

UNIVERSITY OF KENTUCKY

Purchasing Division

NOTICE OF AWARD OF PRICE CONTRACT

Cisco Systems, Inc.
170 Tasman Drive
San Jose, CA 95134

REPRESENTATIVE: Mimi Farr
FED. EMPLOYER ID NO.: 77-0059951
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PHONE: 859-421-0100
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PRICE CONTRACT NO.:	UK-1704-17	TERMS:	Net 30
CONTRACT TERM FROM:	02.08.2018	DELIVERY:	As requested
TO:	11.11.2018	RFP/IFB NO.:	UK-1704-17
RENEWAL OPTION THRU:	2024	DEPARTMENT(S):	IT
COMMODITY/SERVICES:	Networking Products & Services	DATE:	02.07.2018

The Contractor is hereby awarded this Price Contract to furnish the products or services listed as required by the University of Kentucky during the contract term indicated above. SHIPMENTS ARE TO BE MADE ONLY UPON RECEIPT OF OFFICIAL NOTIFICATION. The Price Contract incorporates the University of Kentucky's General Terms and Conditions, and all Special Conditions identified in the bid/proposal referenced above.

Pursuant to the Kentucky Model Procurement Code (Code), and the Government Contract Review Committee (GCRC) of the Kentucky General Assembly, a Personal Service Contract must be completed in conjunction with this Notice of Award of Price Contract. The Initial term of the Personal Service Contract shall be for the remaining bi-annum, June 30, 2016. The contract shall be effective as soon as the Personal Service Agreement is reported to the GCRC.

DESCRIPTION

This document establishes a contract between the University of Kentucky (University) and Cisco (Contractor) to provide **Networking Products & Services** as described in the Request for Proposal UK-1704-17.

For Purposes of this Award, the contract documents shall consist of the following components:

- A. Notice of Award Price Contract
- B. Written Questions & Answers dated 8/2/16
- C. University of Kentucky Request for Proposal UK-1704-17 issued 7/14/16
- D. Cisco Technical response to UK-1704-17 dated 8/23/16
- E. Cisco Financial response to UK-1704-17 dated 8/23/16

In the event that any provision of the component parts of the Contract conflicts with any provision of any other component parts, the component part first enumerated shall govern.

Contract Term

This contract shall be effective for 2 years from date of Contract, and is renewable for up to three (3) additional two-year renewal periods. The total contract period will not exceed eight (8) years. Annual renewal shall be contingent upon the University's satisfaction with the services performed.


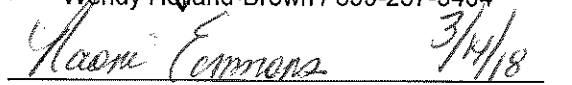
Financials

Financial Response attached

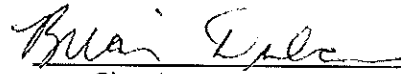
Attachment E

Agreed exceptions attached.

OFFICIAL APPROVAL
UNIVERSITY OF KENTUCKY


Wendy Holland-Brown / 859-257-5404
 3/14/18
Director/Associate Director Date

OFFICIAL SIGNATURE
CISCO SYSTEMS, INC.

 February 14, 2018
Signature Date
Brian Dulac
Director, Finance

Typed or Printed Name, Title

APPROVED BY LEGAL

Attachment E:

RFP Section 6.10. Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act. Cisco respectfully requests certain changes as reflected below in Section 33 of the General Terms and Conditions.

RFP Section 6.12. Termination for Non-Performance. Cisco respectfully requests certain changes as reflected below in Section 8 of the General Terms and Conditions.

RFP Section 6.15. Assignment. Cisco respectfully requests certain changes as reflected below in Section 11 of the General Terms and Conditions.

RFP Section 6.16. Permits, Licenses, Taxes and Commonwealth Registration. Cisco respectfully requests certain changes as reflected below in Section 14 of the General Terms and Conditions.

RFP Section 6.17. Attorneys' Fees. Cisco respectfully requests certain changes as reflected below in Section 9 of the General Terms and Conditions.

RFP Section 6.18. Patent, Copyrights and Trademarks. Cisco respectfully requests certain changes as reflected below in Section 15 of the General Terms and Conditions.

RFP Section 6.19. Indemnification. Cisco respectfully requests certain changes as reflected below in Section 5 of the General Terms and Conditions.

RFP Section 6.20. Insurance. Cisco respectfully requests certain changes as reflected below in Section 6 of the General Terms and Conditions.

RFP Section 6.23. Reports and Auditing. Cisco respectfully requests certain changes as reflected below in Section 18 of the General Terms and Conditions.

RFP Section 6.24. Confidentiality. Cisco respectfully requests certain changes as reflected below in Section 17 of the General Terms and Conditions.

RFP Section 6.27. Personal Service Contract Policies. Cisco respectfully clarifies that Cisco does not have hourly rates for our professional services. Any fulfillment partners that act as services subcontractors will determine their own hourly rates, as applicable.

RFP Section 6.28. Copyright Ownership and Title to Designs and Copy. Cisco respectfully requests deletion of this section as noted below in Cisco's comments regarding Section 16 of the General Terms and Conditions.

RFP Section 6.31. Damaged or Inferior Material. Cisco respectfully takes exception to this section. Any damages to Products will be addressed with the Return Materials Authorization (RMA) process described Attachment C and warranty provisions included in Attachment B.

Cisco respectfully requests the following changes to the **General Terms and Conditions** as noted below:

5. Indemnification:

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

The foregoing indemnification obligations are conditioned upon the University notifying Cisco in writing in a timely manner that does not prejudice Cisco of the claim suit or proceeding for which Cisco is obligated under this Section, cooperating with, assisting and providing information to Cisco as reasonably required, and granting Cisco the exclusive right to defend or settle such claim, suit or proceeding. This clause shall survive the termination of any contract for as long as necessary to protect the University.

6. Insurance:

The successful Contractor shall procure and maintain, at its expense, the following insurance coverages. These insurance policies must be with insurers that are licensed to sell insurance in the State of Kentucky. Insurance requirements may be modified in the Special Conditions of any solicitation document. In such cases, the insurance requirements of the Special Conditions shall prevail.

COVERAGES

Workers' Compensation Employer's Liability

Commercial General Liability, including operations/ completed operations, products, and contractual liability (including defense and investigation costs) including this contract.

Business Automobile Liability, covering owned, leased, or non-owned autos

LIMITS

Statutory Requirements (Kentucky)

\$500,000/\$500,000/\$500,000

**\$1,000,000 each occurrence
(BI & PD combined) \$2,000,000 Products and Completed Operations Aggregate and
\$2,000,000 general aggregate**

\$1,000,000 each occurrence (BI & PD combined) and \$1,000,000 aggregate

The successful Contractor agrees to furnish Certificates of Insurance for the above described coverage's and limits to the University of Kentucky Division of Purchasing. The University, its trustees and employees must be included as Additional Insured on the Commercial General Liability policy for liabilities falling within contractor's indemnity obligations under this contract that are otherwise covered by such insurance.. Any deductibles or self-insured retention in the above-described policies must be paid and are the sole responsibility of the Contractor. Coverage is to be primary and non-contributory with other coverage, if any, purchased by the University. All of these required policies must include a Waiver of Subrogation, except Workers' Compensation, in favor of the University, its trustees and employees.

7. Termination for Convenience

The University reserves the right to terminate any contract at any time, in whole or in part, by thirty (30) day written notice to Contractor. Contractor may terminate the Contract at any time, in whole or in part, by giving ninety (90) day written notice to the University. Upon receipt of the "notice of termination" by a party, the Contractor shall discontinue all services with respect to the applicable contract. The University, after deducting any amount(s) previously paid, shall pay for all services rendered or goods supplied by the Contractor, as well as any reasonable costs incurred by Contractor up to the time of termination but not including Contractor's loss of profit. The cost of any agreed upon services provided by the Contractor will be calculated at the agreed upon rate prior to "notice of termination" and a fixed fee contract will be pro-rated (as appropriate).

8. Termination for Non-performance

Default

The University may terminate the resulting contract for non-performance, as determined by the University, for such causes as:

- Failing to provide satisfactory quality of service, including, failure to maintain adequate personnel, whether arising from labor disputes, or otherwise any substantial change in ownership or proprietorship of the Contractor, which in the opinion of the University is not in its best interest, or failure to comply with the terms of this contract;
- Failing to keep or perform, or violation of, any of the covenants, conditions, provisions or agreements herein contained;
- Adjudicating as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time, or under any similar law or statute of the United States or any state thereof, or if an order for relief shall be entered against the Contractor in any proceeding filed by or against contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the Contractor, the fact of such an involuntary petition being filed shall not be considered an event of default until sixty (60) days after filing of said petition in order that Contractor might during that sixty (60) day period have the opportunity to seek dismissal of the involuntary petition or otherwise cure said potential default; or

Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Contractor.

Demand for Assurances

In the event the University has reason to believe Contractor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Contractor will be able to perform all obligations under the Contract. If Contractor is unable to provide such adequate assurances, then such failure shall be an event of default and grounds for termination of the Contract.

Notification

The University will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to the University's satisfaction within ten (10) calendar days, the University may terminate the contract by giving forty-five (45) days notice, by registered or certified mail, of its intent to cancel this contract.

9. Attorney's Fees:

In the event that either party deems it necessary to take legal action to enforce any provision of the contract, the parties agree that they shall be responsible for their respective expenses in any such action, including attorney's fees and costs at all stages of litigation.

11. Assignment and Subcontracting:

The Contractor(s) may not assign or delegate its rights and obligations under any contract in whole or in part without the prior written consent of the University, which shall not be unreasonably withheld or delayed. Any attempted assignment or subcontracting shall be void, except Contractor may assign rights to money due to a financing entity or bank. Notwithstanding the foregoing, Contractor may, with prior written consent from Participating States, which consent shall not be unreasonably withheld, enter into subcontracts with third parties as "Fulfillment Partners." Fulfillment Partners are Subcontractors who may provide products and services under the Contract at the price discounts established in the Contract and bill Purchasers directly for such products and services.

12. Contractor's Responsibility in Performing Work:

The Contractor is solely responsible for the fulfillment of the contract with the University.

Contractor and its agents, subcontractors, and representatives shall be independent contractors and not act as agents of the University. All persons furnished or retained by Contractor in connection with any contract shall be considered employees or agents of the Contractor.

Contractor shall control all employee misconduct while on the University's premises. Any employee under the influence of alcohol or controlled substances, other than prescription medications, shall not be allowed on the premises of the University and shall be permanently dismissed from the University site if found to be so. Further, offensive language, sexual or other types of harassment of students, employees or visitors to the University campus could result in immediate and permanent dismissal of the offending person(s) from the University site.

Contractor shall comply with the University's tobacco-free policy. This policy prohibits the use of tobacco in or around its facilities including UK HealthCare. Additional information on this policy is available at: <http://www.uky.edu/TobaccoFree/>.

Contractor shall ensure that employees abide by any applicable University policies and regulations concerning behavior/conduct provided that Contractor and its employees and/or

affiliates shall be given a sixty (60) day grace period following implementation of any new University policies and regulations.

14. Permits, Licenses and Taxes:

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state, and local governments in which work under this contract is performed. All stated prices are exclusive of any taxes, fees and duties or other amounts, however designated, and including without limitation value-added and withholding taxes, which are levied or based on such charges, or upon this Agreement. Purchaser will pay

sales and use taxes, if any, imposed on the Products and Services acquired under this contract or furnish proof of its tax-exempt status upon request. Contractor will pay all other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. In the event that the Purchaser is exempt from property and sales taxes, it will not be charged the same.

15. Royalties, Patents, Copyrights and Trademarks:

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

Contractor's obligations to defend the IPR Claim and indemnify the Purchaser are conditional upon:

15.1.1 Purchaser notifying Contractor promptly in writing of the IPR Claim or threat thereof;

15.1.2 Purchaser giving Contractor full and exclusive authority for the conduct of the defense and settlement of the IPR Claim and any subsequent appeal; and

15.1.3 Purchaser giving Contractor all information and assistance reasonably requested by Contractor in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.

15.2 For the purposes of this Master Agreement, "Third Party IPR" means a United States copyright existing as at the date of order or a United States patent issued as at the date of order.

15.3 If an IPR Claim has been made, or in Contractor's reasonable opinion is likely to be commenced, Purchaser agrees to permit Contractor, at its option and expense, either to: (a) procure for Purchaser the right to continue using the product; (b) replace or modify the product so that it becomes non-infringing; or (c) immediately terminate both parties' respective rights and obligations under this Master Agreement with regard to the product, in which case

Purchaser will return the product to Contractor and Contractor will refund to Purchaser the price originally paid by Purchaser to Contractor for the product, as depreciated or amortized by an equal annual amount over three (3) years from date of original shipment.

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

15.4.1 the combination, operation, or use of a product supplied under this Master Agreement with any product, device, or software not supplied by Contractor; a Claim that asserts damages based upon the amount or duration of use which Purchaser makes of the product, revenue earned

by Purchaser from services it provides which utilize the product, or services offered by Purchaser to external or internal customers;

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

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

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

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

17. Proprietary Information, Data Duplication, and Disclosure:

Contractor agrees that any information disclosed from the University to the Contractor for the purpose of any contract shall be used only in the performance of the contract. Contractor will keep information confidential, will not disclose it to any third party except as authorized by the Owner, and will only disclose it to those within its organization or subcontractors who need to use it in performance of the Contract. Upon completion or termination of this contract, Contractor shall return all such information to the University or make such other disposition thereof as may be directed or approved by the University.

Upon completion or termination of this contract, Contractor shall return all items, tools, plans, designs or specifications to the University or make such other disposition thereof as may be directed by or approved by the University.

Contractor agrees that it will not, without prior written approval of the University, publicize this contract or disclose, confirm or deny any details thereof to third parties, or use the University's name in connection with Contractor's sales promotion or publicity without prior written approval of the University.

Nothing in this provision shall restrict Contractor's right to use or disclose any information which is or becomes generally known to the public without breach of this provision by Contractor, or is rightfully obtained without restriction from other sources.

The University acknowledges that, in connection with the contract and its relationship with Contractor, it may obtain information relating to the Products or Services or to Contractor that is

of a confidential and proprietary nature (“Confidential Information”). Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, customer lists, financial information, and sales and marketing plans or information that the University knows or has reasons to know is confidential, proprietary or trade secret information of Contractor. University shall at all times, both during the term of the contractor and for a period of three (3) years after its termination, keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by Contractor under this contract, nor shall University disclose any such Confidential information to third parties without Contractors’ written consent. University further agrees to immediately return to Contractor all Confidential Information (including copies thereof) in University’s possession, custody or control upon termination of this agreement at any time and for any reason. The obligations of confidentiality shall not apply to information that (a) has entered the public domain, except where such entry is the result of the University’s breach of the contract; (b) prior to disclosure hereunder was already rightfully in the University’s possession; or (c) subsequent to disclosure hereunder is obtained by the University on a non-confidential basis from a third party who has the right to disclose such information to the University.

18. Contractor’s Responsibility for Records, Audits and Reports:

Contractor shall retain all records and documents and shall provide unlimited access, at all reasonable times and upon reasonable notice, to all accounting records and supporting documentation necessary to properly account for payments made for relating to the goods and services furnished under the contract and for a period of five (5) years thereafter, unless required to be retained for a longer period by state or federal statute. The University reserves the right to audit such records and employ any auditor the University deems appropriate to perform an audit of Contractor’s records. Such access will be a) with at least ten (10) business days advance written notice, b) during normal business hours, c) shall not unduly interrupt or interfere with Contractor’s normal business operations, and d) in the event that such audit is conducted by a third party, such third party shall, prior to conducting such audit, execute a confidentiality agreement for the benefit of Contractor in a form reasonably satisfactory to Contractor. Should such audit disclose incorrect billings or improprieties, the University reserves the right to charge the Contractor for the cost of the audit and pursue appropriate reimbursement.

Contractor will be responsible for providing line item usage reports based on Contractor’s then-current sales reporting template to the UK Purchasing Division on a quarterly basis, which shall be due within sixty (60) days after each calendar year quarter. The Purchasing Division reserves the right to request other pertinent one-off reports, provided, however, that such requests do not exceed once per calendar year during the contract term and subject to Contractor’s agreement on the requested report’s content and a reasonable due date.

24. General Warranties:

Contractor warrants that all goods shall conform to the standard manufacturer warranty as set forth in Attachment B. Contractor further warrants that all services shall be performed in a professional and workmanlike manner. These warranties shall remain in effect for the duration

of Contractor's standard warranty period. The foregoing warranties are in addition to, and shall not limit, any other warranties or buyer protections that exist by operation of law.

25. Price Warranty:

If general market prices decrease for Products and Services available for sale under the contract, Contractor will use commercially reasonable efforts to decrease the costs in accordance with the price list update process agreed between the parties.

26. Final Inspection and Acceptance:

Products are deemed accepted upon receipt by the customer. All sales are final.

27. Delivery, Transportation and Packaging:

The Contractor covenants that, if awarded a contract, the Contractor shall:

Adequately pack all commodities and equipment according to accepted commercial practice and according to the packing and marking instructions stated in the contract documents or purchase order.

Make deliveries as stated in the contract; Contractor will make commercially reasonable efforts to have deliveries made by the end of the University's fiscal year in which the contract is awarded unless otherwise specified in a specific contract. However, the parties agree that lead times may vary. Upon request by University, Contractor will notify University whether a particular purchase order will be delivered before the end of the University's fiscal year.

Make deliveries during normal working day hours to the point or points specified in the contract documents or purchase order unless otherwise noted.

28. Price Redetermination

Contractor agrees to hold firm the discount percentages as provided in Criteria 3 Attachment. Notwithstanding the foregoing, list /MSRP price adjustments will be considered and any proposed price increase must be proven to be general throughout the industry. Requests for price increases must be accompanied by sufficient documentation to justify the request including, for example, certified letters from a manufacturer or published price indices such as the Producer Price Index that substantiate a price increase.

The University Contracting Officer must agree to and approve any proposed price adjustment before its effective date. The adjusted price(s) become effective starting with the term beginning after the approval and shall be firm and fixed for the next contract term.

29. Procurement Card

The University utilizes a procurement card program as the preferred method of payment. Payments may be made via the University's procurement card to Fulfillment Partners under this contract. No additional charges may be added for acceptance of the procurement card.

31. University of Kentucky HealthCare Enterprise

The University of Kentucky includes a clinical enterprise, UK HealthCare, which consists of the Colleges of Medicine, Dentistry, Pharmacy, Nursing, Health Sciences and Public Health, the University Hospital Ambulatory Surgery Center, a multi-site physician group practice known as the Kentucky Clinic, and such other facilities as may be added from time to time which provide education, research, and an array of clinical programs. When providing goods or services to the UK HealthCare enterprise, the Contractor understands and agrees to abide by any and all applicable regulatory requirements unique to a clinical enterprise including, but not limited to, the following:

The Contractor represents and warrants that UK HealthCare operates in accordance with a corporate compliance program and the Contractor agrees to adhere to the UK HealthCare compliance standards to the extent that such compliance standards are applicable to Contractor's role as a supplier of Products and Services. Contractor acknowledges that any violation of the compliance plan can, at the sole discretion of the University, result in the immediate termination of this contract upon written notice to the Contractor. The Contractor recognizes that it is under an affirmative obligation to immediately report to UK HealthCare's Corporate Compliance Officer any actions by an agent or employee of UK HealthCare which Contractor believes, in good faith, violates any ethical, professional or legal standard.

Contractor will be required to comply with the Health Insurance Portability Accountability Act of 1996 (HIPAA). As a precondition of entering into a contract with the University, the Contractor will be required to complete a Business Associate Agreement for the purpose of complying with the Administrative Simplification provisions of HIPAA and regulations issued pursuant thereto.

Contractor shall comply with any and all applicable accreditation standards promulgated by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), or such other accrediting organization as UK HealthCare is applicable, as the same now exist or are subsequently promulgated and said standards are hereby incorporated by reference.

In the event that the Contractor provides any patient care services as part of its duties under the contract, Contractor shall require any employee or subcontractor to meet and maintain any credentialing standards determined by UK HealthCare in its reasonable discretion to be applicable.

In the event that Contractor provides any patient care services as part of its duties under the contract, Contractor shall maintain professional liability insurance in a minimum amount of \$1,000,000 per person and \$3,000,000 per occurrence on its employees providing said services and require any subcontractor providing said services to maintain such coverage.

Additional Terms and Conditions

Cisco respectfully requests the following additional be added to the contract:

Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF CONTRACTOR AND ITS SUBCONTRACTORS FOR CLAIMS ARISING UNDER THIS CONTRACT OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID TO CONTRACTOR UNDER THIS CONTRACT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

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

Force Majeure. Neither party to contract shall be held responsible for delay or default caused by including, but not limited to, fire, riot, acts of God and/or war which is beyond that party's reasonable control. The obligations and rights of the excused party shall be extended on a day-by-day basis for the time period equal to the period of the excusable delay. When payments are delayed solely due to a force majeure event, late fees with respect to such payment will not accrue during the period of such force majeure event.

Severability. In the event that one or more terms of the contract becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such term shall be null and void and shall be deemed deleted from the contract. All remaining terms of the contract shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of the contract is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate the contract by written notice with immediate effect to the other.

Payment. Upon and subject to credit approval by Contractor, payment is net thirty (30) days from invoice date. Invoices for products ordered without implementation services shall be rendered by Contractor on or after the date of delivery of such products to the Purchaser. If, at any time, Purchaser is delinquent in payment, or is otherwise in breach of this contract, Contractor may, without prejudice to other rights, withhold shipment (including partial shipments) of any order or require Purchaser to prepay for further shipments. Any sum not paid by Purchaser when due shall bear interest until paid at a rate of 1 percent per month (12 percent per annum) or the maximum legal rate, whichever is less. Purchaser grants Contractor a security interest in products purchased under this contract to secure payment for those products purchased which security interest shall expire upon full payment in accordance with the terms. If requested

by Contractor, Purchaser agrees to execute financing statements to perfect this security interest. Lease financing is an allowable payment option under the resulting contract. The terms and conditions of the capital lease financing arrangement with Cisco Capital, or its designated and/or approved financing partner, will be set forth between the purchaser and Cisco Capital or its designated and/or approved financing partner.

Orders. 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.

Any contingencies on Purchaser's Purchase Orders are not binding upon Contractor. The terms and conditions of the contract prevail, regardless of any additional or conflicting terms on the Purchase Order, or other correspondence from Purchaser to Contractor and any additional or conflicting terms are deemed rejected by Contractor unless Contractor has expressly agreed to such terms in writing. Mere acceptance or processing of a Purchase Order, Order, or Order Document containing such terms shall not constitute such express consent.

All Purchase Orders are subject to Contractor's reasonable acceptance (including performing any related credit checks). Contractor shall use commercially reasonable efforts to accept or reject orders in writing within ten (10) days from receipt, or within three (3) business days, if orders are placed electronically.

Purchaser may defer product shipment up to thirty (30) days from the originally scheduled shipping date, provided written notice is received by Contractor at least ten (10) days before the originally scheduled shipping date. Cancelled orders, rescheduled deliveries, or product configuration changes made by Purchaser less than ten (10) days before the original shipping date are subject to Contractor's acceptance and a charge of fifteen percent (15%) of the total invoice amount relating to the affected Product(s). Contractor reserves the right to reschedule delivery due to configuration changes made within ten (10) days of scheduled shipment. No cancellation shall be accepted by Contractor where products are purchased with implementation services, including but not limited to design, customization, or installation services, except as may be set forth in the agreement or Statement of Work under which the services are to be rendered. Notwithstanding anything to the contrary, if Contractor is delayed in shipping the product for thirty (30) days or more from the original shipping date, the Customer may cancel the order without charge.

Purchaser may place Purchase Orders for the various services offered by Contractor. The provision of any such services, if accepted by Contractor, shall be subject to the terms and conditions set forth in this Agreement, including the Master Services Agreement attached hereto, as well as the then-current terms of service offerings set forth on Contractor's website at

<http://www.cisco.com/legal/services.html>. Contractor reserves the right to subcontract services to a third party maintenance organization to provision services for Purchaser.

Contractor shall employ commercially reasonable efforts to announce, including by electronic posting, product discontinuance or changes other than those set forth in the previous sentence in accordance with Contractor's End-of-Life Policy, which is found at the following URL:
<http://www.cisco.com/c/en/us/products/eos-eol-policy.html>.

Purchaser may make a last-time purchase of such products as set forth in such policy.

Rights upon Termination or Expiration. Upon termination or expiration of this Master Agreement or a Participating Addendum, (a) Contractor reserves the right to cease all further delivery of product or services, and (b) all outstanding invoices become due and payable within thirty (30) days of termination. If Contractor agrees to complete delivery of any further products or services due against any existing accepted Purchase Orders, then Customer shall pay for such products or services in advance within thirty (30) days.

Except for a termination of the contract resulting from Customer's breach of Contractor's proprietary rights and software licensing, Confidential Information, or Export, Re-Export, Transfer and Use Controls, upon termination or expiration of this contract, Customer may continue to use, in accordance with the terms and conditions of this contract and/or the Participating Addendum, products provided to it by Contractor prior to the date of termination or expiration provided (1) payment has been made in full for such products and (2) license rights allow for such continued use.

In the event of any termination pursuant to this section, and unless otherwise required by law or court of competent jurisdiction, Customer shall remain obligated to comply in perpetuity with the provisions of Contractor's Software License terms, and Confidential Information.

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Customer Records. Customer grants to Contractor and its independent accountants the right once a year to examine Customer's books, records, and accounts during Customer's normal business hours to verify compliance with this license. In the event such audit discloses non-compliance with this license, Customer shall promptly pay to Contractor the appropriate license fees, plus the reasonable cost of conducting the audit. In all other circumstances, the audit fees shall be paid by Contractor.

Warranty. All products are sold with Contractor's standard limited warranty listed below:

X.1 **Hardware.** Contractor warrants that from the date of shipment by Contractor to Customer, and continuing for a period of the longer of (a) ninety (90) days or (b) the period set forth in the Warranty Card accompanying the product, the Hardware will be free from defects in material and workmanship, under normal use. This limited warranty extends only to the original user of the product. Customer's sole and exclusive remedy and the entire liability of Contractor and its suppliers under this limited warranty will be, at Contractor's or its service center's option, shipment of a replacement within the period and according to the replacement process described in the Warranty Card, or a refund of the purchase price, if the Hardware is returned to the party supplying it to Customer, if different than Contractor, freight and insurance prepaid. Contractor replacement parts, used in Hardware repair, may be new or equivalent to new. Contractor's obligations hereunder are conditioned upon the return of affected products, in accordance with Contractor's then-current Return Material Authorization (RMA) procedures.

X.2 **Software.** Contractor warrants that from the date of delivery by Contractor to Customer (but in case of resale by a Contractor reseller, commencing not more than ninety (90) days after original shipment by Contractor), and continuing for a period of the longer of (a) ninety (90) days or (b) the period set forth in the Warranty Card accompanying the product (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship, under normal use; and (b) the Software substantially conforms to its published specifications. The date of shipment of a product by Contractor is set forth on the packaging material in which the product is shipped. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Contractor and its suppliers under this limited warranty will be, at Contractor or its service center's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to Customer, if different than Contractor. In no event does Contractor warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the Software or any equipment, system, or network on which the Software is used will be free of vulnerability to intrusion or attack.

X.3 Restrictions. This warranty does not apply if the product (a) has been altered, except by Contractor, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is sold or, in the case of Software, licensed, for beta, evaluation, testing, or demonstration purposes for which Contractor does not receive a payment of purchase price or license fee.

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