

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND Netsync Network Solutions

This Services Agreement (“Agreement”) is entered into and effective 1/23/2020 (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “A&M System”), an agency of the state of Texas, and Netsync Network Solutions (hereafter referred to as “PROVIDER”). A&M System and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

A&M System and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will work with members of the A&M System (hereafter referred to as “MEMBER”) to provide Cisco Smart Net Total Care services (“Services”) to support network infrastructure items (hardware and software. The Services included (but not limited to) in the scope of this Agreement are listed in Exhibit A, attached hereto.

There shall be no guarantee of MEMBER utilization with this Agreement as MEMBERS may choose their service provider. If selected to provide Services to a specific MEMBER, the MEMBER will formalize their needs with the PROVIDER through a separate agreement or purchase order referencing this Agreement.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin 1/1/2020 and will extend for three (3) years. This Agreement can be extended for one additional two (2) year term upon written agreement of both parties. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the PROVIDER.

3. PAYMENT TERMS

A. A&M System shall not pay any costs or fees as a direct result of this Agreement. For the services rendered under this Agreement, MEMBER shall pay PROVIDER based on Exhibit B – Cost Sheet, attached hereto.

B. Each MEMBER that chooses to utilize the services within this Agreement will be responsible to issue a purchase order or execute their own specific agreement which references this Agreement. Actual payment terms shall be stated within each purchase order or member specific agreement.

4. DEFAULT AND TERMINATION

A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, A&M System may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of A&M System.

- B. A&M System may terminate this Agreement at any time upon thirty (30) days prior notice to PROVIDER.
- C. Termination of this Agreement for either of the reasons stated above shall not terminate any MEMBER specific agreement or Purchase Order. Refer to Section 8.Q for survivability of terms beyond termination of this Agreement.

5. PUBLIC INFORMATION

- A. PROVIDER acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon A&M System’s written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System.
- C. PROVIDER acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the PROVIDER agrees that the agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

6. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to Billy Hamilton, Deputy Chancellor and Chief Financial Officer for A&M System, who shall examine PROVIDER’s claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

7. INSURANCE

Insurance requirements are stated in Exhibit C, attached hereto.

8. MISCELLANEOUS

- A. **Indemnification. PROVIDER agrees to indemnify and hold harmless A&M System from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER’s negligent or willful errors or omissions under this Agreement.**
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of A&M System. A&M System will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe

and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of A&M System relative to conduct on its premises.

- C. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: “Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits A&M System from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- G. **State Auditor’s Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest

benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.
- L. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP found at <https://www.tamus.edu/business/hub-procurement/hub-programs-3/system-offices-hub-program/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.

In the event that you determine you will be using a subcontractor, please contact Mr. Jeff Zimmermann from the A&M System's HUB Program at (979) 458-6410 or jjzimmermann@tamus.edu for assistance in determining available HUB subcontractors and proper completion of the HSP.

- M. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- N. **Loss of Funding.** Performance by A&M System under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, A&M System will issue written notice to PROVIDER and A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M System.
- O. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- P. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- Q. **Survivability.** The PROVIDER'S duties under this Master Agreement and/or MEMBER specific agreement, which impose an obligation after expiration or termination of this

Master Agreement, will survive unless otherwise stated within the MEMBER specific agreement.


- R. **Non-Waiver.** PROVIDER expressly acknowledges that A&M System is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- S. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
- T. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- U. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Purchase Order may be terminated if this certification is or becomes inaccurate.
- V. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- W. **Records Retention.** PROVIDER will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.
- X. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. A&M System and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

A&M System: The Texas A&M University System
 301 Tarrow St., Suite 273

College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
Fax: (979) 458-6250
E-mail: jzimmermann@tamus.edu

PROVIDER: Netsync Network Solutions
2500 West Loop South, Suite 410
Houston, TX 77027
Attn: Legal
Phone: 866-974-5959
Email: legal@netsync.com

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System
By 
Billy Hamilton
Deputy Chancellor & Chief Financial Officer

1/24/20
Date

Vendor Name

By Nicole Nordhogen
Nicole Nordhogen
General Counsel

Digitally signed by Nicole Nordhogen.
DN: cn=Nicole Nordhogen, o=Netsync Network Solutions, ou,
email=nicole@netsyncnetwork.com, c=US
Date: 2020.01.23 18:55:03 -0600

1/23/2020
Date

EXHIBIT A – SCOPE

Scope of Items and Service Levels

Provide Cisco Smart Net Total Care services to support network infrastructure items (hardware and software) as outlined under Cisco's Smart Net Total Care Service and provide additional account management, contract management, advisory, and training services described in this section.

1. Item (Hardware and Software) Scope
2. Service Levels

A variety of service response times are used by MEMBERS.

PROVIDER must work with the MEMBER directly to determine (1) the item (hardware and software) to be covered by Smart Net Total Care Service and (2) the appropriate service response time for each item (hardware and software) type.

Service response times include:

- a. Two hours
- b. Four hours
- c. Same business day
- d. Next business day
- e. Three to five business days
- f. Ten days
- g. Spares onsite only

Account Management Services

PROVIDER will provide a dedicated and responsive account management team that are adaptive in addressing the evolving needs of each MEMBER.

PROVIDER will provide MEMBER the following account management services:

1. Dedicated account team:
 - a. Dedicated Account Manager
 - b. Dedicated Cisco Smart Net Specialist(s)
 - c. Prioritized list of account team members who will be contacted in the event of an outage
2. Account services including:
 - a. Contract management, renewals, and migrations
 - b. Issue tracking and resolutions
 - c. Contract expiration alerts at 90 days prior to the expiration, with follow-ups 60 and 30 days prior to contract expiration. The 30-day notice ideally contains a calendar invitation tied to the renewal date.
 - d. Additional reporting as requested
3. A secure portal listing items (hardware and software) and Smart Net Total Care Service information about each item. The portal may be a custom solution provided by the firm or the firm may use the Cisco portal. If the firm develops a custom portal, it should present at least the same items as are presented in the Cisco portal.

Contract Management Services

PROVIDER will provide MEMBER the following contract management services:

1. Ensure the MEMBER retains ownership of all contract numbers in relationship to the Cisco Support Portals. If there are requirements or instances where this is not possible, the PROVIDER will provide a single point of contact for resolution.
2. Provide clear written instructions for adding current items (hardware and software) to the service agreement, including detailed quotes and pro-rating information as applicable.
 - a. Items (hardware and software) could have been purchased from a firm other than PROVIDER.
 - b. Items (hardware and software) may be reaching the end of its first year of included Smart Net Total Care service.
3. Provide clear written instructions for adding new items (hardware and software), including detailed quotes and pro-rating information as applicable.
4. Provide clear written instructions for removing items (hardware and software) from the service agreement, including detailed prorating, credit, and refund instructions as applicable.
5. Provide clear written instructions for MEMBER notification procedures to be followed when an addition, a credit, or a refund occur. Procedures must include notifying all entities involved of the new costs of any additions as well as notifying all entities involved of the process and status for any credit or refund for removal of items.
6. Provide an annual report of all items (hardware and software) covered by Smart Net Total Care service. The following information should be provided for each item (hardware or software):
 - a. Product Number
 - b. Date for EOL
 - c. Date for End of Support
 - d. Last date to purchase support
 - e. PAK/Serial Number
 - f. Subscription/Service Level
 - g. Subscription/Service Description or type
 - h. Start Date
 - i. End Date
 - j. Termination Date
 - k. Contract Line Status
7. Conduct annual inventory “true up” meetings to review items (hardware and software). The following minimum items will be discussed:
 - a. Identify items (hardware or software) that need to be added to the service agreement. Items should be added to the service agreement and be covered by Smart Net Total Care service within 15 business days of the meeting. These items include:
 - i. Any non-covered items (hardware or software) including items purchased outside of the service agreement.
 - ii. Items whose Smart Net Total Care service has lapsed for any reason.
 - iii. Items whose first year of Smart Net Total Care service is ending.
 - b. Identify items (hardware or software) that need to be removed from the service agreement. Items should be removed within 15 business days of the meeting.

- c. Meeting minutes will be provided within five days of the meeting. Minutes should include the following:
 - i. Actions to be taken by service provider.
 - ii. Actions to be taken by the MEMBER.
 - iii. Timeline estimates for all additions, removals, refunds, and any other “true up” activities.

Technical Support Services

PROVIDER will be required to verify all existing MEMBER Cisco Smart Net Total Care Service contracts and confirm Cisco Smart Net contract numbers, contract levels, expirations dates, serial numbers, end of support dates, and product location to ensure Smart Net coverage is up to date and accurate.

Additional technical support services to be provided by PROVIDER include:

1. Assign at least one dedicated Smart Net specialist to each MEMBER to serve as a subject matter expert for all Smart Net questions and requirements.
2. Ensure all hardware, software, and licenses are covered with correct service levels.
3. Change serial numbers on hardware, software, and licenses covered during the contract period when needed (e.g., Return Merchandise Authorization (RMA) hardware, software or licenses).
4. Provide the MEMBER with access to Cisco’s Technical Knowledge Library (TKL) for the duration of the Smart Net contract.

Advisory Services

PROVIDER must provide advisory services to help MEMBER meet specific business outcomes and compliance needs. These services include:

1. Strategic planning for network extensions and implementations, emphasizing the lifespan of the item (hardware and software).
2. Optimization services to ensure items (hardware and software) are being used effectively.

EXHIBIT B – COST SHEET

The following discounts shall apply based on a MEMBERs annual net amount.

- Any Member with Annual Smart Net Contract of \$49,999 or less will receive 34% off list price and 1 TKL license.
- Any Member with Annual Smart Net Contract of \$50,000 - \$99,999 will receive 36% off list price and 1 TKL license.
- Any Member with Annual Smart Net Contract of 100,000 to \$199,999 will receive 37% off list price, 1 TKL license, and \$3,500 in Cisco Learning Credits.
- Any Member with Annual Smart Net Contract over \$200,000 will receive 37% off list price, 1 TKL license, and \$7,000 in Cisco Learning Credits.
- Any Member that does not use the TKL license or Cisco Learning Credits will receive 40% off list price.

Additionally, the first two members that select Netsync for their Cisco Smart Net Total Care renewal will receive a cybersecurity threat assessment at zero cost. This will include:

Cybersecurity Risk Assessment:

- Internal Vulnerability Assessment for 510 hosts.
- External Risk Profile Assessment and Risk Score.
- Phishing Campaign to evaluate the security awareness of personnel.

EXHIBIT C – INSURANCE

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

Insurance:

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker’s Compensation</u>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit

Workers’ Compensation policy must include under Item 3.A. on the information page of the workers’ compensation policy the state in which work is to be performed for A&M System. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted

B. **Automobile Liability**

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

Additional Endorsements

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured’s.

C. **Commercial General Liability**

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000

Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures PROVIDER's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement

D. PROVIDER will deliver to A&M System:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by PROVIDER under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section 11.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by PROVIDER under this Agreement. PROVIDER is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be emailed to the following A&M System contact in SOProurement@tamus.edu.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by A&M System in writing, except as may be noted.