



## Attachment E. Cisco's Exceptions and Proposed Changes

Cisco respectfully respects the following changes to the **RFP Special Conditions** as noted below:

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.

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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 respects the following changes to the **General Terms and Conditions** as noted below:

#### 5. Indemnification:

The Contractor shall indemnify, hold ~~and save~~ harmless the University, its affiliates and subsidiaries and their officers, agents, and employees from losses, claims, suits, actions, expenses, damages, costs (including reasonable attorney fees of attorneys of the University's choice and court costs) expenses, all liability of any nature or kind arising out of or relating to the Contractor's performance hereunder a claim, suit or proceeding brought by a third party based upon bodily injury (including death) or damage to tangible personal property (not including lost or damaged data ) arising from the negligent or intentional acts or omissions of Contractor or its subcontractors, or the officers, directors, employees, successors and assigns of any of them. In the event that the University's or a third party's negligent or intentional acts or omissions contributed to cause the injury or damages for which a claim of Indemnity is being asserted against Contractor hereunder, the damages and expenses (including, without limitation, reasonable attorneys' fees) shall be allocated or reallocated, as the case may be, between the University, Contractor and any other party or the officers, directors, employees, agents, successors and assigns of any of them, and the liability of contractor shall be proportionately reduced. The foregoing indemnification obligations are conditioned upon the University promptly notifying Contractor in writing of the claim, suit or proceeding for which Contractor is obligated under this Section, cooperating with, assisting and providing information to Contractor 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.

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## 6. Insurance:

The successful Contractor shall procure and maintain, at its expense, the following minimum insurance coverages insuring all services, work activities and contractual obligations undertaken in this contract. These insurance policies must be with insurers that are licensed to sell insurance in the State of Kentucky and that have an AM Best's rating of at least A-VII-acceptable to the University. 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.

**Commented [A1]:** First, we cannot use terms like "minimum" or "not less than".

Second, the required insurance does not cover all risks undertaken in this contract. For example, you are not requiring E&O insurance. Also, the listed insurance does not cover IP infringement risk.

**Commented [A2]:** We do not give approval/consent rights to customers and clients.

### COVERAGES

### LIMITS

#### Workers' Compensation Employer's Liability Statutory Requirements (Kentucky)

Commercial General Liability, including operations/ completed operations, products, and contractual liability (including defense and investigation costs) including this contract.	\$500,000/\$500,000/\$500,000 \$1,000,000 each occurrence (BI & PD combined) \$2,000,000 Products and Completed Operations Aggregate <u>and \$2,000,000 general aggregate</u>
Business Automobile Liability, covering owned, leased, or non-owned autos	\$1,000,000 each occurrence (BI & PD combined) <u>and \$1,000,000 aggregate</u>

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, with regards to the scope of this RFP/contract. 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.

**Commented [A3]:** Our CGL policy has a "blanket" additional insured endorsement. So, UK will not be added by name by specific endorsement to the policy, but will be included automatically as an additional insured by operation of this contract.

## 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 by the Contractor of the "notice of termination" by a party, the Contractor shall discontinue all

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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, ~~within the time period set forth herein~~, 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 ~~timely~~ 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.

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## 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, ~~and in the event the University prevails, the non-prevailing Contractor agrees party~~ to pay all reasonable expenses of such action, including attorney's fees and costs at all stages of litigation.

## 10. Compensable Damages for Breach:

~~The Contractor agrees that the following items shall be included as compensable damages for any breach of a contract with the University.~~

- ~~• Replacement costs.~~
- ~~• Cost of repeating the competitive bidding procedure expenses.~~
- ~~• Expenses incurred as the result of delay in obtaining replacements.~~

~~The enumeration of compensable damage contained in this section is not intended to be exclusive and will not operate to bar recovery by the University for any other damages occasioned by the Contractor's breach of a contract. However, in cases where contract provides for liquidated damages, said liquidated damages shall be in lieu of all other damages, including those enumerated. **RESERVED.**~~

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Commented [A4]: Cisco respectfully takes exception to this provision in whole.

## 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:

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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 to Contractor in writing in advance of such employee's access to University premises.

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#### 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 same. The Contractor shall pay any sales, use, personal property, and other taxes arising out of this contract and the transactions contemplated hereby. Any other taxes levied upon this contract, the transaction, or the equipment or services delivered pursuant hereto shall be the responsibility of the Contractor.

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#### 15. Royalties, Patents, Copyrights and Trademarks:

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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. The Contractor shall pay all applicable royalties and license fees. If a particular process, products or device is specified in the contract documents and it is known to be subject to patent rights or copyrights, the existence of such rights shall be disclosed in the contract documents and the Contractor is responsible for payment of all associated royalties. To the fullest extent permitted by law the Contractor shall indemnify, hold the University harmless, and defend all suits, claims, losses or damages resulting from any infringement of patent, copyright, and trademark rights resulting from the incorporation in the Work or device specified in the Contract Documents.

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:

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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.

Unless provided otherwise in the contract, the Contractor shall not use the University's name nor any of its trademarks or copyrights, although it may state that it has a Contract with the University.

## **16. Copyright Ownership and Title to Designs and Copy~~+~~. RESERVED**

~~Contractor and University both consider the products and results of the services to be rendered by Contractor to be a work made for hire. Contractor acknowledges and agrees that the work and all rights therein, including, without limitation, copyright, belongs to and shall be the sole and exclusive property of the University. For any work that is not considered a work made for hire under applicable law, title and copyright ownership shall be assigned to the University.~~

~~Title to all dies, type, cuts, artwork, negatives, positives, color separations, progressive proofs, plates, copy, and any other requirement not stated herein required for completion of the finished product for use in connection with any University job shall be the property of and owned by the University. Such items shall be returned to the appropriate department upon completion and/or delivery of work unless otherwise authorized by the University. In the event that time of return is~~

**Commented [A5]:** This section is not applicable. Cisco sells commercial off the shelf products and pre-existing software/services. Cisco does not perform work for hire.

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~~not specified, Contractor shall return all such items to the appropriate University department within one week of delivery.~~

#### **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.

~~No item furnished under this contract, or tools, plans, designs or specifications for producing the same which have been specifically designed for by the University shall be duplicated or used by Contractor.~~ 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 contract 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

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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 relating to the necessary to properly account for payments made for goods and services furnished during any 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 each 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 specifications of the contract and shall be merchantable, free from defects (including defects in design and fit) and suitable for the intended purposes. Contractor further warrants that all services shall conform to the specifications of the contract and shall be performed in a professional and workmanlike manner. These warranties shall remain in effect for at least one year following University's acceptance of the goods or services or for the duration of Contractor's standard warranty period if such period exceeds one year. The foregoing

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warranties are in addition to, and shall not limit, any other warranties or buyer protections that exist by operation of law.

## 25. Price Warranty:

~~Contractor warrants that the price(s) for the articles or services sold to the University hereunder are not less favorable than those extended to any other customer (whether government or commercial) for the same or similar articles or services in similar quantities. In the event Contractor reduces its price(s) for such articles or services during the term of this contract, Contractor agrees to reduce the prices hereof accordingly. Contractor warrants that prices shown on this contract shall be complete, and no additional charges of any type shall be added without the University's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, customs, duties, taxes, storage, insurance, boxing and crating. 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.

~~The University reserves the right to perform inspection and/or expediting of the materials and fabrication thereof at the facility of the Contractor or its suppliers at any reasonable times. All materials and services are subject to final inspection and acceptance by the University at destination, notwithstanding any prior payments or inspection at the source. Such final inspection shall take place within thirty (30) days from the date of delivery or installation or completion of services which ever is latest.~~

~~In addition to other remedies which may be available under law or in equity, the University, at its option may return to the Contractor any nonconforming or defective item(s), at no cost to the University, and require correction or replacement of the item(s). If the University does not require correction or replacement of nonconforming or defective item(s), Contractor shall repay such portion of the contract price or such additional amount as is equitable under the circumstances. The rights of the University are in addition to and shall not be limited by Contractor's standard warranties.~~

## 27. Delivery, Transportation and Packaging:

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

**Commented [A6]:** Cisco respectfully takes exception to this Article in its entirety. As a just-in-time manufacturer, Cisco products are manufactured based on purchase order volumes and inspection requirements would slow shipping times. Cisco does not provide a right to return non-conforming goods outside of a warranty claim under the standard manufacturer's warranty.

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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; ~~it is understood by the Contractor~~ will make commercially reasonable efforts to have that all deliveries ~~shall be~~ 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

~~Prices quoted shall be firm and fixed unless otherwise stipulated in the Special Conditions of the Invitation For Bid. For multiple year contracts, prices shall remain firm and fixed during the initial term of the contract. At the end of the initial contract term, and at the end of each contract term thereafter, the Contractor may request a price adjustment. Such requests must be submitted in writing at least 60 calendar days prior to the end of the contract term and shall include the cause for the adjustment, the amount of change requested, and documentation to support the requested adjustment.~~

Contractor agrees to hold firm the discount percentages as provided in Criteria 3 Attachment. Notwithstanding the foregoing, list /MSRP Only pass through 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. ~~The University assumes that all successful bidders will~~ Payments may be made via accept the University's procurement card ~~as a method of payment unless a specific exception is stated in the bidder's response to the Invitation For Bid to Fulfillment Partners under this contract.~~ No additional charges may be added for acceptance of the procurement card.

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### 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 ~~provided to Contractor in writing, to the extent applicable to Contractor's role as a supplier of Products and Services. The Contractor is informed that a copy of the compliance plan is available from the UK HealthCare Office of Corporate Compliance.~~

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.~~

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~~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.~~

### **32. Payment Card Industry – Data Security Standard Requirements (PCI-DSS)**

~~To the extent Contractor processes applicable information,~~ Contractor shall be required to comply with the Gramm-Leach-Bliley Act (GLBA). To the extent any purchase includes services, including support, such that the provider of the service (defined in the GLBA as “Service Provider”) may receive “customer information” through the course of contracted activities with the University, Service Provider agrees to the following additional terms and conditions:

(a) Throughout the term of this Agreement, Service Provider shall implement and maintain “appropriate safeguards”, as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all “customer information,” as that term is defined in 16 C.F.R. § 314.2(b), received by Service Provider pursuant to this Agreement.

(b) Service Provider shall promptly notify the University, in writing, of each instance of (i) unauthorized access to or use of any customer information that could result in substantial harm or inconvenience to a customer of the University or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of any customer information. Within 30 days of the termination or expiration of this Agreement, Service Provider shall destroy all records, electronic or otherwise, in its or its agents' possession that contains such customer information and shall deliver a written certification of the destruction to the University.

(c) Service provider consents, upon reasonable advance notice ~~and no more than once per year,~~ to University's right to conduct an on-site audit ~~for the sole purpose and to the extent required only to review of Service Provider's security program compliance with this contract. Such audit will be during normal business hours.~~

(d) Notwithstanding any other provisions of this Agreement, University may terminate this Agreement for cause if Service Provider has allowed a material breach of its security program, if Service Provider has lost or materially altered customer information, or if the University reasonably determines that Service Provider's security program is inadequate.

~~(e) Service Provider shall defend, indemnify, and hold harmless University, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to any allegations of security breaches, violations of the Safeguard Rule caused by~~

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~~Service Provider's negligence, intentional acts or omissions, or any loss or material alteration of customer information~~Reserved.

(f) ~~Subject to a limitation of \$100,000, Service Provider shall reimburse the University for reasonable, foreseeable any-direct~~ damages, including but not limited to any costs required to reconstruct lost or altered information, resulting from any security breach, loss, or alteration of customer information, to the extent such costs were the direct result of Contractor's material breach of the contract or applicable law.

Contractor hereby agrees as follows:

(a) ~~To the extent Fulfillment Partner accepts payment card information, Contractor shall be responsible for confirming that Fulfillment partner maintains the security of cardholder data that it possesses, even temporarily, including any functions relating to storing, processing and transmitting of cardholder data on behalf of the University of Kentucky. In the case of a payment processing system and/or equipment purchased from Contractor that is covered by PA DSS (Payment Application Data Security Standard), Contractor warrants and represents that its software and/or equipment shall not impede the University's PCI DSS (Payment Card Industry Data Security Standard) compliance efforts. In the event that Contractor's software and/or equipment does impede such efforts, the University may, in its sole discretion, upon thirty (30) days' notice and opportunity to cure, terminate this Agreement, with any prepaid amounts refunded to University on a pro-rata basis.~~

**Commented [A7]:** Cisco does not sell payment processing equipment.

(b) ~~Contractor warrants and represents that, as of the effective date of this Agreement, it has complied with all applicable requirements for validation and compliance with the PCI DSS (Payment Card Industry Data Security Standard), as appropriate for its Service Provider level. Contractor agrees to supply the current status of its PCI DSS compliance, and evidence of its most recent validation of compliance, upon execution of this Agreement. Further, Contractor must supply to the University a new status report and evidence of validation of compliance at least annually and upon request by the University. Contractor will immediately notify the University if it learns that it is no longer PCI DSS compliant and will immediately report to the University the steps being taken to remediate the non-compliance status. In no event should Contractor's notification to the University be later than seven (7) calendar days after Contractor learns it is no longer PCI DSS compliant. Failure to maintain PCI DSS compliance shall be a breach of contract and the University may, at its sole discretion, terminate this Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to University on a pro-rata basis.~~

**Commented [A8]:** Cisco does not take payment card information. Payments only go to Fulfillment Partners

~~(c) Contractor warrants and represents that, as of the effective date of this Agreement, it has complied with all applicable requirements for validation with the PA DSS (Payment Application Data Security Standard) for its payment processing system. Contractor agrees to supply evidence of its most recent validation upon execution of this Agreement. Further, Contractor agrees to~~

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~~maintain PA DSS validation for the installed payment processing system version throughout the term of any maintenance agreement with the University. If the PA DSS validation deadline for the payment system lapses, Contractor acknowledges that it shall be in breach of this Agreement and the University may, at its sole discretion, terminate this Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to University on a pro-rata basis.~~

~~(d) While doing business in University facilities or on its property, if credit card payments will be processed over the internet via the Contractors own system and/or equipment and through its own merchant account, Contractor will provide its own internet connection to process such payments, and will not be permitted to use the University network and equipment.~~

### **33. Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act**

To the extent Company receives Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, 61.932 and 61.933 (the "Act"), Company shall secure and protect the Personal Information by, without limitation: (i) complying with all requirements applicable to non-affiliated third parties set forth in the Act; (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed, at least as stringent as University's and reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction; (iii) notifying University of a security breach to the extent such breach was the direct result of Contractor's material breach of the contract or applicable law relating to Personal Information in the possession of Company or its agents or subcontractors within seventy-two (72) hours promptly after ~~of~~ discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Company abides by the requirements set forth in that exception; (iv) cooperating with University in complying with the response, mitigation, correction, investigation, and notification requirements of the Act , (v) subject to a limitation of \$100,000, paying all-reasonable costs of notification, investigation and mitigation in the event of a security breach of Personal Information suffered by Company; and (vi) at University's discretion and direction, handling all administrative functions associated with ~~notification,~~ investigation and mitigation.

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### **Additional Terms and Conditions**

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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

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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.

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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.

**Export Control.** Customer shall comply with such laws and regulations governing use, export, reexport, and transfer of Cisco Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses. Information regarding compliance with U.S. use, export, reexport, and transfer laws may be found at: [http://www.cisco.com/wwl/export/compliance\\_provision.html](http://www.cisco.com/wwl/export/compliance_provision.html).

**License.** Conditioned upon compliance with the terms and conditions of the license granted herein or as represented in Contractor's End User License Agreement, Contractor grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business

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purposes the Software and the Documentation for which Customer has paid the required license fees, subject to the terms herein and Exhibit 1, End User License Agreement.

Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or that number of agent(s), concurrent users, sessions, IP addresses, port(s), seat(s), server(s), or site(s), as set forth in the applicable Purchase Order which has been accepted by Contractor and for which Customer has paid to Contractor the required license fee.

Unless otherwise expressly provided in the documentation, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable documentation permits installation on non-Contractor equipment) for communication with Contractor equipment owned or leased by Customer and used for Customer's internal business purposes. For evaluation or beta copies for which Contractor does not charge a license fee, the above requirement to pay license fees does not apply.

**General License Limitations.** This is a license, not a transfer of title, to the Software and Documentation, and Contractor retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Contractor, its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Accordingly, except as otherwise expressly provided under this Agreement, Customer shall have no right, and Customer specifically agrees not to:

- X.1 transfer, assign or sublicense its license rights to any other person or entity, or use the Software on unauthorized or secondhand Contractor equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense, or use shall be void;
- X.2 except as approved in writing by Contractor, make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
- X.3 reverse engineer or decompile, decrypt, disassemble, or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;
- X.4 use or permit the software (other than embedded in the product) to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Contractor; or
- X.5 except and to the extent expressly required applicable records laws or final court order (provided that the University provides: (1) prior written notice to Contractor of such obligation and (2) the opportunity to oppose such disclosure, provision, or otherwise making available), disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Contractor. Customer shall implement reasonable security measures to protect such trade secrets.

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To the extent required by law, and at Customer's written request, Contractor shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Contractor's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Contractor makes such information available.

**Software, upgrades/updates, and additional copies.**

NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CONTRACTOR EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR WHO OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

**Proprietary Notices.** Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in this Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Contractor.

**Term and Termination of License.** This license granted herein shall remain effective until terminated. Customer may terminate the license at any time by destroying all copies of Software and any Documentation except as to the minimum number of copies required by law to keep for archival records purposes only. Customer's rights under this license will terminate immediately if Customer fails to comply with any material provision of this license and Contractor will give Customer notice of such non-compliance. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control.

**Customer Records.** Customer grants to Contractor and its independent accountants the right 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

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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.

**X.4 DISCLAIMER OF WARRANTY.** EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE

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**WARRANTY PERIOD.** This disclaimer shall apply even if the above-stated warranty fails of its essential purpose.

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

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#### **Additional Vendor Terms and Conditions**

##### **Master Services Agreement**

This Master Services Agreement governs all Orders for Services placed under the Contract

This Agreement is entered into between Cisco Systems, Inc. ("Cisco"), a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134 and the WSCA-NASPO Cooperative Purchasing Organization LLC ("WSCA"), on behalf of their Public Sector Customers formed under the laws of United States ("Customer") having its principal place of business at State of Utah, Division of Purchasing and General Services, State Office Building, Capitol Hill, Room 3150, Salt Lake City, UT 84114-1061, United States, and is entered into as June 1, 2014.

This Master Services Agreement consists of (i) the Master Services Agreement Terms and Conditions (including the Exhibits), (ii) incorporated Sections from the Contract Terms and Conditions and (iii) the Services Descriptions of the Services at cisco.com that the Customer may elect to purchase, which are incorporated in this Agreement by this reference.

#### **Master Services Agreement - Terms and Conditions**

- 1. Definitions** are those set out in the Exhibit A, Glossary of Terms at the end of the Agreement.
- 2. Scope.** This Agreement describes the terms and conditions for Purchases by Customer of Services. Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid, (ii) a valid Software license has been granted, and (iii) Customer provides information requested by Cisco such as valid serial numbers, site location, contract number, and Product type.
- 3. Orders.** Terms of this Section are covered in the Contract Terms and Conditions.
- 4. Pricing.** For Direct Purchases, and subsequent Equipment List renewals, prices for Services shall be (a) those specified in Cisco's then-current Price List less any applicable contract discount in effect under the Contract at the time of acceptance of the Purchase Order by Cisco, or (b) those set forth in a written price quotation submitted by Cisco or its Fulfillment Partner, if at or below the stated contract discount. All stated prices are exclusive of taxes, fees, and duties or other amounts in accordance with the Contract. Any taxes related to Services purchased pursuant to this Agreement shall be paid by Customer or Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible. In the event that Customer is unable to provide valid and applicable serial number(s) for Product and Cisco agrees to provide Services, then Service fees payable by Customer shall be at Cisco's then-current time and materials or non-contract service rates.

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Subject to the price discount floor established by Cisco under the Contract, for Indirect Purchases, Fulfillment Partners are free to determine their resale prices unilaterally. Customer understands that no employee or representative of Cisco or anyone else has any authority to determine such resale prices, or to limit the Fulfillment Partners' pricing discretion with respect to Services.

5. **Payment.** Terms of this Section are covered in the Contract Terms and Conditions.
6. **Invoicing.** Fees for Services, other than those for which a SOW is required, shall be invoiced in advance of delivery of Services. The timing of invoices for Services provided pursuant to a SOW shall be set forth in the respective SOW.
7. **Term and Termination.**
  - (a) The term of any service order shall commence on the Effective Date of the Order and shall continue for a period of one (1) year, or such other multi-year period as set forth in the purchase order or SOW. Such term will be renewed automatically for successive one (1) year terms unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current term.
  - (b) The term of an Equipment List shall commence on the date set forth on such.
  - (c) Equipment List, which may be up to sixty (60) days following the date of Purchase Order acceptance by Cisco. The term of an Equipment List shall be for a period of one (1) year and shall be renewed automatically for successive one (1) year terms, unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one (1) year term.
  - (d) The term of each SOW shall be stated in the SOW.

This Master Service Agreement may be terminated in accordance on the same terms as set forth in the Contract. Any Equipment List or SOW may be terminated immediately by either party upon written notice.

If Services fees are not paid when due and payment has not been received within thirty (30) days after notice from Cisco of such past due payment, Cisco may withhold the provision of Services until all amounts past due are paid in full, and/or terminate immediately this Agreement, any Equipment List, and SOW.

- (e) Cisco reserves the right to make changes to the scope and content of the Services or part thereof, including terminating the availability of a given Service, at any time upon ninety (90) days' prior notice. Such changes will become effective upon renewal of the affected Equipment Lists and SOWs. If Customer does not agree to a change of scope or content, Customer may terminate any affected Equipment List or SOW by notifying Cisco at least sixty (60) days prior to the expiration of the then current one (1) year term of the Equipment List or SOW. In such case, Cisco shall continue to provide Services until the next expiration date of the affected Equipment List or SOW.
- (f) Each Equipment List and SOW hereunder shall terminate immediately upon termination of the Agreement.
- (g) Upon termination of the Agreement, any Equipment List, or SOWs, Customer shall pay Cisco for all work performed under the affected Equipment Lists or SOWs up to the effective date of termination at the agreed-upon prices, fees, and expense reimbursement rates.
- (h) Firm orders for services under this Master Services Agreement placed and accepted prior to expiration of the contract term, (even if involving a multi-year commitment) remain valid in accordance with the contract terms which shall remain binding as to such prior orders only for the term stated therein, and shall not otherwise constitute an extension of the Master Services Agreement.

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Additional terms governing Term and Termination are covered in the Contract Terms and Conditions.

8. **Confidentiality.** Terms of this Section are covered in the Contract Terms and Conditions.
9. **Warranty.** All services provided hereunder shall be performed in a workmanlike manner in accordance with industry standards expected of a company providing professional services in the networking industry. Except as specified in this section, Cisco hereby disclaims and customer waives all representations, conditions, and warranties (whether express, implied, or statutory), including without limitation, any warranty or condition (a) of merchantability, fitness for a particular purpose, non-infringement, title, satisfactory quality, accuracy, (b) arising from any course of dealing, course of performance, or usage in the industry. To the extent an implied warranty cannot be disclaimed, such warranty is limited in duration to the applicable express warranty period. Customer's sole and exclusive remedy for breach of warranty shall be, at Cisco's option, re-performance of the services; or termination of this agreement or the applicable equipment list or SOW and return of the portion of the service fees paid to Cisco by customer for such non-conforming services.
10. **Limitation of Liability and Consequential Damages Waiver.** Terms of this Section are covered in the Contract Terms and Conditions.
11. **License.** Terms of this Section are covered in the Contract Terms and Conditions.
12. **Ownership.** Cisco shall at all times retain all right, title, and interest in and to all pre-existing Intellectual Property owned by Cisco as of the Effective Date and all Intellectual Property in and to the Services, Cisco Products, Deliverables, and Data Collection Tools or other Intellectual Property provided or developed by Cisco or a third party on Cisco's behalf thereafter. Customer shall at all times retain all right, title, and interest in and to all pre-existing Intellectual Property owned by Customer as of the Effective Date and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter without the benefit of any of Cisco's Intellectual Property. Third Party Products shall at all times be owned by the applicable third party.
13. **Force Majeure.** Terms of this Section are covered in the Contract Terms and Conditions.
14. **Applicable law and Jurisdiction.** Terms of this Section are covered in the Contract Terms and Conditions.
15. **Export Control.** Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of Cisco Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses. Information regarding compliance with U.S. use, export, re-export, and transfer laws may be found at: [http://www.cisco.com/wwl/export/compliance\\_provision.html](http://www.cisco.com/wwl/export/compliance_provision.html).
16. **Assignment.** Terms of this Section are covered in the Contract Terms and Conditions.
17. **Subcontracting.** Cisco reserves the right to subcontract Services to a third party organization including Fulfillment Partners or Servicing Subcontractors (as defined in the Contract) to provide Services to Customer; provided that invoicing and/or payments will only be handled by and through Cisco and its authorized Fulfillment Partners. Any such subcontract shall not relieve Cisco of any of its obligations under this Agreement.

If Contractor or its Fulfillment Partners are using servicing subcontractors for the performance of local marketing, maintenance, and/or technical support services in accordance with the terms and conditions of this Contract, servicing subcontractors may not directly accept purchase orders or payments for products or services from Purchasers under the terms and conditions of the contract. Only Contractor or Fulfillment Partners authorized by Cisco may directly accept purchase orders, invoice, or receive payments for products or services under the terms and conditions of the contract. The authorized Purchaser has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

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- 18. Inventory Review.** From time-to-time Cisco may perform an inventory review of Customer's installed base and review serial numbers and other records (upon reasonable advance notice) to validate entitlement. Cisco will charge a Service fee if it finds that unauthorized Services are being provided. This Service fee includes amounts which should have been paid, interest, and attorneys' and audit fees. Attorneys' and audit fees will only be payable by the customer where the discrepancy exceeds 5 percent of the amount otherwise due and payable. Cisco requires that Customer take all necessary action (for example, disabling passwords) to ensure that any former employees and contractors do not access or use the Service.
- 19. Notices.** Notwithstanding anything contained in the Agreement to the contrary, all notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile or electronic mail (in the case of Cisco to Agreement-notice@cisco.com), (provided that the original document is placed in air mail/air courier or delivered personally, within seven (7) days of the facsimile electronic notice); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or six [6] days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the cover sheet of this Agreement or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph. Notwithstanding the above, notices regarding general changes in pricing, policies, or programs may also be by posting on Cisco.com or by email or fax.
- 20. Entire Agreement.** This Master Services Agreement, in addition to the general provisions of the Contract pertinent to Services, is the complete agreement between the parties concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties, except as agreed between the parties. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein. This Agreement may only be modified by a written document executed by the parties hereto.
- 21. No Waiver.** The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
- 22. Severability.** In the event that one or more terms of this Agreement 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 this Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of this Agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this Agreement by written notice with immediate effect to the other.
- 23. Attorneys' Fees.** In any suit or proceeding relating to this Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, incurred in connection with the suit or proceeding, including costs, fees, and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive expiration or termination and shall not be merged into any such judgment unless the judgment expressly precludes survivability.
- 24. No Agency.** This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of this Agreement. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

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- 25. Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "Counterpart Image") shall be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. In the event that a party delivers a Counterpart Image in place of an originally-executed counterpart, such party shall retain the originally-executed counterpart in its files for at least the duration of the Term hereof.
- 26. Headings.** Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.
- 27. Survival.** Sections 5 (Payment), 7 (Term and Termination), 8 (Confidentiality), 9 (Warranty), 10 (Limitation of Liability and Consequential Damages Waiver), 11 (License), 12 (Ownership), 13 (Force Majeure), 14 (Applicable Law and Jurisdiction), 15 (Export Control), Section 18 (Inventory Review), 19 (Notices), 20 (Entire Agreement), 21 (No Waiver), 22 (Severability), 23 (Attorneys' Fees), 24 (No Agency), 27 (Survival), and the Glossary of Terms shall survive the termination or expiration of this Agreement.

#### **Exhibit A** **Glossary of Terms**

In addition to the Definitions set forth in the Contract, the following definitions shall apply to this Services Agreement:

**Additional Services** means installation of new Hardware, system additions, Hardware upgrades, dispatch of a field engineer, or non-mandatory engineering changes otherwise within the scope of the Contract.

**Advance Replacement** means shipment of replacement Field-Replaceable Unit (FRU) before receiving failed or defective FRU.

**Advanced Services** means the proactive Services within the scope of the Contract, and as set forth in the AS Service Description(s) found at <http://www.cisco.com/go/servicedescriptions> throughout the term of the agreement and/or SOW(s) selected by the Customer. Advanced Services does not include Cisco's core maintenance services, such as SMARTnet or Software Application Services, nor does it apply to the purchase, support, or maintenance of any Products.

**Advanced Services Engineer** means the Cisco engineer appointed to be the main point of contact for a Customer purchasing Advanced Services.

**Application Software** means non-resident or standalone Software Products listed on the Price List and within the scope of the Contract, that include but are not limited to Cisco Systems® Network management Software, security Software, IP telephony Software, Internet appliance Software, Cisco® Intelligent Contact Management Software, IP Contact Center Software, and Cisco Customer Interaction Suite Software.

**Business Days** means the generally accepted days of operation per week within the relevant region where the Services shall be performed, excluding local holidays as observed by Cisco.

Cisco.com (<http://www.cisco.com>) is the Cisco website for its suite of online services and information.

**Confidential Information** means proprietary and confidential Information received by Cisco or Customer in connection with the Agreement and their relationship. 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 which the receiving party knows or has reason to know is confidential, proprietary, or trade

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secret information of the disclosing party, as well as, in the case of Cisco, any information posted on Cisco.com.

**Customer** as defined in the Contract means the entity purchasing Services for its own internal use either directly or through a Fulfilment Partner.

**Data Collection Tools** means Hardware or Software tools that support Cisco's ability to provide troubleshooting on critical cases, data analysis, and report-generation capabilities.

**Depot Time or Local Time** means Central European Time for Services provided in Europe-Middle-East and Africa, Australia's Eastern Standard Time for Services provided in Australia, Japan's Standard Time for Services provided in Japan, and Pacific Standard Time for Services provided in all other locations.

**Deliverable** means, with respect to each SOW, the items specified as deliverables in the SOW.

**Device Type** means a Cisco supported Hardware Product (for example, Cisco Catalyst® 6509 Switch, GSR 12000, and Cisco 7200 Series Router).

**Direct Purchases** means purchases of Services by Customer directly from Cisco.

**Documentation** is user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials, and other information relating to Products or Services offered by Cisco, whether distributed in print, electronic, CD-ROM, or video format.

**Equipment List** means the list of Hardware and/or Software for which Cisco provides services.

**Event** means notification by Customer of its performance of a planned Network Hardware, Software, or configuration change.

**Feature Set Upgrade** means a separately licensed and priced Software release that contains an enhanced configuration or feature set.

**Field-Replaceable Unit (FRU)** means any component or subassembly of an item or unit of Hardware that reasonably can be replaced at Customer's location. FRUs also may be subject to size and weight limitations.

**Four-hour Response** means:

- (i) For Advance Replacement Service, the four-hour time period commences upon the Cisco problem diagnosis and determination that a FRU is required and ends when the FRU is delivered onsite.
- (ii) For onsite service, the four-hour time period commences upon the Cisco problem diagnosis and determination that remedial onsite service is required and ends when Cisco personnel arrive onsite.

**Fulfilment Partner** means a system integrator, distributor or reseller authorized by Cisco to sell Services under the WSCA Master Agreement in a Participating State.

**Hardware** means tangible Cisco equipment, devices, or components made available to Customers.

**Indirect Purchases** means purchases of Services by Customer through a Fulfilment Partner.

**Intellectual Property** means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms, and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

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**Level 1** means support that is defined as having the necessary technical staff (Cisco or Cisco-authorized Reseller) with appropriate skill, perform installations, Remedial Hardware Maintenance, and basic Hardware and Software configuration on Cisco Products.

**Level 2** means support that is defined as having the necessary technical staff with the appropriate skills to perform isolation, replication, and diagnosis of Internet-based problems on Cisco Product(s). Customer shall not report Software bugs to Cisco prior to attempting to identify the source of such bugs and testing in Customer's Network where appropriate. If the Customer cannot duplicate the bug in Customer's Network, Customer and Cisco shall cooperate in attempting to replicate and resolve related Software bugs in either Customer's or Cisco's test facility as mutually agreed. In all cases Customer will address Software bugs on a best effort basis to replicate same in Customer's Network and document activity to Cisco before seeking further resolution with Cisco's participation.

**Local Time** means local time on Business Days.

**Maintenance Release** means an incremental Software release that provides maintenance fixes and may provide additional Software functions. Cisco designates Maintenance Releases as a change in the digits to the right of the tenths digit or of the hundredths digit of the Software version number [x.x.(x) or x.x.x.(x)].

**Major Release** means a release of Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Software version number [(x).x.x].

**Minor Release** means an incremental release of Software that provides maintenance fixes and additional Software functions. Cisco designates Minor releases as a change in the tenths digit of the Software version number [x.(x).x].

**Network** means a set of interconnected and interworking Cisco supported Hardware and Software that is implemented, operated, and supported by Customer from a single Network Operations Center (NOC).

**Network Infrastructure** means your core transport and aggregation Network technology (for example, metro optical, ATM/Frame Relay, IP core, and Cisco security devices including, but not limited to, Firewall, IDS, and VPN3000).

**Network Infrastructure Size** means the total value of Products in Customer's Network based on the global list price of the Products that Customer has purchased.

**Price List** means the price list for services applicable in the country where the Services are ordered or delivered.

**Product** means both Cisco Hardware and/or Software which are generally available.

**Purchase Order or P.O.** means a written or electronic order from Customer to Cisco for the Services to be provided by Cisco under this Agreement.

**Remedial Hardware Maintenance** means diagnosis and onsite replacement of Hardware components with FRUs.

**RMA** means Return Material Authorization.

**Services** means one or more of the services options selected by the Customer in its Purchase Order and described at: <http://www.cisco.com/go/servicedescriptions>.

**Services Descriptions** mean the detailed descriptions of the Services purchased by Customer which are incorporated in the MSA by reference.

**Software** means the software programs licensed to Customer by Cisco along with copies, Updates, or Upgrades to those software programs.

**Standard Business Hours** means (i) 8:00 AM to 5:00 PM, Depot time, on Business Days for replacement of failed Products and (ii) 8:00 AM to 5:00 PM, Local Time at location of the respective Cisco TAC, on Business Days for case handling of TAC calls.

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**Statement of Work (SOW)** means the documents agreed upon by the parties that define Services and deliverables to be provided.

**TAC** means the Cisco Technical Assistance Center.

**Technical Support Services** means Services that provide both essential proactive and reactive operation and maintenance support Services identified as Technical Support Services at <http://www.cisco.com/go/servicedescriptions>.

**Technology Application** means specific technologies including, but not limited to, content networking, broadband, and IP telephony that do not operate at the Network Infrastructure level.

**Third Party Products** means third party Hardware and/or software, and all upgrades thereto, that are designated by Cisco as required for:

- (i) The operation of Application Software in conformance with Cisco applicable Application Software Documentation.
- (ii) Cisco support of the Application Software.

**Transactional Advanced Services** means the project related or consultancy Services sold under a Statement of Work.

Two-hour Response means:

- (i) For Advance Replacement, the two-hour time period commencing with Cisco's problem diagnosis and determination that a FRU is required and ending when the FRU is delivered onsite.
- (ii) For onsite service, the two-hour time period commencing with our problem diagnosis and determination that remedial onsite service is required and ending when Cisco personnel arrive onsite.

**Update** means Cisco Software Maintenance Releases, Minor Releases, and Major Releases containing the same configuration or feature set as originally acquired, unless the Customer has upgraded the applicable Hardware or Software to a configuration or feature set other than what was originally acquired, and the applicable license fee for that upgrade has been paid. Updates do not include Feature Set Upgrades.

**Services will also be governed by the End User Obligations, Glossary of Terms, Severity and Escalation Guidelines, List of Services Not Covered, and Cisco Smart Care Service End User Consent and Obligations attached hereto as Attachment F.**

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