



# STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Utah Division of Purchasing and the following Contractor:

Cradlepoint, Inc.

Name

1111 W Jefferson Street, Suite 400

Street Address

Boise

ID

83702

City

State

Zip

Vendor # 213874 Commodity Code #: 920-05 Legal Status of Contractor: For-Profit Corporation

Contact Name: Mitch Head Phone Number: O: 208-472-6154 M: 208-608-1712 Email: mhead@cradlepoint.com

2. CONTRACT PORTFOLIO NAME: Data Communications Products and Services.

3. GENERAL PURPOSE OF CONTRACT: Provide Data Communications Products and Services for the Award Categories provided in Attachment B – Scope of Work..

4. PROCUREMENT: This contract is entered into as a result of the procurement process on FY2018, Solicitation# SK18001

5. CONTRACT PERIOD: Effective Date: Tuesday, October 01, 2019. Termination Date: Monday, September 30, 2024 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal Options: Two (2) one year renewal options.

6. Administrative Fee (if any): Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) of contract sales no later than 60 days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on sales of the Services

7. Prompt Payment Discount Details (if any): N/A.

- 8. ATTACHMENT A: NASPO ValuePoint Master Terms and Conditions
- ATTACHMENT B: Scope Awarded to Contractor
- ATTACHMENT C: Pricing Discounts and Value Added Services
- ATTACHMENT D: Service Offering EULAs, SLAs

**Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.**

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

- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
- b. Utah Procurement Code, Procurement Rules, and Contractor’s response to solicitation # SK18001.

10. Each signatory below represents that he or she has the requisite authority to enter into this contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the “Effective Date” of this Contract shall be the date provided within Section 5 above.

**CONTRACTOR**

Val Hausinkveld 8/5/19  
Contractor's signature Date

**DIVISION OF PURCHASING**

[Signature] Aug 6, 2019  
Director, Division of Purchasing Date

Valerie Hausinkveld CFO  
Type or Print Name and Title



## **Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions**

### **1. Master Agreement Order of Precedence**

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement, including a Service Level Agreement and Service Offering EULAs;
- (4) The Solicitation; and
- (5) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

**2. Definitions** - Unless otherwise provided in this Master Agreement, capitalized terms will have the meanings given to those terms in this Section.

**Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

**Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Data** means all information, whether in written or electronic form, delivered by a Participating Entity or Purchasing Entity to the Contractor.

**Data Breach** means any actual or reasonably suspected non-authorized access to or acquisition of computerized Non-Public Data or Personal Data that compromises the security, confidentiality, or integrity of the Non-Public Data or Personal Data, or the ability of Purchasing Entity to access the Non-Public Data or Personal Data.

**Disabling Code** means computer instructions or programs, subroutines, code,

instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the Purchasing Entity's' software, applications and/or its end users processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

**Embedded Software** means one or more software applications which permanently reside on a computing device.

**Fulfillment Partner** means a third-party contractor qualified and authorized by Contractor, and approved by the Participating State under a Participating Addendum, who may, to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Services under this Master Agreement and billing Customers directly for such Services. Contractor may, upon written notice to the Participating State, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Master Agreement or to bind Contractor to any additional terms and conditions.

**Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** means the State centrally administering any resulting Master Agreement(s).

**Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

**NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

**Non-Public Data** means Data that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the Purchasing Entity because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

**Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

**Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

**Participating State** means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposal is not required to participate through execution of a Participating Addendum.

**Personal Data** means data alone or in combination that includes information relating to an individual that identifies the individual by name, identifying number, mark or description can be readily associated with a particular individual and which is not a public record. Personal Information may include the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or Protected Health Information (PHI) relating to a person.

**Processed Data** means the output of any computer processing, or other electronic manipulation, of any Data in the course of using and configuring the Services provided under this Agreement.

**Product** means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

**Purchasing Entity** means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

**Services** mean any of the services described in the Scope of Services that are supplied

or created by the Contractor pursuant to this Master Agreement.

**Security Incident** means the possible or actual unauthorized access to a Purchasing Entity's Non-Public Data and Personal Data the Contractor believes could reasonably result in the use, disclosure or theft of a Purchasing Entity's Non-Public Data within the possession or control of the Contractor. A Security Incident also includes a major security breach to the Contractor's system, regardless if Contractor is aware of unauthorized access to a Purchasing Entity's Non-Public Data. A Security Incident may or may not turn into a Data Breach.

**Service Level Agreement (SLA)** means a written agreement between both the Purchasing Entity and the Contractor that is subject to the terms and conditions in this Master Agreement and relevant Participating Addendum unless otherwise expressly agreed in writing between the Purchasing Entity and the Contractor. SLAs should include: (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) remedies, such as credits, and (5) an explanation of how remedies or credits are calculated and issued.

**Solicitation** means the documents used by the State of Utah, as the Lead State, to obtain Contractor's Proposal.

**Statement of Work** means a written statement in a solicitation document or contract that describes the Purchasing Entity's service needs and expectations.

## **NASPO ValuePoint Program Provisions**

### **3. Term of the Master Agreement**

a. The initial term of this Master Agreement is for five (5) years. This Master Agreement may be extended beyond the original contract period for two (2) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

### **4. Amendments**

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

## 5. Participants and Scope

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments;

Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. **Resale.** "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

## **6. Administrative Fees**

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

## 7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in Attachment H.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media



containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

## **8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, terminate the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Termination based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to terminate the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.
- g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and

NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

## **9. NASPO ValuePoint eMarket Center**

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

## **10. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

## **11. Price and Rate Guarantee Period**

All pricing must be guaranteed for the first year of the Master Agreement.

Following the guarantee period, any request for price increases must be for an equal

guarantee period (1 year), and must be submitted to the Lead State at least thirty (30) calendar days prior to the effective date. The Lead State will review a documented request for an MSRP price list increase only after the Price Guarantee Period.

Requests for price increases must include sufficient documentation supporting the request and demonstrating a reasonableness of the adjustment when comparing the current price list to the proposed price list. Documentation may include: the manufacturers national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase. The price increase must not produce a higher profit margin than the original contract, and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published commercial price list.

No retroactive price increases will be allowed.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published commercial price list, including renewal options, the Lead State shall be notified immediately. All published commercial price list price reductions shall be effective upon the notification provided to the Lead State.

## **12. Individual Customers**

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **Administration of Orders**

### **13. Ordering**

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master

Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Maintenance agreements may have terms as prescribed in section 27. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

j. Notwithstanding anything contained in this Master Agreement to the contrary, Contractor reserves the right to require that purchases be made through Fulfillment Partners. Where so required by Contractor, Purchasers shall not order Products or Services directly from Contractor and shall order same from Fulfillment Partner. Purchaser shall purchase products by issuing a written or electronic Purchase Order, signed or (in the case of electronic transmission) sent by its authorized representative, indicating specific products, quantity, unit price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and any other special instructions.

Contractor nonetheless remains contractually liable for all purchases under its Master Agreement, regardless if the purchase is made directly with Contractor or through a Fulfillment Partner.

#### **14. Shipping and Delivery**

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

#### **15. Laws and Regulations**

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

## **16. Inspection and Acceptance**

- a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.
- b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.
- d. The warranty period shall begin upon Acceptance.

## **17. Payment**

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

## **18. Warranty**

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used as described in Contractor's response to the solicitation, (c) the Product is suitable for any special purposes identified in the solicitation, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of material defects. Upon breach of the warranty, the Contractor will repair or replace (at

no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

## **19. Title of Product**

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product, except for any portion of the Product which is provided subject to a nonexclusive subscription license or is Embedded Software, free and clear of all liens, encumbrances, or other security interests. Subject to the foregoing exclusion, transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license to the Embedded Software shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee. Any Services or any portion of the Product which is provided subject to a nonexclusive subscription license provided under this Agreement shall not transfer to another entity.

## **20. License of Pre-Existing Intellectual Property**

Except with respect to any portion of the Product which is provided subject to a nonexclusive subscription license, Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use for Purchasing Entity's own use, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

### **20.1 Subscription License**

For that portion of the Product which is provided subject to a nonexclusive subscription license, Contractor shall grant to the Purchasing Entity such subscription license as agreed upon by the Contractor and Purchasing Entity as set forth in Attachment D.

**21. No Guarantee of Service Volumes:** The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that it has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters.

**22. Purchasing Entity Data:** Purchasing Entity retains full right and title to Data and all Processed Data. Contractor shall not collect, access, or use user-specific Purchasing Entity Data and/or Processed Data specifically identifying a Purchasing Entity or individual users except as strictly necessary to provide Service to the Purchasing Entity. No information regarding Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction unless in an aggregated and anonymized format that does not identify the Purchasing Entity or individual users. The obligation shall extend beyond the term of this Master Agreement in perpetuity.

Except in an aggregated and anonymized format that does not identify the Purchasing Entity or individual users, Contractor shall not use any information collected in connection with this Master Agreement, including Purchasing Entity Data, for any purpose other than fulfilling its obligations under this Master Agreement.

**23. System Failure or Damage:** In the event of system failure or damage caused by Contractor or its Services, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

**24. Title to Product:** If access to the Product requires an application program interface (API), other than any portion of the Product which is provided subject to a nonexclusive subscription license, Contractor shall convey to Purchasing Entity an irrevocable and perpetual license to use the API.

**25. Data Privacy:** The Contractor must comply with all applicable laws related to data privacy and security, including IRS Pub 1075. Prior to entering into a SLA with a Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine the Data Categorization to determine what data the Contractor will hold, store, or process. The Contractor must document the Data Categorization in the SLA or Statement of Work.

**26. Transition Assistance:**

a. The Contractor shall reasonably cooperate with other parties in connection with all Services to be delivered under this Master Agreement, including without limitation any successor service provider to whom a Purchasing Entity's Data is transferred in connection with the termination or expiration of this Master Agreement. The Contractor shall assist a Purchasing Entity in exporting and extracting a Purchasing Entity's Data, in a format usable without the use of the Services and as agreed by a Purchasing Entity, at no additional cost to the Purchasing Entity. Any transition services requested by a Purchasing Entity involving additional knowledge transfer and support may be subject to a separate transition Statement of Work.

b. A Purchasing Entity and the Contractor shall, when reasonable, create a Transition Plan Document identifying the transition services to be provided and including a Statement of Work if applicable.



c. The Contractor must maintain the confidentiality and security of a Purchasing Entity's Data during the transition services and thereafter as required by the Purchasing Entity.

**27. Performance and Payment Time Frames that Exceed Contract Duration:** All maintenance or other agreements for services entered into during the duration of an SLA and whose performance and payment time frames extend beyond the duration of this Master Agreement shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, maintenance or other agreements for services may be executed after the Master Agreement has expired. For the purposes of this section, renewals of maintenance, subscriptions, and other service agreements, shall not be considered as "new."

## **General Provisions**

### **28. Insurance**

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$3 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other

documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

## **29. Records Administration and Audit**

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of Administrative Fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

### **30. Confidentiality, Non-Disclosure, and Injunctive Relief**

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including

disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 29. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

### **31. Public Information**

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

### **32. Assignment/Subcontracts**

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State, except that Contractor shall be authorized to utilize subcontractors to perform Web hosting of that portion of the Product which is provided subject to a nonexclusive subscription license upon written notice to the Lead State administrator.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

### **33. Changes in Contractor Representation**

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

### **34. Independent Contractor**

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

### **35. Termination**

Unless otherwise stated, this Master Agreement may be terminated by either Lead State or Contractor upon 60 days written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Termination may be in whole or in part. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Termination of the Master Agreement due to Contractor default may be immediate.

### **36. Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

### **37. Defaults and Remedies**

a. The occurrence of any of the following events by Contractor shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15

calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

### **38. Waiver of Breach**

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

### **39. Debarment**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

### **40. Indemnification**

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending

the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

#### **41. No Waiver of Sovereign Immunity**

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

#### **42. Governing Law and Venue**

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely



and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

#### **43. Assignment of Antitrust Rights**

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

#### **44. Contract Provisions for Orders Utilizing Federal Funds**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

#### **45. Leasing or Alternative Financing Methods**

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

**46. Limitation of Liability.** Except for those obligations under the Indemnification section above, notwithstanding anything else herein, all liability of Contractor and its suppliers to any Participating Entity for claims arising under this Agreement, the applicable Participating Addendum, or otherwise shall be limited to Five Million Dollars (\$5,000,000). This limitation of liability is cumulative and not per incident.

**47. Waiver of Consequential and Other Damages.** In no event shall Contractor or its suppliers be liable for any incidental, special, indirect, or consequential damages, or lost or damaged data (except for a loss of Purchaser data caused by Contractor's negligence), arising in tort (including negligence), or otherwise, even if Contractor or its suppliers have been informed of the possibility thereof.

**48. Entire Agreement:** This Master Agreement, along with any attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum with a Participating Entity. No click-through, or other end user terms and conditions or agreements required by the Contractor ("Additional Terms") provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative "acceptance" of those Additional Terms before access is permitted.

## eMarket Center Appendix

a. This Appendix applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.

b. Supplier's Interface with the eMarket Center. There is no cost charged by JAGGAER to the Contractor for loading a hosted catalog or integrating a punchout site.

c. At a minimum, the Contractor agrees to the following:

(1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and JAGGAER to set up an enablement schedule, at which time JAGGAER's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.

(2) NASPO ValuePoint and JAGGAER will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. **Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).**

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to JAGGAER, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data no more than once per 30 days to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.

(b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a. Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update no more than once per 30 days to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.

d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State

and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per year (see required Price Guarantee Period section 11). The following conditions apply with respect to hosted catalogs:

(1) Updated pricing files are required each calendar month of the month and shall go into effect in the eMarket Center on as approved by the Lead State contract administrator.

(2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.

e. Supplier Network Requirements: Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use JAGGAER's Supplier Portal to import the Contractor's catalog and pricing, into the JAGGAER system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: [www.sciquest.com](http://www.sciquest.com) or call the JAGGAER Supplier Network Services team at 800-233-1121.

f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:

(1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and

(2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract; and

(3) The Catalog must include a Lead State contract identification number; and

(4) The Catalog must include detailed product line item descriptions; and

(5) The Catalog must include pictures when possible; and

(6) The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.

g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.

i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any supplier's offering from the eMarket Center.

j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.

k. Several NASPO ValuePoint Participating Entities currently maintain separate JAGGAER eMarketplaces, these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate JAGGAER catalogs.

**(December 2017)**

## Attachment B – Scope Awarded to Contractor

### I. Data Communications Award Categories

The scope for this contract is as provided below. Contractor may offer products (i.e. white box, artificial intelligence, etc.) and services within the Categories it received an award in. Each category also allows for Internet of Things (IoT) products. These products must be an IoT product that can be deployed within, upon, or integrated into a government agency's physical asset to address government line of business needs. Proposals are expected to include IoT products designed to support common government lines of business in specific subcategories i.e. routers, switches, end points, etc. IoT products can only be provided in categories that the vendor is awarded in and can include endpoints that support items in that category.

#### **Category 1.2: NETWORKING**

##### **1.2.1 Network Application Services.**

Application networking solutions and technologies that enable the successful and secure delivery of applications to local, remote, and branch-office users using technology to accelerate, secure, and increase availability of both application traffic and computing resources.

**1.2.1.1 Virtualized Load Balancers** — Virtual devices that act like a reverse proxy to distribute network and/or application traffic across multiple servers to improve the concurrent user capacity and overall reliability of applications. Capabilities should include:

- SSL (Secure Sockets Layer) Off-loading
- Caching capabilities
- Layer 4 Load Balancing
- Layer 7 Load Balancing
- Detailed Reporting
- Supports multiple load balancers in the same system for multiple groups
- Supports TLS1.2

**1.2.1.2 WAN Optimization** — An appliance utilizing a collection of techniques for increasing data-transfer efficiencies across wide-area networks (WAN). Capabilities should include:

- CIFS (Common Internet File System) acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization
- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages).

##### **1.2.2 Networking Software.**

Software that runs on a server, or within the Cloud, and enables the server to manage data, users, groups, security, applications, and other networking functions. The network operating system is designed to allow

transfer of data among multiple computers in a network, typically a local area network (LAN), a private network or to other networks. Networking software capabilities should include:

- Restartable Process
- High availability options
- Targeted operating systems, i.e. DC, campus, core, wan, etc.
- Operating System Efficiencies
- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages).

**1.2.2.1 Network Management and Automation** — Software products and solutions for network automation, cloud computing, and IT systems management.

**1.2.2.2 Data Center Management and Automation** — Software products and solutions that capture and automate manual tasks across servers, network, applications, and virtualized infrastructure.

**1.2.2.3 Cloud Portal and Automation** — Software products and solutions for cloud management with policy-based controls for provisioning virtual and physical resources.

**1.2.2.4 Branch Office Management and Automation** — Software products and solutions for management of branch offices. Capabilities include remote troubleshooting, device management, and WAN performance monitoring.

### **1.2.3 Network Optimization and Acceleration.**

Devices and tools for increasing data-transfer efficiencies across wide-area networks.

**1.2.3.1 Data Analytics** — Appliance for improving network management by more effectively factoring in issues related to congestion, such as utilization, service consumption and routing. Provides real-time insights into network traffic to determine the value of different portions of that traffic.

**1.2.3.2 Dynamic Load Balancing (Network Traffic Management)** — An appliance that performs a series of checks and calculations to determine which server can best service each client request in order to select the server that can successfully fulfill the client request and do so in the shortest amount of time without overloading either the server or the server farm as a whole.

**1.2.3.3 WAN Acceleration** — Appliance that optimizes bandwidth to improve the end user's experience on a wide area network (WAN). Capabilities should include:

- CIFS acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization

**1.2.3.4 High Availability and Redundancy** — Limits any disruption to network uptime should an appliance face unforeseen performance issues. Transparently redistributes workloads to surviving cluster appliances without impacting communication throughout the cluster.

### **1.2.4 Optical Networking.**

High capacity networks based on optical technology and components that provide routing, grooming, and restoration at the wavelength level as well as wavelength based services.

**1.2.4.1 Core DWDM (Dense Wavelength Division Multiplexing) Switches** — Switches used in systems designed for long haul and ultra long-haul optical networking applications.

**1.2.4.2 Edge Optical Switches** — Provide entry points into the enterprise or service provider core networks.

**1.2.4.3 Optical Network Management** — Provides capabilities to manage the optical network and allows operators to execute end-to-end circuit creation.

**1.2.4.4 IP over DWDM (IPoDWDM)** — A device utilized to integrate IP Routers and Switches in the OTN (Optical Transport Network).

### **Category 1.3: ROUTERS, SWITCHES, SECURITY, AND NETWORKING STORAGE**

#### **1.3.1 Routers.**

A device that forwards data packets along networks. A router is connected to at least two networks, commonly two LANs or WANs or a LAN and its ISP's network. Routers are located at gateways, the places where two or more networks connect, and are the critical device that keeps data flowing between networks and keep the networks connected to the Internet.

**1.3.1.1 Branch Routers** — A multiservice router typically used in branch offices or locations with limited numbers of users and supports flexible configurations/feature. For example: security, VoIP, wan acceleration, etc.

**1.3.1.2 Network Edge Routers** — A specialized router residing at the edge or boundary of a network. This router ensures the connectivity of its network with external networks, a wide area network or the Internet. An edge router uses an External Border Gateway Protocol, which is used extensively over the Internet to provide connectivity with remote networks.

**1.3.1.3 Core Routers** - High performance, high speed, low latency routers that enable Enterprises to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV and Video on Demand (VoD), and Software as a Service (SaaS).

**1.3.1.4 Service Aggregation Routers** — Provides multiservice adaptation, aggregation and routing for Ethernet and IP/MPLS networks to enable service providers and enterprise edge networks simultaneously host resource-intensive integrated data, voice and video business and consumer services.

**1.3.1.5 Carrier Ethernet Routers** — High performance routers that enable service providers to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV, Video on Demand (VoD), and Software as a Service (SaaS).

#### **1.3.2 Security.**

**1.3.2.1 Data Center and Virtualization Security Products and Appliances** — Products designed to protect high-value data and data center resources with threat defense and policy control.



**1.3.2.2 Intrusion Detection/Protection and Firewall Appliances** — Provide comprehensive inline network firewall security from worms, Trojans, spyware, key loggers, and other malware. This includes Next-Generation Firewalls (NGFW), which offer a wire-speed integrated network platform that performs deep inspection of traffic and blocking of attacks. Intrusion Detection/Protection and Firewall Appliances should provide:

- Non-disruptive in-line bump-in-the-wire configuration
- Standard first-generation firewall capabilities, e.g., network-address translation (NAT), stateful protocol inspection (SPI) and virtual private networking (VPN), etc.
- Application awareness, full stack visibility and granular control
- Capability to incorporate information from outside the firewall, e.g., directory-based policy, blacklists, white lists, etc.
- Upgrade path to include future information feeds and security threats
- SSL decryption to enable identifying undesirable encrypted applications (Optional)

**1.3.2.3 Logging Appliances and Analysis Tools** — Solutions utilized to collect, classify, analyze, and securely store log messages.

**1.3.2.4 Secure Edge and Branch Integrated Security Products** — Network security, VPN, and intrusion prevention for branches and the network edge. Products typically consist of appliances or routers.

**1.3.2.5 Secure Mobility Products** — Delivers secure, scalable access to corporate applications across multiple mobile devices.

**1.3.2.6 Encryption Appliances** — A network security device that applies crypto services at the network transfer layer - above the data link level, but below the application level.

**1.3.2.7 On-premise and Cloud-based services for Network Communications Integrity** — Solutions that provide threat protection, data loss prevention, message level encryption, acceptable use and application control capabilities to secure web and email communications. This could include cloud access security brokers (CASBs) and DNS security.

**1.3.2.8 Secure Access** — Products that provide secure access to the network for any device, including personally owned mobile devices (laptops, tablets, and smart phones). Capabilities should include:

- Management visibility for device access
- Self-service on-boarding
- Centralized policy enforcement
- Differentiated access and services
- Device Management

### **1.3.3 Storage Networking.**

High-speed network of shared storage devices connecting different types of storage devices with data servers.

**1.3.3.1 Director Class SAN (Storage Area Network) Switches and Modules** — A scalable, high-performance, and protocol-independent designed primarily to fulfill the role of core switch in a core-edge Fibre Channel (FC), FCOE or similar SAN topology. A Fibre Channel director is, by current convention, a

switch with at least 128 ports. It does not differ from a switch in core FC protocol functionality. Fibre Channel directors provide the most reliable, scalable, high-performance foundation for private cloud storage and highly virtualized environments.

**1.3.3.2 Fabric and Blade Server Switches** — A Fibre Channel switch is a network switch compatible with the Fibre Channel (FC) protocol. It allows the creation of a Fibre Channel fabric, which is currently the core component of most SANs. The fabric is a network of Fibre Channel devices, which allows many-to-many communication, device name lookup, security, and redundancy. FC switches implement zoning; a mechanism that disables unwanted traffic between certain fabric nodes.

**1.3.3.3 Enterprise and Data Center SAN and VSAN (Virtual Storage Area Network) Management** — Management tools to provisions, monitors, troubleshoot, and administers SANs and VSANs.

**1.3.3.4 SAN Optimization** — Tools to help optimize and secure SAN performance (ie. Encryption of data-at-rest, data migration, capacity optimization, data reduction, etc).

#### **1.3.4: Switches.**

Layer 2/3 devices that are used to connect segments of a LAN (local area network) or multiple LANs and to filter and forward packets among them.

**1.3.4.1 Campus LAN – Access Switches** — Provides initial connectivity for devices to the network and controls user and workgroup access to internetwork resources. The following are some of the features a campus LAN access switch should support:

1. Security
  - a. SSHv2 (Secure Shell Version 2)
  - b. 802.1X (Port Based Network Access Control)
  - c. Port Security
  - d. DHCP (Dynamic Host Configuration Protocol) Snooping
2. VLANs
3. Fast Ethernet/Gigabit Ethernet
4. PoE (Power over Ethernet)
5. link aggregation
6. 10 Gb support
7. Port mirroring
8. Span Taps
9. Support of IPv6 and IPv4
10. Standards-based rapid spanning tree
11. Netflow Support (Optional).

**1.3.4.2 Campus LAN – Core Switches** — Campus core switches are generally used for the campus backbone and are responsible for transporting large amounts of traffic both reliably and quickly. Core switches should provide:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans

- Security
  - SSHv2
  - MacSec encryption
  - Role-Based Access Control Lists (ACL)
- Support of IPv6 and IPv4
- 1/10/40/100 Gbps support
- IGP (Interior Gateway Protocol) routing
- EGP (Exterior Gateway Protocol) routing
- VPLS (Virtual Private LAN Service) Support
- VRRP (Virtual Router Redundancy Protocol) Support
- Netflow Support.

**1.3.4.3 Campus Distribution Switches** — Collect the data from all the access layer switches and forward it to the core layer switches. Traffic that is generated at Layer 2 on a switched network needs to be managed, or segmented into Virtual Local Area Networks (VLANs), Distribution layer switches provides the inter-VLAN routing functions so that one VLAN can communicate with another on the network. Distribution layer switches provides advanced security policies that can be applied to network traffic using Access Control Lists (ACLs).

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Security (SSHv2 and/or 802.1X)
- Support of IPv6 and IPv4
- Jumbo Frames Support
- Dynamic Trunking Protocol (DTP)
- Per-VLAN Rapid Spanning Tree (PVRST+)
- Switch-port auto recovery
- NetFlow Support or equivalent

**1.3.4.4 Data Center Switches** — Data center switches, or Layer 2/3 switches, switch all packets in the data center by switching or routing good ones to their final destinations, and discard unwanted traffic using Access Control Lists (ACLs) a minimum of 10 Gigabit speeds. High availability and modularity differentiates a typical Layer 2/3 switch from a data center switch. Capabilities should include:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Ultra-low latency through wire-speed ports with nanosecond port-to-port latency and hardware-based Inter-Switch Link (ISL) trunking
- Load Balancing across Trunk group able to use packet based load balancing scheme
- Bridging of Fibre Channel SANs and Ethernet fabrics
- Jumbo Frame Support
- Plug and Play Fabric formation that allows a new switch that joins the fabric to automatically become a member

- Ability to remotely disable and enable individual ports
- Support NetFlow or equivalent

**1.3.4.5 Software Defined Networks (SDN)** — An application in SDN that manages flow control to enable intelligent networking.

**1.3.4.6 Software Defined Networks (SDN) - Virtualized Switches and Routers** — Technology utilized to support software manipulation of hardware for specific use cases.

**1.3.4.7 Software Defined Networks (SDN) — Controllers** - is an application in software-defined networking (SDN) that manages flow control to enable intelligent networking. SDN controllers are based on protocols, such as OpenFlow, that allow servers to tell switches where to send packets. The SDN controller lies between network devices at one end and applications at the other end. Any communications between applications and devices have to go through the controller. The controller uses multiple routing protocols including OpenFlow to configure network devices and choose the optimal network path for application traffic.

**1.3.4.8 Carrier Aggregation Switches** — Carrier aggregation switches route traffic in addition to bridging (transmitted) Layer 2/Ethernet traffic. Carrier aggregation switches' major characteristics are:

- Designed for Metro Ethernet networks
- Designed for video and other high bandwidth applications
- Supports a variety of interface types, especially those commonly used by Service Providers

Capabilities should include:

- Redundant Processors
- Redundant Power
- IPv4 and IPv6 unicast and multicast
- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- MPLS (Multiprotocol Label Switching)
- BGP (Border Gateway Protocol)
- Software router virtualization and/or multiple routing tables
- Policy based routing
- Layer 2 functionality
  - Per VLAN Spanning Tree
  - Rapid Spanning Tree
  - VLAN IDs up to 4096
  - Layer 2 Class of Service (IEEE 802.1p)
  - Link Aggregation Control Protocol (LACP)
  - QinQ (IEEE 802.1ad)

**1.3.4.9 Carrier Ethernet Access Switches** — A carrier Ethernet access switch can connect directly to the customer or be utilized as a network interface on the service side to provide layer 2 services.

- Hot-swappable and field-replaceable integrated power supply and fan tray
- AC or DC power supply with minimum DC input ranging from 18V to 32 VDC and 36V to 72 VDC
- Ethernet and console port for manageability
- SD flash card slot for additional external storage
- Stratum 3 network clock
- Line-rate performance with a minimum of 62-million packets per second (MPPS) forwarding rate
- Support for dying gasp on loss of power
- Support for a variety of small form factor pluggable transceiver (SFP and SFP+) with support for Device Object Model (DOM)
- Timing services for a converged access network to support mobile solutions, including Radio Access Network (RAN) applications
- Support for Synchronous Ethernet (SyncE) services
- Supports Hierarchical Quality of Service (H-QoS) to provide granular traffic-shaping policies
- Supports Resilient Ethernet Protocol REP/G.8032 for rapid layer-two convergence

#### **Category 1.4: WIRELESS.**

Provides connectivity to wireless devices within a limited geographic area. System capabilities should include:

- Redundancy and automatic failover
- IPv6 compatibility
- NTP Support

**1.4.1 Access Points** — A wireless Access Point (AP) is a device that allows wireless devices to connect to a wired network using Wi-Fi, or related standards. Capabilities should include:

- 802.11a/b/g/n
- 802.11n
- 802.11ac
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)
- UL2043 plenum rated for safe mounting in a variety of indoor environments
- Support AES-CCMP (128-bit)
- Provides real-time wireless intrusion monitoring and detection

**1.4.2 Outdoor Wireless Access Points** — Outdoor APs are rugged, with a metal cover and a DIN rail or other type of mount. During operations they can tolerate a wide temperature range, high humidity and exposure to water, dust, and oil. Capabilities should include:

- Flexible Deployment Options
- Provides real-time wireless intrusion monitoring and detection
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)

**1.4.3 Wireless LAN Controllers** — An onsite or offsite solution utilized to manage Light-weight access points in large quantities by the network administrator or network operations center. The WLAN controller automatically handles the configuration of wireless access-points. Capabilities should include:

- Ability to monitor and mitigate RF interference/self-heal
- Support seamless roaming from AP to AP without requiring re-authentication
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic
- System encrypts all management layer traffic and passes it through a secure tunnel
- Policy management of users and devices provides ability to de-authorize or deny devices without denying the credentials of the user, nor disrupting other AP traffic
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic

**1.4.4 Wireless LAN Network Services and Management** — Enables network administrators to quickly plan, configure and deploy a wireless network, as well as provide additional WLAN services. Some examples include wireless security, asset tracking, and location services. Capabilities should include:

- Provide for redundancy and automatic failover
- Historical trend and real time performance reporting is supported
- Management access to wireless network components is secured
- SNMPv3 enabled
- RFC 1213 compliant
- Automatically discover wireless network components
- Capability to alert for outages and utilization threshold exceptions
- Capability to support Apple's Bonjour Protocol / mDNS
- QoS / Application identification capability

**1.4.5 Cloud-based services for Access Points** — Cloud-based management of campus-wide WiFi deployments and distributed multi-site networks. Capabilities include:

- Zero-touch access point provisioning
- Network-wide visibility and control
- RF optimization,
- Firmware updates

**1.4.6 Mobile Device Management (MDM)** — MDM technology utilized to allow employees to bring personally owned mobile devices (laptops, tablets, and smart phones) to their workplace, and use those devices to access privileged government information and applications in a secure manner. Capabilities should include:

- Ability to apply corporate policy to new devices accessing the network resources, whether wired or wireless
- Provide user and devices authentication to the network
- Provide secure remote access capability
- Support 802.1x
- Network optimization for performance, scalability, and user experience

## II. Value Added Services

For each Award Category above, the following valued services should also be available for procurement at the time of product purchase or anytime afterwards. This provided list of value added services is not intended to be exhaustive, and may be updated pursuant to the terms of the resulting Master Agreement

**2.1 Maintenance Services** — Capability to provide technical support, software maintenance, flexible hardware coverage, and smart, proactive device diagnostics for hardware.

### **2.2 Professional Services**

#### a. Deployment Services

- i. Survey/ Design Services — Includes, but not limited to, discovery, design, architecture review/validation, and readiness assessment.
- ii. Implementation Services — Includes, but not limited to, basic installation and configuration or end-to-end integration and deployment.
- iii. Optimization — Includes, but not limited to, assessing operational environment readiness, identify ways to increase efficiencies throughout the network, and optimize Customer's infrastructure, applications and service management.

b. Remote Management Services — Includes, but not limited to, continuous monitoring, incident management, problem management, change management, and utilization and performance reporting that may be on a subscription basis.

c. Consulting/Advisory Services — Includes, but not limited to, assessing the availability, reliability, security and performance of Customer's existing solutions.

d. Data Communications Architectural Design Services — Developing architectural strategies and roadmaps for transforming Customer's existing network architecture and operations management.

e. Statement of Work (SOW) Services — Customer-specific tasks to be accomplished and/or services to be delivered based on Customer's business and technical requirements.

f. Testing Services — Includes, but not limited to, testing the availability, reliability, security and performance of Customer's existing solutions

### **2.3 Partner Services** — Provided by Contractor's Authorized Partners/Resellers.

a. Subject to Contractor's approval and the certifications held by its Partners/Resellers, many Partners/Resellers can also offer and provide some or all of the Services as listed above at competitive pricing, along with local presence and support. As the primary Contractor (OEM), Contractor is ultimately responsible for the service and performance of its Partners/ Resellers. Customers may have the option to purchase the Services to be directly delivered by Contractor (OEM) or its certified Partners/Resellers.

**2.4 Training** — Learning offerings for IT professionals on networking technologies, including but not limited to designing, implementing, operating, configuring, and troubleshooting network systems pertaining to items provided under the master agreement.

### **III. Product Line Additions**

During the contract term Contractor may submit a request to update product catalog that falls within the scope listed in herein this Attachment B as new technology is introduced, updated or removed from the market. Lead State will evaluate requests and update the contract offering as appropriate. New product additions must utilize the same pricing structure as was used for services falling into the same service category.

#### **A. Minimum Discount %**

The Minimum Discount % off List shall be firm fixed for the duration of the contract. However, the list prices may fluctuate through the life of the contract, as provided within Attachment A. Contractor may offer increased discounts upon achievement of contract volume milestones. Minimum guaranteed contract discounts do not preclude Contractor and/or its authorized resellers from providing deeper or additional, incremental discounts at their sole discretion. Purchasing entities shall benefit from any promotional pricing offered by the Contractor to similar customers. Promotional pricing shall not be cause for a permanent price change.



**Attachment C - Pricing Discounts and Value Added Services**

Contractor Cradlepoint, Inc.

**Section 1: Pricing Notes**

1. % discounts are based on minimum discounts off Contractor's commercially published pricelists versus fixed pricing. Nonetheless, Orders will be fixed-price or fixed-rate and not cost reimbursable contracts. Contractor has the ability to update and refresh its respective price catalog, as long as the agreed-upon discounts are fixed.
2. Minimum guaranteed contract discounts do not preclude an Offeror and/or its authorized resellers from providing deeper or additional, incremental discounts at their sole discretion.
3. Purchasing entities shall benefit from any promotional pricing offered by Contractor to similar customers. Promotional pricing shall not be cause for a permanent price change.
4. Contractor's price catalog shall include the price structures of all products, services and value added items (i.e., Maintenance Services, Professional Services, Etc.) that it intends to provide under its contract. Pricing shall all-inclusive of infrastructure and software costs and management of infrastructure, network, OS, and software.

**Section 2: Minimum Discount % off List**

<b>Category 1.2 Networking</b>	
Hardware and Software (on premise)	25.00%
Cloud Services	25.00%
Service Packages (i.e., Maintenance, etc.)	25.00%
<b>Category 1.3 Routers, Switches, Security, and Networking Storage</b>	
Hardware and Software (on premise)	25.00%
Cloud Services	25.00%
Service Packages (i.e., Maintenance, etc.)	25.00%
<b>Category 1.4 Wireless</b>	
Hardware and Software (on premise)	25.00%
Cloud Services	25.00%
Service Packages (i.e., Maintenance, etc.)	25.00%

**Section 3: Value Added Services**

Provide the title, job description for each title, and associated hourly rate. Add additional rows as necessary.

Title	Job Description	Hourly Rates					
		Weekday		Weekend		State Holiday	
		Onsite	Remote	Onsite	Remote	Onsite	Remote
Maintenance Services	Maintenance Services will be provided through Cradlepoint Partner Program	To be provided once Cradlepoints' authorized resellers are identified for each Participating Addendum.					
Professional Services	Professional Services will be provided through Cradlepoint Partner Program	To be provided once Cradlepoints' authorized resellers are identified for each Participating Addendum.					
Deployment Services	Deployment Services will be provided through Cradlepoint Partner Program	To be provided once Cradlepoints' authorized resellers are identified for each Participating Addendum.					
Consulting Advisory Services	Consulting Advisory Services will be provided through Cradlepoint Partner Program	To be provided once Cradlepoints' authorized resellers are identified for each Participating Addendum.					
Architectural Design Services	Architectural Design Services will be provided through Cradlepoint Partner Program	To be provided once Cradlepoints' authorized resellers are identified for each Participating Addendum.					
Statement of Work Services	Statement of Work Services will be provided through Cradlepoint Partner Program	To be provided once Cradlepoints' authorized resellers are identified for each Participating Addendum.					
Partner Services	Partner Services will be provided through Cradlepoint Partner Program	To be provided once Cradlepoints' authorized resellers are identified for each Participating Addendum.					
Training Deployment Services	Training Deployment Services will be provided through Cradlepoint Partner Program	To be provided once Cradlepoints' authorized resellers are identified for each Participating Addendum.					
Value Added Services	Additional Value Added Services to be identified at a later date and will be provided through Cradlepoint Partner Program	To be provided once Cradlepoints' authorized resellers are identified for each Participating Addendum.					



## **Cradlepoint NASPO Terms of Service License Agreement (TSLA) - Response to Attachment D, Service Offering EULAs, SLAs**

Pursuant to Attachment A, Section 20.1 of the Master Agreement, the Cradlepoint Terms of Service and License Agreement attached hereto shall be agreed upon by the Contractor and Purchasing Entity for that portion of the Product which is provided subject to a nonexclusive subscription license.

### **CRADLEPOINT TERMS OF SERVICE AND LICENSE AGREEMENT**

BY CLICKING ON THE “ACCEPT” OR “CONTINUE” BUTTON, YOU AND ANY ENTITY THAT YOU REPRESENT (THE “CUSTOMER”) AND ANYONE TO WHOM CUSTOMER PROVIDES ACCESS TO THE SERVICES OR THAT IS USING OR ACCESSING THE SERVICES ON CUSTOMER’S BEHALF (COLLECTIVELY, “AGENTS”) ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS TERMS OF SERVICE AND LICENSE AGREEMENT AND ANY ADDENDUMS THERETO (“TSLA” or “AGREEMENT”). THIS AGREEMENT DEFINES THE TERMS OF USE FOR THE SERVICE AND ANY SOFTWARE REQUIRED TO DELIVER THE SERVICE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF YOUR EMPLOYER OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND CUSTOMER. CUSTOMER’S CONTINUED USE OF SERVICES AND SOFTWARE PROVIDED BY CRADLEPOINT, INC. (“CRADLEPOINT”) SHALL ALSO CONSTITUTE ASSENT TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE “CANCEL” OR BROWSER BACK BUTTON AND THE ACCOUNT REGISTRATION OR SETUP PROCESS WILL NOT CONTINUE. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

#### **1. SERVICE SUBSCRIPTION**

1.1 Subject to the terms and conditions of this Agreement, Cradlepoint will provide the Customer with a subscription to access its cloud-based network management, connectivity services, security services, router operating systems, and other related services, including any Platform APIs or SDKs, provided by Cradlepoint through the Internet as set forth in Exhibit 1 – Service Level Agreement attached hereto or as otherwise documented and made available to Customer upon request by Cradlepoint (collectively referred to as the “Service”). Access to the Service may require the Customer to download and install certain software applications (the “Client Software”) which is covered under a License (below). The License may also be presented to anyone downloading the Client Software and for the avoidance of doubt, in the event of any conflict between the License contained in this Agreement and any license accepted to download the Client Software, the License in this Agreement shall prevail.

1.2 Except for Client Software, the service and the software underlying or used to deliver the Service will be hosted on servers under control or direction of Cradlepoint or its third party providers. The Service is subject to modification from time to time at Cradlepoint’s sole discretion, for any purpose deemed appropriate by Cradlepoint. Cradlepoint will use reasonable efforts to give Customer prior written notice of any material modifications.

1.3 For paid Customer accounts in good standing, Cradlepoint will undertake commercially reasonable efforts to make the Service available in accordance with the Customer Service Level Agreement available at [www.Cradlepoint.com/SLA](http://www.Cradlepoint.com/SLA) or as otherwise documented and made available by Cradlepoint to Customer upon request, except for Cradlepoint’s right to suspend Customer’s access to the Service: (i) for scheduled or emergency maintenance, (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due, or (iii) as a result of circumstances beyond Cradlepoint’s reasonable control (including, but not limited to: acts of God, acts of government, flood, fire, earthquake, civil unrest, acts of terror, strike or other labor problem, hosting provider failure or delay, issues related to a third party, or denial of service attacks) (“Force Majeure”).

1.4 Subject to the terms hereof and pursuant to the level of support for which the Customer is entitled, Cradlepoint or its designated third-party partners will provide reasonable support to Customer for the Service as



described at the Cradlepoint support website as otherwise documented and made available by Cradlepoint to Customer upon request. Customer will designate an employee who will be responsible for all matters relating to this Agreement ("Primary Contact"). Customer may change the individual designated as Primary Contact at any time through its account settings on the Services.

1.5 Customer is responsible for all acts and omissions of its Agents (including any breaches of this Agreement) as if Customer committed such act or omission itself. Cradlepoint may exercise any rights and/or remedies under this Agreement, at law or in equity, against Customer based upon such acts or omissions of such Agents.

## 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, and will not permit any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of any portion of the Service, documentation or data related to the Service (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Service; use the Services for timesharing or service bureau purposes or for any purpose other than its own internal use unless Customer is a Managed Service Provider ("MSP") and has reviewed and agreed to be bound by the additional terms and conditions set forth in the Managed Service Provider Addendum ("MSP Addendum") attached hereto as Exhibit 2 – Managed Service Provider Addendum, which is hereby incorporated herein by reference (if you do not unconditionally agree to all terms of the MSP Terms, click the "CANCEL" or browser back button and the account registration or setup process will not continue); use the Services in connection with any high risk or strict liability activity; use the Service other than in accordance with this Agreement and in compliance with all applicable laws and regulations, including but not limited to any privacy laws, marketing and data security laws and government guidelines, and laws and regulations concerning intellectual property, consumer and child protection, obscenity or defamation; run or use any processes that run or are activated while Customer is not logged on to the Services or that "crawl," "scrape," or "spider" the Service; or use the Service in any manner that (i) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable (including without limitation, accessing any computer, computer system, network, software, or data without authorization, breaching the security of another user or system, and/or attempting to circumvent any user authentication or security process), (ii) impersonates any person or entity, including without limitation any employee or representative of Cradlepoint, or (iii) contains a virus, Trojan horse, worm, time bomb, unsolicited bulk, commercial, or "spam" message, or other harmful computer code, file, or program (including without limitation, password guessing programs, decoders, password gatherers, keystroke loggers, cracking tools, packet sniffers, and/or encryption circumvention programs). Notwithstanding anything to the contrary, Cradlepoint reserves the right to suspend or limit Customer's access to the Service if Cradlepoint determines, in its sole discretion, that Customer's use of the Service does or is likely to: (a) damage the Service or interfere with Cradlepoint's ability to reliably provide the Service to other users; or (b) place an unreasonable or unexpected load on the Service (c) there is a threat or attack on the cloud servers hosting the Services (including a denial of service attack) or other event that may create a risk to the Services, to Customer or to any other user of the Services; (d) Customer's use of the Services disrupts or poses a security risk to the Services or any other user of the Services, may harm Cradlepoint's systems or any other user of the Services, or may subject Cradlepoint or any third party to liability; (e) Customer is misusing the Services or using the Services for fraudulent or illegal activities; (f) subject to applicable law, Customer has ceased to continue Customer's business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Customer's assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding; (g) Customer is using the Services in breach of the Agreement; (h) Customer is in default of Customer's payment obligations hereunder; or (g) there is an unusual spike or increase in Customer's use of the Services (collectively, "Service Suspensions"). Customer understands that many of the reasons for suspension listed above are imposed on us by third party licensors, are subject to change without notice, and may result in Customer's access to the Services being suspended as a result of the actions of other users. Cradlepoint will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Customer (including notices posted on the website or sent to Customer's registered e-mail address) and to provide updates regarding resumption of Customer's access to the Services following any Service



Suspension. Cradlepoint will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Customer may incur as a result of any Service Suspension or limitations related to carrier coverage or support.

For the purposes of this Agreement, "MSP" shall mean an entity that provides access to the Service in conjunction with the provision of Integrated Services as defined in the MSP Addendum or uses the Service to manage the devices of third parties.

2.2 Customer will cooperate with Cradlepoint in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Cradlepoint may reasonably request. Customer will also cooperate with Cradlepoint in establishing a password or other procedures for verifying that only designated employees of Customer has access to any administrative functions of the Services.

2.3 As a condition of Customer's use of the Services and with respect to third-party claims, Customer agrees to indemnify, defend, and hold harmless Cradlepoint, its affiliates, subsidiaries, and its and their respective officers, directors, employees, agents, contractors, suppliers, successors, and assigns from and against any judgments, claims, actions, losses, damages, liabilities, costs, or expenses (including, but not limited to, reasonable attorneys' fees and legal expenses) of any kind arising from Customer's and/or its Agents use of the Services or related products, or from or attributable to any breach by Customer and/or its Agents of Customer's obligations established herein or any privacy, employee, or consumer protection right that is implicated herein and by the Services, or Customer's and/or its Agents infringement, or the infringement or use by any other user of Customer's account, of any intellectual property or other right of any person or entity. All indemnification duties shall continue in effect even after, and notwithstanding, any subsequent revocation of consent or the expiration or termination of the Agreement or Customer's and/or its Agents use of the Services.

2.4 Customer will be responsible for maintaining the security of Customer's account, passwords, including but not limited to administrative and user passwords and files, and for all uses of Customer account with or without Cradlepoint's knowledge or consent.

2.5 THE SERVICES ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE WITH DATA, CONTENT OR INFORMATION USED FOR OR REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPON SYSTEMS, IN WHICH THE FAILURE OF THE SERVICES, INTERNET OR THIRD PARTY CLOUD SERVICE PROVIDER INFRASTRUCTURE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK APPLICATIONS"). Cradlepoint and its third party Licensors specifically disclaim any express or implied warranty of fitness for High Risk Applications.

### 3. CONFIDENTIALITY

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Without limiting the foregoing, the Client Software and any software provided by Cradlepoint is Cradlepoint Proprietary Information. Customer will obtain agreement from its Agents that it will treat Cradlepoint Proprietary Information in accordance with the terms of this Agreement prior to allowing any such Agent to have access to the Services.

3.2 The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (i) to give access to such Proprietary Information solely to those employees and Agents with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it



without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order.

3.3 Customer acknowledges that Cradlepoint does not wish to receive any Proprietary Information from Customer that is not necessary for Cradlepoint to perform its obligations under this Agreement (including, without limitation, any information protected under applicable privacy laws and regulations), and, unless the parties specifically agree otherwise, Cradlepoint may reasonably presume that any unrelated information received from Customer is not confidential or Proprietary Information.

3.4 Both parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers and such are bound by the terms of a similar confidentiality agreement with at least as restrictive covenants to protect such information.

#### 4. INTELLECTUAL PROPERTY RIGHTS

4.1 Except as expressly set forth herein, Cradlepoint alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Service and the software and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Service and/or the software, which are hereby assigned to Cradlepoint. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service or any intellectual property rights.

4.2 Customer represents and warrants that Customer owns and will continue to own all worldwide right, title and interest in, or presently holds and will continue to hold a valid license to, all information distributed by or on behalf of Customer through the Service ("Content") and the intellectual property rights with respect to that Content. If Cradlepoint receives any notice or claim that any Content, or activities hereunder with respect to any Content, may infringe or violate rights of a third party or any applicable law or regulation (a "Claim"), Cradlepoint may (but is not required to) suspend activity hereunder with respect to that Content and Customer will indemnify Cradlepoint from all liability, damages, settlements, attorney fees and other costs and expenses in connection with any such Claim, as incurred.

#### 5. USE OF DATA

5.1 By using or accessing the Service, Customer hereby grants to Cradlepoint a worldwide, royalty-free, non-exclusive, irrevocable, sublicensable right and license to use, copy, display, perform, store, distribute and modify Data as necessary to perform the Service. "Data" means all electronic data and information submitted by Customer for set up and provisioning of the Service, and information created, generated, collected or harvested by Cradlepoint in the furtherance of this Agreement and the security and performance of the Service. Data does not include any Content.

5.2 Notwithstanding anything else in this Agreement or otherwise, Cradlepoint may monitor Customer's use of the Service and Customer Information (as defined in the MSP Addendum), and in an aggregate and anonymous manner, compile statistical and performance information related to the provision and operation of the Service ("Cradlepoint Data"), and may make such information publicly available, provided that such information does not identify Customer or Customer's Proprietary Information. Cradlepoint shall own all right, title and interest in and to the Cradlepoint Data. To the extent needed to perfect Cradlepoint's ownership in the Cradlepoint Data, Customer hereby irrevocably assigns all right, title and interest in such Cradlepoint Data to Cradlepoint.

5.3 The Service may make use of non-PII location data (including, but not limited to, GPS coordinates, the MAC address and received signal strength of nearby Wi-Fi access points, nearby cell tower IDs, and the IP Address) that is



sent by devices using the Service. In order to allow Cradlepoint to provide the best user experience, the Service may utilize a third party provider to resolve location requests. At all times, Customer's location information will be treated in accordance with such third party's privacy policy, a copy of which is available upon request. By using location services, Customer consents to Cradlepoint and its partners' transmission, collection, maintenance, processing and use of Customer's location data and queries to provide and improve location-based products and services.

5.4 During the term of this Agreement, Customer will supply Cradlepoint with contact details for Customer's employees, contractors and/or representatives ("Contact Data") in order for Cradlepoint to carry out its obligations under this Agreement (for example, to accomplish the provision of Service, allow the Customer to access and use the Service, enable Customer's employees, contractors and/or representatives to access and use the Service, and, where applicable, the subscription ordering process as described this Agreement). Cradlepoint hereby agrees to process the Contact Data in accordance with applicable laws, rules and regulations and in compliance with the Cradlepoint Privacy Policy <https://cradlepoint.com/privacy-policy>. Customer warrants and represents that (a) it has notified the relevant data subjects that Cradlepoint will be given such information and informed them of Cradlepoint's Privacy Policy; and (b) if necessary, it has obtained all necessary consents in order to transfer the Contact Data to Cradlepoint. Customer shall notify Cradlepoint as soon as reasonably practicable of any amendments required to the Contact Data either through the Service or by email at: [privacy@cradlepoint.com](mailto:privacy@cradlepoint.com).

## 6. PAYMENT OF FEES

6.1 Customer will pay the applicable fees as set forth at the time of purchase by Cradlepoint or its distributors, resellers or partners ("Fees") for availability, features and functionalities of the Service subscribed to by Customer ("Subscription") without any right of set-off or deduction. To the extent applicable, Customer will pay for additional services, such as integration fees or other consulting fees. All payments will be made in accordance with the payment schedule and the method of payment set forth in the Subscription. If not otherwise specified, payments will be due beginning on the date of Service initiation. All Fees paid hereunder (including any prepaid amounts) are non-refundable, including without limitation if this Agreement is terminated in accordance with Section 7 below.

6.2 Unless otherwise explicitly agreed in writing at the time of purchase, unpaid Fees may be subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys' fees. Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property and similar taxes, if any. Unless otherwise explicitly agreed in writing at the time of purchase, Customer agrees to pay such taxes (excluding US taxes based on Cradlepoint's net income) unless Customer has provided Cradlepoint with a valid exemption certificate. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid on account thereof.

## 7. TERMINATION

7.1 This Agreement shall continue until terminated in accordance with this Section 7.

7.2 Customer may terminate this Agreement upon thirty (30) days written notice to Cradlepoint. Cradlepoint may terminate this Agreement immediately upon written notice to Customer in the event of any material breach of this Agreement by Customer and/or its Agents, including without limitation, any breach of Section 2.1 and/or failure to pay any Fees or other amounts when due hereunder.

7.3 Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings (provided such proceedings are not dismissed within thirty (30) days of such institution), (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business.

7.4 Customer's access to the Service, and any licenses granted hereunder, shall terminate upon any termination of this Agreement. All sections of this Agreement, which by their nature should survive termination, will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations,



intellectual property rights, warranty disclaimers, and limitations of liability. The following Sections will survive any termination of this Agreement: 2 through 6, this section 7, and 8 through 11.

7.5 Customer agrees that upon any termination or cancellation of this Agreement Customer will not be entitled to a refund of fees for any additional work previously performed by Cradlepoint at Customer's request or any pre-paid Fees for Subscriptions still in effect at the time of termination or cancellation, and Customer's obligation to pay any balance due shall survive any such termination or cancellation.

#### 8. WARRANTY DISCLAIMER

CRADLEPOINT DOES NOT WARRANT THAT THE OPERATION OF THE SERVICE OR ANY FUNCTION CONTAINED THEREIN WILL MEET CUSTOMER'S REQUIREMENTS, BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVICE OR THE SERVERS THAT MAKE THIS SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE, SOFTWARE AND CRADLEPOINT PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. ANY USE OF THE SERVICE IS DONE AT CUSTOMER'S SOLE RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE, LOSS OR EXPENSE INCURRED AS A RESULT OF OR ARISING OUT OF CUSTOMER'S USE OF THE SERVICE.

CRADLEPOINT MAKES NO OTHER WARRANTY, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THIS SERVICE. CRADLEPOINT SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

#### 9. LIMITATION OF LIABILITY

Cradlepoint will not be liable for any loss resulting from a cause over which it does not have direct control.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL CRADLEPOINT OR ITS THIRD PARTY LICENSORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR: LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY, LOSS OF PRIVACY, CORRUPTION OR LOSS OF DATA, FAILURES TO TRANSMIT OR RECEIVE DATA OR ANY OTHER PECUNIARY LOSS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SERVICES OR OTHERWISE IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IF CRADLEPOINT OR ITS THIRD PARTY LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL LIABILITY OF CRADLEPOINT AND ITS LICENSORS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE LESSER OF (i) ONE THOUSAND DOLLARS (\$1,000), OR (ii) THE FEES PAID TO CRADLEPOINT HEREUNDER IN THE THREE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

#### 10. U.S. GOVERNMENT MATTERS

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Service or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the



Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Customer's use of the Service is deemed a representation and warranty by Customer that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by Cradlepoint are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

## 11. MISCELLANEOUS

11.1 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

11.2 This Agreement is not assignable, transferable or sublicensable by Customer except with Cradlepoint's prior written consent. Cradlepoint may transfer and assign any of its rights and obligations under this Agreement with written notice to Customer.

11.3 Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed or otherwise agreed to by Cradlepoint, except as otherwise provided herein.

11.4 Neither party shall be liable to the other or responsible for delay or non-performance of any of the terms of the Agreement due to Force Majeure.

11.5 No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Cradlepoint in any respect whatsoever.

11.6 In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

11.7 All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid.

11.8 This Agreement shall be governed by the laws of the State of Idaho and the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Idaho for any dispute arising out of this Agreement.

11.9 Amendments. We reserve the right, in our sole discretion, to change, modify, add or remove provisions of this Agreement at any time. Customer is responsible for regularly reviewing this Agreement for changes. By using the Service after we post any changes to this Agreement or otherwise notify Customer of such changes, Customer agrees to accept those changes, whether or not Customer has reviewed them. If Customer does not agree to this Agreement, Customer should not use the Service and Customer should cancel Customer's Subscription.

11.10 No Implied Waivers. If either party fails to require performance of any duty hereunder by the other party, such failure shall not affect its right to require performance of that or any other duty thereafter. The waiver by





either party of a breach of any provision of this Agreement shall not be a waiver of the provision itself or a waiver of any breach thereafter, or a waiver of any other provision herein.

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## CRADLEPOINT SECURE LOCATION SERVICES TERMS AND CONDITIONS

If Customer is using Cradlepoint Secure Location Services ("Location Services"), the following terms and conditions apply to Customer's use of the Location Services and these terms and conditions form part of the Agreement. For the avoidance of doubt, the Location Services are included in the definition of "Services" under this Agreement and the below terms and conditions are in addition to the Terms and Conditions of the Agreement, not in substitution thereof.

### 1. DEFINITIONS

Following are definitions for certain capitalized terms used in connection with the Location Services terms and conditions. Other capitalized terms used herein shall have the same definitions as set forth above in the Agreement or as otherwise defined herein.

"Subscriber" means a person or entity that subscribes to or uses the Location Services.

"Subscriber Data" means a Subscriber's identity, phone number, email address, wireless carrier account information, billing or credit information, the type of wireless device, Location Information, and any other personally identifying information captured by Cradlepoint or its third party licensors and used within the Services in connection with Subscribers' use of the Location Services. Subscriber Data does not include data provided directly to Cradlepoint by Customer for use in conjunction with opening, administering or closing Customer's account.

"Location Information" means the approximate geographic location of a Registered Device in response to a Location Query, including the latitude/longitude, address, zip code, or position relative to a defined boundary or geo-fence.

"Location Query or Location Queries" means electronic requests for Location Information made by Customer or the Location Services application.

"Registered Devices" Customer's Cradlepoint devices managed by the Service and provisioned for use of the Location Services by the payment of the applicable Fee(s).

"Wireless Service Provider" or "WSP" means a wireless telecommunications service provider with whom Cradlepoint or its third party licensors have contracted and which have agreed to provide Location Information to Cradlepoint for use in connection with the Location Services.

### 2. LICENSE TO CUSTOMER

2.1 Cradlepoint agrees to grant Customer a non-exclusive, non-transferable, limited right to access the Location Services, solely for Customer's own business purposes, provided that Customer comply fully with all of the provisions of the Agreement. Cradlepoint grants Customer the right to use the Location Services solely in conjunction with the use of Customer's Registered Devices. All rights not expressly granted to Customer in the Agreement are reserved by Cradlepoint.



### 3. PRIVACY AND LICENSE FROM CUSTOMER

3.1 By accessing and using the Location Services, Customer expressly agrees to and hereby grants Cradlepoint the right to collect, use, store and disclose Location Information relative to Customer's Registered Devices and to enable GPS functionality on Customer's Registered Devices. Customer further acknowledges and agrees that Location Information of Customer's Registered Devices may be collected and utilized by Cradlepoint and its third party licensors in support and provision of the Location Services. Customer may use the Location Services to make Location Queries for the best available Location Information of the Registered Devices and Customer acknowledges that no notifications are provided to Customer or the Registered Devices when such Location Queries are made.

3.2 By accessing and using the Location Services, Customer expressly agrees to and hereby grants Cradlepoint a limited, irrevocable, royalty-free, sublicensable, non-exclusive license to copy, reproduce, store, adapt, modify, translate, and distribute Subscriber Data solely to enable Cradlepoint to provide and improve the Location Services. Customer acknowledges and agrees that Cradlepoint may store Location Information for up to twelve (12) months.

### 4. SAFE AND LAWFUL USE

4.1 Customer agrees to use Location Services and the Location Information provided thereby only for lawful purposes, and Customer agrees to comply with all applicable laws and rules and any additional terms that Cradlepoint may incorporate into this Agreement with or without notice to Customer. Customer agrees that Customer will not misuse the Location Services and Customer will be responsible for any costs incurred by Cradlepoint or any other party (including attorney's fees) as a result of Customer's misuse or fraudulent use of the Location Services. Misuse or fraudulent use includes, but is not limited to:

- Using the Location Services in such a manner so as to interfere unreasonably with the use of the Location Services by one or more other users or to interfere unreasonably with Cradlepoint's ability to provide the Location Services;
- Subscription fraud or unauthorized access to devices not provisioned for Location Services;
- Using the Location Services for any purpose not directly related to Customer's business solution;
- Using the Location Services to defame, harass, stalk, threaten or otherwise violate the legal rights of others;
- Using the Location Services to disseminate or convey inappropriate, defamatory, obscene, salacious, or unlawful information, images or materials;
- Attempting or assisting another to access, alter, or interfere with the communications and/or obtain information about another user or device not owned by or licensed to Customer;
- Tampering with the security components of the Location Services or making an unauthorized connection to the network;



- Utilizing the Location Services or a Cradlepoint device to track an individual or private automobile without their consent; or
- Accessing or obtaining location information of a device other than one of Customer's Registered Devices.

## 5. SERVICE AVAILABILITY

5.1 Support for Location Services may vary based on the carrier or network provider. Contact Cradlepoint for a complete list of supported carriers. Customer acknowledges and agrees that the Location Services coverage may be limited to the native network of the carrier. The Location Services may not provide Location Information for Registered Devices that are roaming or otherwise not on the designated carrier network. It may not be possible to utilize the Location Services to locate GSM or CDMA Registered Devices that are not in the United States or Canada.

## 6. LIMITATION OF SERVICE AND USAGE

6.1 Customer acknowledges and agrees that the Location Services provides an approximate location of the requested Registered Device and does not provide guaranteed results. In order for the Location Services to work, the Registered Device for which Customer make a Location Query must be turned on, charged and located within Customer's coverage area, among other factors. Accuracy of the Location Information obtained via the Location Services is subject to network capabilities, environmental conditions such as structures, buildings, weather, geography, landscape, and topography, available data, atmospheric conditions and other factors associated with use of wireless networks, satellites and satellite data. By entering into this Agreement, Customer acknowledges the results Customer may obtain from the Location Services, including but not limited to maps, geo-fencing and requested locations or messaging, may not be accurate, timely or reliable. Cradlepoint reserves the right to set limits on the use of the Location Services at our discretion. The Location Services may be subject to other limitations, such as, for purposes of example, monthly limits on the number of Location Queries Customer may make. Cradlepoint will make commercially reasonable efforts to provide Customer with advance notice of any changes to Customer's usage limitations thirty (30) days prior to the end of the then-current term.

## 7. PRIVACY COMPLIANCE

7.1 Customer agrees at all times to comply with all applicable privacy, consumer protection, marketing and data security laws and government guidelines, including (without limitation) all laws that apply to collecting, accessing, using, disclosing and securing Subscriber Data; the Cradlepoint Privacy Policy at <https://cradlepoint.com/privacy-policy> and; the Privacy Policies and content standards of the Wireless Service Providers from which Customer request subscriber Location Information; applicable privacy, marketing, or advertising guidelines issued by the Mobile Marketing Association (MMA); and the CTIA Best Practices and Guidelines for Location-Based Services. The current locations for WSP, CTIA, and MMA guidelines are listed below but are subject to change without notice:

**AT&T:** <http://www.att.com/privacy>

**Sprint:** <http://www.sprint.com/privacy>

**T-Mobile:** <http://www.t-mobile.com/privacy>

**Verizon Wireless:** <http://www.verizon.com/privacy>

**Bell Mobility:** <http://bell.ca/privacy>

**Rogers:** <http://www.rogers.com/privacy>

**TELUS:** <http://www.telus.com/privacy>

**CTIA:** [http://www.ctia.org/business\\_resources/wic/index.cfm/AID/11300](http://www.ctia.org/business_resources/wic/index.cfm/AID/11300)

**MMA:** <http://www.mmaglobal.com/education/bestpractice>



**Locaid:** <http://www.loc-aid.com/privacy-policy>

**Google:** <https://policies.google.com/privacy>

**Skyhook Wireless:** <http://www.skyhookwireless.com/privacy>

Please report abuse or any violation of the applicable privacy policies above at [\\_privacy@cradlepoint.com](mailto:privacy@cradlepoint.com).

7.2 Customer agrees to be bound by the Google Terms of Service and Google Maps/Google Earth Additional Terms of Service [https://www.google.com/help/terms\\_maps.html](https://www.google.com/help/terms_maps.html) (including the Google Privacy Policy at <https://policies.google.com/privacy>).

## 8. TERMINATION AND CANCELLATION

8.1 Either Customer or Cradlepoint may terminate or cancel Customer's Subscription to the Location Services at any time upon written notice. Customer understands and agrees that the cancellation or termination of Customer's Subscription is Customer's sole right and remedy with respect to any dispute with us including, but not limited to, any dispute related to, or arising out of: (i) any terms or our enforcement of the Agreement; (ii) any Cradlepoint policy or practice and/or our enforcement thereof; (iii) the content available through the Location Services or any change in content provided through the Location Services; (iv) Customer's ability to access and/or use the Location Services; and (v) the amount or types of fees, applicable taxes, or billing methods, or any change to such fees, applicable taxes, or billing methods.

8.2 Cradlepoint reserves the right to immediately terminate Customer's Subscription and block Customer's access to the Location Services if Customer fails to comply with any term or condition in this Agreement, including but not limited to failure to pay fees when due.

8.3 Upon any termination or cancellation of this Agreement, Customer acknowledges and agrees that: (i) Customer will not be entitled to a refund of any amount paid for the Subscription and Customer's obligation to pay any balance due, shall survive any such termination or cancellation; (ii) Cradlepoint will not disable and Customer will be solely responsible for disabling the GPS functionality on Customer's Registered Devices; and (iii) Customer's access to Subscriber Data will immediately terminate.

## 9. CUSTOMER'S WARRANTIES

9.1 Customer represents and warrants to Cradlepoint that: (i) Customer has the authority to agree to the terms and conditions specified in this Agreement on behalf of Customer and all users who have access to the Location Services, (ii) Customer's use of the Location Services will be solely for Customer's commercial and lawful use and for no other purpose, (iii) Customer or Customer's licensors own all right, title, and interest in and to the Subscriber Data, and (ii) Customer has all rights in the Subscriber Data necessary to grant the rights contemplated by this Agreement and Customer's license to the Location Services.

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## CLIENT SOFTWARE LICENSE TERMS AND CONDITIONS

To access the Services, Customer will need to download and install Client Software. Client Software and any accompanying documentation is licensed and not sold and is protected by copyright laws and treaties, as well as laws and treaties related to other forms of intellectual property. Cradlepoint owns intellectual property rights in the Client Software. Customer's license to download, use and/or copy the Client Software is subject to these rights and to all the terms of conditions of this license ("License"). The terms and conditions of this License are in addition to and not in substitution of the terms and conditions of the Agreement. Reference to Section numbers below are to Section number in this License only unless otherwise specified.



## 1. LICENSE GRANT

1.1 Access to the Service, or portion thereof, requires that Customer download and install directly, or download, distribute and install programmatically, certain Client Software applications. Subject to Customer's compliance with all of the terms and conditions of the Agreement and this License, Cradlepoint hereby grants Customer a limited, personal, non-sublicensable, non-transferable, non-exclusive license to internally use the Client Software only in accordance with any accompanying documentation, and only as required to access the Services in accordance with this License.

## 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, and will not permit any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Client Software, documentation or data related to the Client Software (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Client Software, except as expressly permitted herein; sublicense, sell, resell, transfer, assign or distribute or otherwise commercially exploit or make available in any way to any third party any portion of the Client Software; use the Client Software other than in accordance with this License and in compliance with all applicable laws and regulations.

2.2 Customer will cooperate with Cradlepoint in connection with the performance of this License by making available such personnel and information as may be reasonably required, and taking such other actions as Cradlepoint may reasonably request. Customer will also cooperate with Cradlepoint in establishing a password or other procedures for verifying that only designated users have access to any administrative functions of the Service.

2.3 Customer hereby agrees to indemnify and hold harmless Cradlepoint against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing, any breach of this License, or from Customer's and/or Agents use of the Client Software.

2.4 Customer will be responsible for maintaining the security of Customer's account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer's account with or without Customer's knowledge or consent.

## 3. INTELLECTUAL PROPERTY RIGHTS

3.1 Except as expressly set forth herein, Cradlepoint alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Client Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Client Software, which are hereby assigned to Cradlepoint. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this License. This License is not a sale and does not convey to Customer any rights of ownership in or related to the Client Software, or any intellectual property rights.

3.2 Customer retains all right, title and interest (including, without limitation, sole ownership of) all content and data provided by or on behalf of Customer or distributed through the Service ("Content") and the intellectual property rights with respect to that Content. If Cradlepoint receives any notice or claim that any Content, or activities hereunder with respect to any Content, may infringe or violate rights of a third party or any applicable law or regulation (a "Claim"), Cradlepoint may (but is not required to) suspend activity hereunder with respect to that Content and Customer will indemnify Cradlepoint from all liability, damages, settlements, attorney fees and other costs and expenses in connection with any such Claim, as incurred.

## 4. TERMINATION

4.1 This License shall continue until terminated in accordance with this Section 4.

4.2 Customer may terminate this License at any time upon written notice to Cradlepoint as Customer's sole right and remedy with respect to any dispute with Cradlepoint under this License.



4.3 Cradlepoint reserves the right to immediately suspend or terminate Customer’s license to and block Customer’s access to the Service if Customer fails to comply with any term or condition in this License.

4.4 Customer’s access to the Service, and any licenses granted hereunder, shall terminate upon any termination of this License. All sections of this License, which by their nature should survive termination, will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability. In addition, the following Sections will survive any termination of this License: 2, 3, 4, and 6.

## 5. CLIENT SOFTWARE SECURITY

5.1 Cradlepoint represents and warrants that it will not knowingly include, in any Cradlepoint software released to the public and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, Trojans, or time bombs, that are intentionally designed to disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, Cradlepoint fails to comply with the warranty in this Section, Customer may promptly notify Cradlepoint in writing of any such non-compliance. Cradlepoint will, within thirty (30) days of receipt of such written notification, either correct the non-compliance or provide Customer with a plan for correcting the non-compliance. If the non-compliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this License as Customer’s sole and exclusive remedy for such non-compliance.

## 6. WARRANTY DISCLAIMER

6.1 EXCEPT AS SET FORTH IN SECTION 5 ABOVE, THE SERVICE, CLIENT SOFTWARE AND CRADLEPOINT PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS LICENSE ARE PROVIDED “AS-IS,” WITHOUT ANY WARRANTIES OF ANY KIND. ANY USE OF THE SERVICE AND/OR CLIENT SOFTWARE IS DONE AT CUSTOMER’S SOLE RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE, LOSS OR EXPENSE INCURRED AS A RESULT OF OR ARISING OUT OF CUSTOMER’S USE OF THE SERVICE AND/OR CLIENT SOFTWARE. CRADLEPOINT AND ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

6.2 IF THE CLIENT SOFTWARE OR SERVICE DOES NOT MEET CUSTOMER’S REQUIREMENTS OR PROVIDE FUNCTIONALITY AND PERFORMANCE TO CUSTOMER’S SATISFACTION, CUSTOMER AGREES THAT CUSTOMER’S SOLE AND EXCLUSIVE REMEDY SHALL BE TO CANCEL CUSTOMER’S SUBSCRIPTION TO THE SERVICE AND TERMINATE THIS LICENSE AS SET FORTH IN SECTION 4 OF THIS LICENSE. THE REMEDIES PROVIDED HEREIN ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES.

### EXHIBIT 1 - SERVICE LEVEL AGREEMENT

This Service Level Agreement (“SLA”) outlines the service level commitments by Cradlepoint for each of the cloud-delivered services within the Cradlepoint NetCloud platform (referred to individually as the “Service”). Each SLA pertains only to the availability of the applicable Service (“Service Performance”) and applies only to direct licensees of the applicable Service, provided such licensee remains in full compliance with the Cradlepoint Terms of Service and License Agreement (“TSLA”).

## 1. DEFINITIONS.



**1.1 Measurement Window** – The Service Performance shall be calculated based on minutes of compliance within a consecutive 30-day period, exclusive of any scheduled and emergency maintenance performed during that period (the “Measurement Window”).

**1.2 Span of Control** – The SLA shall only pertain to incidents that involve elements of the Service that are within Cradlepoint’s direct and complete operational control (“Span of Control”). For example, the physical Internet connection that connects the devices to the Service is outside of Cradlepoint’s Span of Control.

## **2. NETCLOUD MANAGER SLA**

**2.1** Service Performance for NetCloud Manager is based on availability with a 99.9% monthly uptime (excluding scheduled downtime associated with maintenance windows) as defined by the customer’s ability to use the web interface to perform administration, operations and management functions for networks and devices managed by the Service and subject to incidents within the Span of Control.

## **3. NETCLOUD PERIMETER SLA**

**3.1** Service Performance for NetCloud Perimeter is based on availability with a 99.95% monthly uptime for each customer’s virtual, cloud-based network running on the Service (“Virtual Cloud Network” or “VCN”) as defined by the ability to maintain active connections and forward data between devices within the Measurement Window and subject to (i) incidents within the Span of Control, and (ii) excludes a five (5) minute fail-over migration window per incident.

**3.2** The NetCloud Perimeter Service is designed to achieve high availability even when underlying elements of the Service fail. For certain major elements within the Span of Control, Cradlepoint has established specific non-binding Service Performance objectives (the “Element Service Level Objective” or “ESLO”) that the company shall apply commercially reasonable effort to obtain, but the performance of which is not subject to section 2.1.

**3.2.1 ControlPoint** – a redundant control plane system element that provides provisioning, orchestration, capacity management and operational supervision of the Service. The ControlPoint ESLO is 99.9%

**3.2.2 ServicePoint** – a data plane element that hosts one or more VCNs and provides data forwarding and Internet egress functionality. The ServicePoint ESLO is 99.99%, exclusive of a five (5) minute fail-over migration window per incident.

## **4. MISCELLANEOUS**

**4.1** Licensee’s sole and exclusive remedies for Cradlepoint’s breach of the foregoing are set forth in the TSLA.

**4.2** This document contains the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this SLA. All waivers and modifications to the terms set forth herein must be in a signed and agreed to by Cradlepoint in writing.



## EXHIBIT 2 - MANAGED SERVICE PROVIDER ADDENDUM

BY CLICKING ON THE “ACCEPT” OR “CONTINUE” BUTTON OF THE TERMS OF SERVICE AND LICENSE AGREEMENT (“TSLA”), YOU AS A MANAGED SERVICE PROVIDER AND ANY ENTITY THAT YOU REPRESENT (THE “MSP”) AND ANYONE TO WHOM MSP PROVIDES ACCESS TO THE SERVICES OR THAT IS USING OR ACCESSING THE SERVICES ON MSP’S BEHALF (COLLECTIVELY, “AGENTS”) ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THE TSLA AND THIS MANAGED SERVICE PROVIDER ADDENDUM (“ADDENDUM”). THIS ADDENDUM, TOGETHER WITH THE TSLA, (COLLECTIVELY “SERVICES AGREEMENT”) DEFINES THE TERMS AND CONDITIONS PURSUANT TO WHICH CRADLEPOINT AGREES TO ALLOW YOU, AS A MSP, TO BUNDLE AND BILL FOR INTEGRATED SERVICES AND DELIVER THEM, OR FACILITATE THE DELIVERY THEREOF, TO YOUR CUSTOMERS, IN ACCORDANCE WITH CRADLEPOINT’S NETCLOUD™ MSP PROGRAM FOR MSPS AS DETAILED HEREIN. IF YOU ARE ENTERING INTO THIS SERVICES AGREEMENT ON BEHALF OF YOUR EMPLOYER OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND MSP. MSP’S CONTINUED USE OF SERVICES AND SOFTWARE PROVIDED BY CRADLEPOINT, INC. (“CRADLEPOINT”) SHALL ALSO CONSTITUTE ASSENT TO THE TERMS OF THIS SERVICES AGREEMENT. IF MSP DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS SERVICES AGREEMENT, CLICK THE “CANCEL” OR BROWSER BACK BUTTON AND THE ACCOUNT REGISTRATION OR SETUP PROCESS WILL NOT CONTINUE. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

**1. DEFINITIONS.** Defined terms used but not defined in this MSP Addendum, shall have the meaning ascribed in the TSLA.

1.1 **“Collaborator”** means an option available to the MSP within the Service that allows the MSP to assign an End Customer access to the administrative functionality and permissions of the management services of Service.

1.2 **“End Customer”** means: (i) a customer of MSP for which MSP utilizes the Service in conjunction with the Integrated Services; or (ii) a customer of MSP to which MSP has granted Collaborator status for the management services of the Service; or (iii) a customer of MSP that utilizes the network services of the Service.

1.4 **“Integrated Services”** means other product(s), professional service(s), managed services(s), or business practice(s) provided by the MSP and combined with the Service to create a combined single service/product package that is delivered to End Customers and supported, as set forth in Schedule A, by the MSP. The Integrated Services must have MSP-specific branding, packaging, pricing or support, in accordance with in this Services Agreement, which differentiate it from standard and generally available Cradlepoint services.

1.7 **“Territory”** means the geography in which the MSP is licensed to offer the Integrated Services.

## **2. MSP LICENSE**

2.1 Subject to MSP’s full compliance with the terms of this Services Agreement, (i) Cradlepoint will provide MSP with access to the Services through the internet as set forth in the TSLA, this Addendum and the applicable order, (ii) Cradlepoint hereby grants MSP a nonexclusive, non-transferable, limited, fully-revocable license to use the Service for the provision of Integrated Services to End Customers in the Territory, and (iii) Cradlepoint hereby





grants MSP a nonexclusive, limited, fully-revocable license to distribute the Client Software (defined below) to End Customers or its Agents in conjunction with the Integrated Services in the Territory provided such End Customers and Agents have accepted the terms of the License and agree to be bound by terms at least as restrictive as the terms of the TSLA and this Addendum with respect to restrictions and responsibilities.

2.2 The Services are subject to modification from time to time at Cradlepoint's sole discretion, for any purpose deemed appropriate by Cradlepoint. Cradlepoint will use reasonable efforts to give MSP prior written notice of any such modification. Cradlepoint reserves the right to modify or discontinue the Service or any part thereof at any time in its discretion or to change the terms and conditions under which it provides the Service.

2.3 MSP understands that notwithstanding the use of terms such as "sell," "sales" or the like in connection with MSP's activities under the Services Agreement, MSP is solely an independent entity and has no authority to make representations, incur obligations or otherwise act on behalf of Cradlepoint in any way. Nothing contained in this Services Agreement shall be deemed to create any partnership or joint venture between the parties. MSP is an independent contractor and is not the legal representative or agent of Cradlepoint for any purpose and shall have no right or authority (except as expressly provided in this Services Agreement) to incur, assume or create in writing or otherwise, any obligations over Cradlepoint or its employees.

2.4 All rights not expressly granted to MSP in the Services Agreement are reserved by Cradlepoint.

### 3. MSP RESTRICTIONS AND RESPONSIBILITIES.

3.1 **Single Point of Contact.** MSP will designate an employee who will be responsible for all matters relating to this Services Agreement ("Primary Contact"). MSP may change the individual designated as Primary Contact at any time by providing written notice to Cradlepoint.

3.2 **End Customer Support.** MSP shall provide all support services to End Customers for the Integrated Services.

3.3 **Account Security.** MSP will be responsible for maintaining the security of MSP account, passwords (including but not limited to administrative and user passwords) and files, and for all users of MSP account with or without MSP's knowledge or consent.

3.4 **Compliance with Applicable Laws.** MSP shall at all times comply with all applicable privacy, consumer protection, marketing and data security laws and government guidelines, including (without limitation) all laws that apply to collecting, accessing, using, disclosing and securing data of the End Customer.

3.5 **Restrictions and Acceptable Use.** MSP will not, and will not permit any Agent or End Customer to violate any of the restrictions and responsibilities set forth in the TSLA except as expressly allowed in Section 2 of this Addendum with respect to the provision of Integrated Services to End Customers. MSP agrees not to use, or allow the use of, the Services in High Risk Applications, and not to market, sell or provide Integrated Services to MSP Customers or End Customers for use in High Risk Applications. MSP is responsible for all acts and omissions of its Agents and End Customers (including any breaches of this Services Agreement) as if MSP committed such act or omission itself. Cradlepoint may exercise any rights and/or remedies under this Services Agreement, at law or in equity, against MSP based upon such acts or omissions of such End Customers.

3.6 **Representations or Warranties.** In addition to warranties set forth in Section 6.1, MSP hereby represents, warrants and covenants that it has all necessary consents and authorization as may be required by law for MSP to: (i) use the Service on the End Customers' behalf; (ii) access such End Customers' networks, systems, personally identifiable information of Customer's and End Customers' employees, contractors and/or representatives, data, and information ("Customer Information") on behalf of such End Customer; and (iii) provide



such Customer Information to Cradlepoint for the performance of the Services. MSP further represents and warrants that it shall process the Customer Information in accordance with applicable laws, rules and regulations and in compliance with the TSLA and Cradlepoint's Privacy Policy at <https://cradlepoint.com/privacy-policy> and MSP shall notify each End Customer in writing: (i) the Customer Information entered into or gathered and/or stored in conjunction with the use of the Service shall be governed under the terms of the TSLA and Cradlepoint's Privacy Policy; (ii) that Cradlepoint's Privacy Policy is available at <https://cradlepoint.com/privacy-policy>; and (iii) upon termination of the TSLA, (a) access by MSP and End Customers to such Customer Information shall immediately cease; (b) neither the MSP nor the End Customer shall have any right to access such Customer Information; and (c) Cradlepoint shall have no obligation to retain or transfer such Customer Information to the MSP or the End Customer or to another managed service provider which may be designated by the MSP or the End Customer. MSP SHALL NOT MAKE ANY WARRANTY COMMITMENT, WHETHER WRITTEN OR ORAL, ON CRADLEPOINT'S BEHALF.

**3.7 MSP Indemnity.** MSP SHALL INDEMNIFY, DEFEND AND HOLD CRADLEPOINT HARMLESS AGAINST ANY CLAIM, LOSS, LIABILITY COST OR DAMAGE SUSTAINED AS A RESULT OF MSP'S NONCOMPLIANCE WITH SECTION 3.6.

**3.8 Applicable to Network Services Only.** Access to the network services portion of the Service ("Network Services") requires the download and installation of software (the "Client Software") which is covered under a License as set forth in the TSLA. MSP shall not make the Network Services available to End Customers or Agents, or distribute the Client Software except pursuant to an enforceable agreement between the MSP and the End Customer or Agent (as applicable) for Cradlepoint's benefit that is at least as protective of Cradlepoint and its rights and technology as the License and the applicable terms of the TSLA.

#### **4. CRADLEPOINT RESPONSIBILITIES**

**4.1 Service Availability.** Cradlepoint will undertake commercially reasonable efforts to make the Service available in accordance with the Services Agreement. Notwithstanding the foregoing, Cradlepoint reserves the right to temporarily suspend MSP's and/or one or more of its End Customers access to the Services (i) for scheduled or emergency maintenance, (ii) in the event MSP is in breach of this Services Agreement, including failure to pay any amounts due to Cradlepoint, or (iii) as a result of a Force Majeure event.

**4.2 MSP Training.** Cradlepoint shall, in accordance with the applicable partner program level of the MSP, provide product sales and support training and marketing materials to the MSP's designated personnel. All training of MSP personnel shall be delivered in a "train the trainer" methodology as solely designated by Cradlepoint.

**4.3 MSP Support.** Cradlepoint shall provide reasonable support to MSP for the Service and Client Software as specified, in Schedule A attached hereto. Cradlepoint is not responsible for providing support to any End Customer or for supporting any aspect of the Integrated Services with which the Service is combined.

**4.4 Comply with Applicable Laws.** Cradlepoint shall comply with all applicable laws and regulations in its performance hereunder.

**4.5 Service Delivery.** Except for Client Software, the service and the software underlying or used to deliver the Service will be hosted on servers under control or direction of Cradlepoint or its third party providers. The Service is subject to modification from time to time at Cradlepoint's sole discretion, for any purpose deemed appropriate by Cradlepoint. Cradlepoint will use reasonable efforts to give MSP prior written notice of any material modifications.

#### **5. INTELLECTUAL PROPERTY RIGHTS**



5.1 **Use of Trademarks.** During the term of this Services Agreement, MSP may use the Cradlepoint Marks (as defined in the Trademark Usage Guidelines available at [Cradlepoint.com](http://Cradlepoint.com)) solely in connection with its activities under this Services Agreement and in accordance with the Cradlepoint's trademark policies in effect from time to time. MSP shall not use the Cradlepoint Marks to imply Cradlepoint's endorsement of products, services or materials other than the Service. Cradlepoint may revoke any permission to use Cradlepoint Marks under this Services Agreement at any time, with or without cause.

5.2 **Ownership of Trademarks.** MSP acknowledges and agrees that Cradlepoint owns the Cradlepoint Marks, domain names, and that any and all goodwill derived from the use of such inures solely to the benefit of Cradlepoint. If, at any time, MSP acquires any rights in any Cradlepoint Marks or domain names or apps related to Cradlepoint Marks, MSP hereby assigns and agrees to assign such rights to Cradlepoint, along with any and all associated goodwill, at no cost to Cradlepoint. MSP will, at no time, challenge the validity, ownership, or enforceability of any Cradlepoint Marks, domain names, or apps including, without limitation, using advertising, displaying or applying to register any trademark, trade name, logo or other designation that is similar to or that may be confused with any Cradlepoint Marks.

5.3 **No Registration of Similar Marks.** MSP will not register in any country or jurisdiction, any name, logo, mark, domain name, or app identical to or confusingly similar to the Cradlepoint Marks.

## 6. MSP Data.

6.1 Cradlepoint will be provided and process certain MSP Data of MSP and End Customers (as defined in Section 6.2) related to the administration, operations, support and usage of the Service and Software. MSP hereby represents and warrants that (a) MSP has the right to provide all MSP Data to Cradlepoint; and (b) collection, maintenance, and use of all MSP Data complies with all applicable laws, which may include, without limitation, export, privacy, Gramm-Leach-Bliley Act, and Health Insurance Portability and Accountability Act. In the event Cradlepoint receives any notice or claim that any MSP Data, or activities hereunder with respect to any MSP Data, may infringe or violate rights of a third party or any laws or regulations, Cradlepoint may, but is not required to, suspend or terminate the Services.

6.2 By using or accessing the Service, MSP hereby grants to Cradlepoint a worldwide, royalty-free, non-exclusive, irrevocable, sublicensable right and license to use, copy, display, perform, store, distribute and modify MSP Data as necessary to perform the Service. "MSP Data" means all electronic data and information submitted by MSP, including End Customer Data, for set up and provisioning of the Service for the performance of Integrated Services. MSP Data does not include any Content. "Content" means all information distributed by or on behalf of MSP or End Customer through the Service.

6.3 Notwithstanding anything else in this Services Agreement or otherwise, Cradlepoint may monitor MSP's and any End Customer's use of the Service and Customer Information and in an aggregate and anonymous manner, compile statistical and performance information related to the provision and operation of the Service ("Cradlepoint Data"), and may make such information publicly available, provided that such information does not identify MSP or End Customer or MSP's or End Customer's confidential or personally identifiable information. Cradlepoint shall own all right, title and interest in and to the Cradlepoint Data. To the extent needed to perfect Cradlepoint's ownership in the Cradlepoint Data: (i) MSP hereby irrevocably assigns all right, title and interest in such Cradlepoint Data to Cradlepoint; (ii) MSP hereby covenants and agrees to obtain an enforceable written assignment to Cradlepoint of all right, title and interest in and to Cradlepoint Data from each End Customer.

## 7. INDEMNIFICATION

7.1 As a condition of MSP's and/or its End Customer's use of the Services and with respect to any third-party claims, MSP agrees to indemnify, defend, and hold harmless Cradlepoint, its affiliates, subsidiaries, and its and



their respective officers, directors, employees, agents, contractors, suppliers, successors, and assigns from and against any judgments, claims, actions, losses, damages, liabilities, costs, or expenses (including, but not limited to, reasonable attorneys' fees and legal expenses) of any kind that directly or indirectly arise from or are based upon:

- (a) MSP's and/or one or more of its End Customers or Agents breach of the Services Agreement;
- (b) MSP's and/or its End Customer's or Agents use of the Services, the Integrated Services and/or related products;
- (c) any conduct, activity, error or omission by MSP and/or its End Customer's or Agents including Content transmitted using the Service or on any web site maintained by MSP and/or its End Customers;
- (d) any violation by MSP and/or one or more of its End Customers or Agents, of any law, regulation or rule;
- (e) violation by MSP and/or one or more of its End Customers or Agents of any privacy, employee, or consumer protection right that is implicated herein; or
- (f) MSP's and/or its End Customer's or Agent's infringement, or the infringement or use by any other user of MSP's account, of any intellectual property or other right of any person or entity.

7.2 All indemnification duties in this Addendum shall continue in effect even after, and notwithstanding, any subsequent revocation of consent or the expiration or termination of the Services Agreement or MSP's and/or its End Customer's use of the Services. Cradlepoint may, at its election in its sole discretion, assume the exclusive defense and control of any matter otherwise subject to indemnification by MSP. Cradlepoint may participate in the defense of all claims as to which it does not assume defense and control, and MSP shall not settle any such claim without Cradlepoint's prior written consent.

## 8. WARRANTIES AND DISCLAIMERS

8.1 Notwithstanding any provision hereof, Cradlepoint's sole and exclusive warranty and warranty obligation with respect to the Services licensed hereunder are set forth in the TSLA.

## 9. LIMITATION OF LIABILITY

9.1 Notwithstanding any provision hereof, Cradlepoint's liability under this Addendum is limited as set forth in Section 9 of the TSLA.

## 10. TERM AND TERMINATION

10.1 **Initial Term and Renewal.** The term of this Addendum shall be coterminous with the term in the TSLA and shall terminate in accordance with terms set forth in the TSLA except as express set forth herein.

10.2 **Termination.** MSP may terminate this Addendum upon thirty (30) days written notice to Cradlepoint. Cradlepoint may terminate this Addendum immediately upon written notice to MSP in the event of any material breach of the Services Agreement by MSP and/or its Agents or End Customers.

10.3 **Surviving Terms.** The following Sections of this Addendum will survive termination of the Services Agreement or the Addendum: 1, 3.7, 5.2, 5.3, 6-12, and any other section which by its nature is intended to survive.

10.4 **Disposition of Network Service End Customers.** Upon termination, either for cause or without cause, the MSP will have a thirty (30) day period by which to decommission, migrate or otherwise dispose of End Customer accounts as provided for below, immediately after which such accounts will be suspended by Cradlepoint and rendered unavailable to MSP and End Customers:



- (a) MSP directly, or facilitates the migration of, End Customer accounts to Cradlepoint where they can create their own account and subscribe to similar service plan.
- (b) Migrate End Customers to another partner, provided by or agreed to by Cradlepoint at its sole discretion that provides similar products and services.

**11. PAYMENT OF FEES**

11.1 **Service Fees.** MSP will pay Cradlepoint the fees in accordance with this Services Agreement and as set forth in the applicable order. If not otherwise specified, payments will be due within thirty (30) days of invoice.

**12. MISCELLANEOUS**

12.1 **Publicity.** Neither party shall engage in any publicity regarding this relationship, including by means of press releases, advertising or other means, without the other party's prior written consent. Either party may include the other's name and logo in lists of partners.

12.2 **Entire Agreement.** The Services Agreement represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No amendment or waiver of any provision of this Services Agreement shall be effective unless in writing and signed by the party against whom the amendment or waiver is to be asserted. To the extent of any conflict between the Addendum and the TSLA, the Addendum shall control. In the event of any conflict between this Addendum and any schedules or attachments hereto, the body of this Addendum shall prevail unless expressly stated otherwise. There are no third party beneficiaries to the Services Agreement.

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**SCHEDULE A – PARTNER SUPPORT REQUIREMENTS**

Cradlepoint follows the tradition three-tier model of customer and technical support. The MSP is responsible for providing all support to End Customers. Cradlepoint is responsible for support only to MSP, as set forth below:

	<b>MSP Provides:</b>	<b>Cradlepoint Provides:</b>
	<p>Inform End Customers on system requirements and supported operating systems.</p> <p>Assist with network topology-related issues</p> <p>Instruct End Customers on how to use the Integrated Service</p> <p>Assist End Customers with any configuration or setup required within their host operating systems</p> <p>General troubleshooting</p>	<p>MSP technical training</p> <p>Documentation</p> <p>Online knowledgebase.</p>
	<p>MSP retains primary End Customer interface</p> <p>Records and manages trouble tickets</p> <p>Provides initial problem investigation, data capture and troubleshooting</p> <p>Escalates unresolved trouble tickets related to the Service to Cradlepoint Tier 2 support for resolution</p> <p>Provides End Customer with feedback once the problem has been resolved and the ticket closed</p>	<p>Access to applicable Cradlepoint support services.</p>

