services, excluding Administrative Data, Payment Data, Support Data and Telemetry Data.

The following provisions shall only apply if an Order expressly says that they apply to such Order:

- a.
 - i. The Contractor shall make available to the State information to enable the State to only purchase Contractor products or services that can ensure that all

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

Confidential State Data is housed in the continental United States, inclusive of backup data.

- ii. The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard (“FIPS”) 140-2 validated encryption technologies.
- iii. The Contractor shall make available to the State information to enable the State to only purchase Hosted Services that can ensure that Contractor and the Contractor’s processing environment containing Confidential State Data are either (1) in accordance with at least one of the following security standards: (i) International Standards Organization (“ISO”) 27001; or (ii) Federal Risk and Authorization Management Program (“FedRAMP”); or (2) subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) Type II audit. If available, the Contractor shall provide or make available proof of current ISO certification or FedRAMP authorization for the Contractor, or provide the State with the Contractor’s and Subcontractor’s annual SOC Type II audit report promptly after the CPA firm provides the audit report to the Contractor

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor stating whether the Contractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor, would negatively affect the auditor’s opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- iv. The Contractor must periodically perform Penetration Tests and Vulnerability Assessments against its Processing Environment. Such tests and assessments shall be performed by a third party or Contractor’s internal, organizationally independent, security compliance team, using industry standard tools and methodologies. “Processing Environment” shall mean the combination of software and hardware on which the Application runs. “Application” shall mean the computer code that supports and accomplishes the State’s requirements as set forth in this Contract. “Penetration Tests” shall be in the form of attacks on the Contractor’s computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment’s features and data. The “Vulnerability Assessment” shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall make high-level summary reports (including, for example, letters of attestation) of the

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

Penetration Tests available to the State detailing the scope, general results, and remediation status or plan.

- v. Upon State request, the Contractor shall make available or provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in an industry standard format
- vi. Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with industry standards, such as the current version of National Institute of Standards and Technology (“NIST”) Special Publication 800-88. Upon request, the Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- i. The Contractor shall make available to the State information to enable the State to purchase Hosted Services that comply with the State’s Enterprise Information Security Policies as amended periodically. The State’s Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>. Notwithstanding the foregoing, the Contractor shall comply with its security policies listed below, a copy of which has been provided to the State and is current as of the date of execution of this Addendum:
 - CISCO CONFIDENTIAL - Acceptable Use Policy
 - CISCO CONFIDENTIAL - Access Management Policy
 - CISCO CONFIDENTIAL - Cloud Change Management Standard
 - CISCO CONFIDENTIAL - Cloud Security Policy
 - CISCO CONFIDENTIAL - Cryptographic Controls Policy
 - CISCO CONFIDENTIAL - Cryptographic Implementation Standard
 - CISCO CONFIDENTIAL - Data Protection Policy
 - CISCO CONFIDENTIAL - Data Protection Standard
 - CISCO CONFIDENTIAL - Global Backgrounds Investigations Policy
 - CISCO CONFIDENTIAL - Global Business Resiliency Whitepaper
 - CISCO CONFIDENTIAL - Global Data Loss and Computer Security Incident Management Policy
 - CISCO CONFIDENTIAL - Network Device Security Standard
 - CISCO CONFIDENTIAL - Network Security Policy
 - CISCO CONFIDENTIAL - Password Construction Standard
 - CISCO CONFIDENTIAL - Password Policy
 - CISCO CONFIDENTIAL - Physical and Environmental Security Standard
 - CISCO CONFIDENTIAL - Secure Coding Standard
 - CISCO CONFIDENTIAL - Secure Development Lifecycle Policy
 - CISCO CONFIDENTIAL - Security Logging Standard



**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

CISCO CONFIDENTIAL - Server Security Policy
CISCO CONFIDENTIAL - Server Security Standard
CISCO CONFIDENTIAL - Trusted Device Standard
CISCO CONFIDENTIAL - Value Chain Security Architecture Policy
CISCO CONFIDENTIAL - Vulnerability Management Standard
CISCO CONFIDENTIAL - Wireless Communication Standard

- ii. The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
 - iii. If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are compatible with current versions of the Operating System and Application for security vulnerability management purposes.
- c. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which are designed to enable the Contractor to respond to accidents, disasters, emergencies, or threats without any material stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- i. "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet its Recovery Point and Recovery Time Objectives, as defined below.
 - a. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident
 - b. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity
 - ii. The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test may use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet its RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. Upon written request, the Contractor shall provide written confirmation

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet its RPO and RTO requirements.

- d. The Contractor shall make available to the State information regarding Hosted Services that maintain a Security Management Certification from the Federal Risk and Authorization Management Program ("FedRAMP"). A "Security Management Certification" shall mean written confirmation from FedRAMP that FedRAMP has assessed the Contractor's information technology Infrastructure, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and has certified that the Contractor meets FedRAMP standards. Information technology "Infrastructure" shall mean the Contractor's entire collection of hardware, software, networks, data centers, facilities and related equipment used to develop, test, operate, monitor, manage and/or support information technology services. If applicable, the Contractor shall provide proof of current FedRAMP certification annually, upon State request. No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.
- e. Contractor shall make available information to enable the State to purchase Hosted Services that meet all applicable requirements of the most current version of Internal Revenue Service Publication 1075.
- f. Contractor shall make available information to enable the State to purchase Hosted Services that meet requirements of current version of Minimum Acceptable Risk Standards for Exchanges ("MARS-E") controls.
- g. Contractor shall make available information to enable the State to purchase Hosted Services that are certified to host Payment Card Industry ("PCI") data in accordance with the current version of PCI DSS ("Data Security Standard"), maintained by the PCI Security Standards Council.

46. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not knowingly do or omit to do anything which would cause the State to be in breach of any Privacy Laws applicable to Contractor's products, services, or Software as a Service Cloud hosting offerings. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**Master Agreement #AR3227 Led by the State of **Utah**

and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security designed to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract. Contractor shall notify State of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. As part of the audit referenced in section 45, the State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII. The foregoing obligation to return or destroy shall not apply to PII included as part of Administrative Data, Payment Data, Support Data and Telemetry Data. For as long as Contractor retains such data, Contractor shall exercise at least the same degree of care as it uses with its own data of similar nature, but in no event less than reasonable care, and shall deploy appropriate security measures designed to protect such data against unauthorized access, use, or disclosure.

The Contractor shall report to the State any instances of unauthorized access to or disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made to: cyber.security@tn.gov by the Contractor within forty-eight (48) hours after the Unauthorized Disclosure has been confirmed by the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. To the extent the Contractor is at fault, the Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure for up to one (1) year (or more if required by applicable Privacy Laws). To the extent the Contractor is at fault, the Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.



**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

ATTACHMENT B

**ATTESTATION RE PERSONNEL USED IN PARTICIPATING ADDENDUM
PERFORMANCE**

SUBJECT CONTRACT NUMBER:	Participating Addendum Number:
CONTRACTOR LEGAL ENTITY NAME:	Cisco Systems, Inc.
EDISON VENDOR IDENTIFICATION NUMBER:	0000068829

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Participating Addendum and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Participating Addendum.

A handwritten signature in blue ink, appearing to read "Jenn Pate".

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Jenn Pate

Authorized Signatory

PRINTED NAME AND TITLE OF SIGNATORY

April 23, 2021

DATE OF ATTESTATION

APPROVED BY LEGAL

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

ATTACHMENT C

**FEDERALLY MANDATED REQUIREMENTS FOR SERVICES CONTRACTS WITH ACCESS
TO FEDERAL TAX RETURN INFORMATION**

Federal Tax Information (“FTI”) includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

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

- (1) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (6) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

(7) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or entity not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**Master Agreement #AR3227 Led by the State of **Utah**

(4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of Utah

ATTACHMENT D

**FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES CONTRACTS
WITH ACCESS TO FEDERAL TAX RETURN INFORMATION**

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES

I. PERFORMANCE

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

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

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

(7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

(8) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.

(9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.

(10) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil

**DATA COMMUNICATIONS PRODUCTS
& SERVICES (2019-2026)**

Master Agreement #AR3227 Led by the State of **Utah**

damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.