



# VCU

# Procurement Services

## COMMONWEALTH OF VIRGINIA STANDARD CONTRACT

**Contract Number: 7365172JC**

This contract entered into by Cisco Systems, Inc., hereinafter called the "Contractor" and Commonwealth of Virginia, Virginia Commonwealth University (VCU), called the "Purchasing Agency".

**WITNESSETH** that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

**PERIOD OF THE PERFORMANCE:** The initial term of the contract is from February 1, 2018 to January 31, 2019. There are four (4), successive one year renewal options available.

**SCOPE OF CONTRACT:** The Contractor shall provide the goods/services to the Purchasing Agency as set forth in the Contract Documents.

The contract documents shall consist of:

- (1) This signed form; and in order of precedence;
- (2) Commonwealth of Virginia Agency Addendum to Contractor's Standard Form;
- (3) The Negotiated Exceptions and Terms between Cisco Systems, Inc. and Virginia Commonwealth University for RFP #7365172JC – Cooperative Term Contract for Cisco Products, Maintenance and Services dated November 29, 2017, including the Cisco Master Services Agreement dated July 7, 2017, the Cisco Acceptable Use Policy, the Cisco Privacy Policy, and the Cisco Service Descriptions;
- (4) RFP #7365172JC dated April 20, 2017, Addendum #1 dated May 1, 2017, and Addendum #2 dated May 15, 2017;
- (5) The Cisco Proposal dated May 23, 2017 excluding Cisco terms and conditions.

All of which documents are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

**CONTRACTOR:**

Cisco Systems, Inc.

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Phil Lozano

Director, Finance

Title: \_\_\_\_\_

Date: \_\_\_\_\_

December 13, 2017

**PURCHASING AGENCY:**

Virginia Commonwealth University

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Karol Kain Gray

Title: \_\_\_\_\_

Vice President for Finance and Budget

Date: \_\_\_\_\_

1/18/18

**APPROVED BY LEGAL**



# VCU Procurement Services

## COMMONWEALTH OF VIRGINIA AGENCY

### ADDENDUM TO CONTRACTOR'S STANDARD FORM

AGENCY NAME: Virginia Commonwealth University

CONTRACTOR  
NAME: Cisco Systems, Inc.

DATE: December 13, 2017

The Commonwealth and the Contractor are this day entering into a contract and, for their mutual convenience; the parties are using the standard form agreement (the "Agreement" provided by the Contractor. This addendum, duly executed by the parties, is attached to and hereby made a part of the contract.

The Contractor represents and warrants that it is a(n) // individual proprietorship // association // partnership // corporation // governmental agency or authority authorized to do in Virginia the business provided for in this contract. (Check the appropriate box.)

Notwithstanding anything in the Contractor's form to which this Addendum is attached, the payments to be made by the Commonwealth for all goods, services and other deliverables under this contract shall not exceed the purchase order amount; payments will be made on a NET 30 basis only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later, in accordance with the Virginia Prompt Payment Act. The total cumulative liability of the Commonwealth, its officers, employees and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to the contract, shall not under any circumstance exceed payment of the amounts actually paid by the Agency and due to the Contractor during the twelve months preceding the incident or circumstance that first gave rise to such liability. The limitation of liability is in the aggregate and not per incident. In its performance under this contract, the Contractor acts and will act as an independent contractor, and not as an agent or employee of the Commonwealth.

The Contractor's form contract is, with the exceptions noted herein, acceptable to the Commonwealth. Nonetheless, because certain standard clauses that may appear in the Contractor's form agreement cannot be accepted by the Commonwealth, and in consideration of the convenience of using that form, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's form contract, none of the following shall have any effect or be enforceable against the Commonwealth:

1. Requiring the Commonwealth to maintain any type of insurance either for the Commonwealth's benefit or for the contractor's benefit;
2. Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;
3. Requiring or stating that the terms of the attached Contractor's form agreement shall prevail over the terms of this addendum in the event of conflict;
4. Requiring the Commonwealth to indemnify or to hold harmless the Contractor or any third party for any act or omission;
5. Imposing interest charges contrary to that specified by the *Code of Virginia*, § 2.2-4347 through 2.2-4354, known as the "Prompt Payment Act";
6. Requiring the application of the law of any state other than Virginia in interpreting or enforcing the contract, or requiring or permitting that any dispute under the contract be resolved in the courts of any state other than Virginia;
7. Requiring any total or partial compensation or payment for lost profit or liquidated damages by the Commonwealth if the contract is terminated before its ordinary period;
8. Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of the Commonwealth before the contract is considered in effect;
9. Delaying the acceptance of this contract or its effective date beyond the date of execution;
10. Limiting or adding to the time period within which claims can be made or actions can be brought;
11. Limiting the liability of the Contractor for property damage or personal injury;
12. Permitting unilateral modification of this contract by the Contractor; or deeming the Commonwealth to agree to a modification by means other than affirmatively signing a modification agreement in writing. Notwithstanding the foregoing, Cisco includes hyperlinks in its agreement including those agreements that are included as part of Cisco's response to the VCU RFP associated with this Addendum. The hyperlinks included within these agreements are subject to change and such changes are part of Cisco's standard policy across its worldwide base of customers and end users. In the event that there is a material significant change to a policy, procedure, or supplemental terms and conditions within such hyperlinks that affect, limit or reduce the Commonwealth's rights to the extent the changes would pose a risk to the Commonwealth, its Programs or Customers, the parties agree to discuss the changes in an effort to come to terms of mutual agreement on how to best mitigate the risk. If there is mutual agreement to changes, the terms of the changes would apply prospectively from the date the document memorializing the changes is dually executed by both parties.

13. Binding the Commonwealth to any arbitration or to the decision of any arbitration board, commission, panel or other entity, or requiring waiver of a jury trial;
14. Obligating the Commonwealth to pay costs of collection or attorney's fees;
15. Granting the Contractor a security interest in property of the Commonwealth.
16. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the signatory to bestow or incur on behalf of the Commonwealth;
17. Requiring the Commonwealth to keep the price paid by the Commonwealth confidential or designating the price paid by the Commonwealth as proprietary information.
18. Requiring the Agency to agree to or be subject to any form of equitable relief not authorized by the Constitution or laws of Virginia;
19. Requiring the Commonwealth to reimburse for travel and living expenses in excess of the relevant agency policy.
20. Nothing in the Agreement shall prevent the Agency from complying with the Virginia Freedom of Information Act.
21. This agreement is the entire agreement between the Agency (including Agency employees and other End Users) and the Contractor. In the event that the Contractor enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this agreement shall apply.
22. Agencies of the Commonwealth of Virginia are afforded the protection of sovereign immunity under Virginia law. Any claims against Virginia Agencies or the commonwealth are subject to the requirements established under Virginia law for bringing such claims against VCU or the commonwealth, including the Virginia Tort Claims Act (Va. Code §§ 8.01-195.1 et seq.) and other applicable statutes relating to claims against the Commonwealth of Virginia or its agencies. Notwithstanding any other provision, nothing in this contract shall be deemed to be or construed as a waiver of an agency's or the Commonwealth's sovereign immunity, or any other applicable requirements under Virginia law for bringing claims against an agency or the Commonwealth of Virginia.

The Agreement and this Addendum constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

The Agreement and this Addendum have been reviewed by staff of the Contractor. Its substantive terms are appropriate to the needs of the Contractor and sufficient funds have been allocated for its performance by the Contractor. The Agreement and this Addendum are subject to appropriations by the Virginia General Assembly.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed, intending thereby to be legally bound.

Virginia Commonwealth University

Name: KAROL KAIN GRAY

Signature: \_\_\_\_\_

Title: Vice President  
Finance & Budget

Date: Karol Kain Gray

11/8/18

Cisco Systems, Inc.

Phil Lozano

Name: Director, Finance

Signature: [Signature]

Title: \_\_\_\_\_

Date: December 13, 2017

**APPROVED BY LEGAL**



**NEGOTIATED EXCEPTIONS AND TERMS BETWEEN CISCO SYSTEMS, INC. AND VIRGINIA COMMONWEALTH UNIVERSITY FOR RFP #7365172JC - COOPERATIVE TERM CONTRACT FOR CISCO PRODUCTS, MAINTENANCE, AND SERVICES**

**Negotiated Exceptions based on Cisco’s Original Response to RFP #7365172JC**

**1. Section VI. P(2)**

Requirement: The terms and conditions of the RFP govern the resulting contract and not any Contractor terms and conditions or other software license agreement.

Negotiated Response:

Cisco and VCU are in mutual agreement that the following order of precedence shall govern the resulting Contract:

- The Commonwealth of Virginia Standard Contract Form signed form and order of precedence;
- The Virginia Agency Addendum to Contractor’s Standard Form;
- The Negotiated Exceptions and Terms between Cisco Systems, Inc. and Virginia Commonwealth University for RFP #7365172JC – Cooperative Term Contract for Cisco Products, Maintenance and Services, dated November 29, 2017, including the Cisco Master Services Agreement, dated July 7, 2017, the Cisco Acceptable Use Policy, the Cisco Privacy Policy and the Cisco Service Descriptions;
- RFP #7365172JC dated April 20, 2017, Addendum #1 dated May 1, 2017, and Addendum, #2 dated May 15, 2017;
- The Cisco Proposal dated May 23, 2017 excluding Cisco terms and conditions.

**2. Section VII.B(2)**

Cisco shall offer the following proposed pricing and Pricing Schedule under this Contract:

**Table 1. Cisco Product Categories**

<i>Cisco Base Discount Category</i>	<i>Product Family</i>	<i>Minimum Discount* (Educ and Gov)</i>
Core	Any Product Family not listed in Compute, Market or Net. Subject to the introduction of future categories	35%
Compute	Unified Computing System (UCS) Product Families	35%



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Market	Cloud Services (i.e., SaaS) and Future Software offerings	10%
Net	Third-party software and other products	0%

\*Cisco offers the same minimum product discounts to all authorized contract users. Higher Education, K-12 Education, Local and State Government customers can all take advantage of the product discounts listed in Table 1. The discounts provided are floor discounts and individual transactions may qualify for additional, incremental (deeper) discounts or incentives offered by Cisco's authorized resellers at their sole discretion on a case-by-case basis.

**Table 2. Cisco Smart Net Total Care Discounts**

<i>Cisco SMART Net Total Care</i>	<i>Discount % (Education)</i>	<i>Discount % (Government)</i>
1-Year Contract	30.00%	10.00%

As confirmed at our in-person meeting, the discounts provided are floor discounts (minimum guarantees) and individual transactions may qualify for additional, incremental (deeper) discounts or incentives offered by Cisco's authorized resellers at their sole discretion on a case-by-case basis. This is no different than how our current VCU contract operates today.

All partners are eligible for Cisco promotions, such as Cisco's Opportunity Incentive Program, which will increase the partner's discount on a specific opportunity within this vehicle. Cisco will ensure that the contract webpage at [www.cisco.com](http://www.cisco.com) for the new contract is clear on how these minimum guaranteed discounts work and that deeper discounts may be available through the authorized resellers at their sole discretion.

Notwithstanding the foregoing, for large-volume purchases or strategic opportunities (i.e., multi-year purchase commitments), we encourage the customers to reach out to Cisco and its authorized resellers for a discussion on deeper pricing based on the dollar value and strategic nature of each opportunity.

Additionally, since this RFP is an IDIQ contract with no volume commitments, the pricing offered in Cisco's bid response is comparable to other customers with similar IDIQ contracts (i.e., quantity 1, with no volume commitments) and similar Ts & Cs.

### 3. Section VII.B(3)(b)

Requirement: Does your company agree with the Procurement Requirements in Section VI.P.?

Negotiated Response:

Cisco and VCU are in mutual agreement that the software license provision included in Section VI.P(2) of RFP#7365172JC shall be replaced with the current Cisco Software License Terms which are accessible via the following link: <https://www.cisco.com/c/en/us/about/legal/cloud->



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[and-software/software-terms.html](#). For additional clarification, the Cisco Software License Terms accessible at the link noted above are the same terms included in the Cisco Master Services Agreement which shall become a part of the resulting Contract between Cisco and VCU.

#### **4. Section VII.B(3)(f)**

**Requirement:** Submit the Cisco Standard Commercial Limited Warranty in your response. State the start of the warranty period and the end of the warranty period.

**Negotiated Response:**

Cisco and VCU are in mutual agreement that all Cisco hardware and software products are covered for a minimum of 90 days. Some products have a longer or more appropriate coverage. All Cisco warranties start on the date Cisco ships the ordered product and ends when the term of the particular warranty expires. All Cisco warranties apply to the Customer or Original Owner (the individual who purchased the product for their own use) also referred to as the End User.

**Note:** All Cisco warranties are subject to and provided only on the terms and conditions set out in the Cisco Limited Warranty, Disclaimer of Warranty, and End User License Agreement. See Cisco Warranty Information Packet SL3DEN\_\_\_.pdf attached to this response or available at [http://www.cisco.com/c/en/us/td/docs/general/warranty/English/SL3DEN\\_\\_\\_.pdf](http://www.cisco.com/c/en/us/td/docs/general/warranty/English/SL3DEN___.pdf) for full details.

For a complete list of Cisco product warranties and customer entitlements under these warranties, please see Attachment 1, Warranty Overview and the following link: [http://www.cisco.com/en/us/products/prod\\_warranties\\_listing.html](http://www.cisco.com/en/us/products/prod_warranties_listing.html).

#### **5. Section VII.B(3)(k)**

**Requirement:** Does your company accept the terms and conditions as presented in Section XI, General Terms and Conditions, Section XII, Special Terms and Conditions, Section XIII, Special Terms and conditions Information technology, and Attachment A to govern the contract?

**Negotiated Response:**

Cisco and VCU are in mutual agreement that the following order of precedence shall govern the resulting contract:

- The Commonwealth of Virginia Standard Contract Form and order of precedence;
- The Virginia Agency Addendum to Contractor's Standard Form;
- The Negotiated Exceptions and Terms between Cisco Systems, Inc. and Virginia Commonwealth University for RFP #7365172JC – Cooperative Term Contract for Cisco Products, Maintenance and Services, dated November 29, 2017, including the Cisco Master Services Agreement, dated July 7, 2017, the Cisco Acceptable Use Policy, the Cisco Privacy Policy and the Cisco Service Description;
- RFP #7365172JC dated April 20, 2017, Addendum #1 dated May 1, 2017, and Addendum, #2 dated May 15, 2017;
- The Cisco Proposal dated May 23, 2017 excluding Cisco terms and conditions;





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In addition, Cisco and VCU are in agreement that any terms and conditions included in links within this Negotiated Exceptions document and in the Cisco Master Services Agreement are one and the same and shall apply to the resulting Contract.

#### **6. Section XI.I(2)(a)-(b)**

Requirement:

(a) Contractor awarded a contract under this RFP is hereby obligated:

- i. To pay the Subcontractor(s) within seven (7) days of the Contractor's receipt of payment from VCU for the proportionate share of the payment received for work performed by the Subcontractor(s) under the contract; or
- ii. To notify VCU and the Subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

(b) The Contractor is obligated to pay the Subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from VCU, except for amounts withheld as stated in 2. above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a Subcontractor may not be construed to be an obligation of VCU.

Negotiated Response:

Cisco and VCU are in mutual agreement that Cisco agrees to the requirements of this provision subject to Cisco's response to Section XII.R of the Special Terms and Conditions of RFP#7365172JC provided in the original Cisco Response to RFP #7365172JC.

#### **7. Section XI.M**

Requirement: ASSIGNMENT OF CONTRACT: A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the VCU Director of Procurement Services.

Negotiated Response:

Cisco and VCU are in mutual agreement that Cisco agrees to the requirements of this provision but that consent shall not be unreasonably withheld by the VCU Director of Procurement Services.

#### **8. Section XI.O**

Requirement: DEFAULT: In case of failure to deliver goods or services in accordance with the Contract terms and conditions, VCU after due oral or written notice, may procure them from



other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which VCU may have in law or equity.

**Negotiated Response:**

Cisco agrees to withdraw the exception that it took in its original response to RFP#7365172JC and agrees to the requirements of this provision in its entirety.

**9. Section XI.R**

**Requirement:**

INSURANCE: By signing and submitting a Proposal under this RFP, the Offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction contracts, if any Subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The Offeror further certifies that the Contractor and any Subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

Minimum Insurance Coverages and Limits Required for Most Contracts:

1. Worker's Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify VCU of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the Contract shall be in noncompliance with the Contract.
2. Employers Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. VCU must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

**Negotiated Response:**

Cisco and VCU are in mutual agreement that Cisco agrees to the requirements of this provision but wishes to note that Cisco uses a "blanket additional insured" endorsement on its General Liability insurance coverage. By operation of that endorsement, the Commonwealth of Virginia is included automatically as an additional insured once the Agreement becomes effective. We do not add a separate endorsement onto our policy that has the Commonwealth of Virginia listed by name. Also, with respect to including the Commonwealth of Virginia as an additional insured on Cisco's General Liability insurance coverage, Cisco will include the Commonwealth of Virginia as an additional insured only to the extent of liabilities falling within the indemnity obligations of



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Cisco for death, bodily injury, or damage to tangible personal property pursuant to the indemnification proposed by Cisco in Cisco's response to Section XII.L to the Special Terms and Conditions.

#### **10. Section XI.T**

##### **Requirement:**

DRUG-FREE WORKPLACE: During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every Subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor and/ or Vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

##### **Negotiated Response:**

Cisco and VCU are in mutual agreement that Cisco agrees to sections (i) and (ii) in the first paragraph under Section T as noted above and respectfully takes exception to sections (iii) and (iv) in the first paragraph under Section T as noted above. Cisco agrees to the second paragraph under Section T as noted above in its entirety.

#### **11. Section XI.W**

**Requirement:** FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA). The Selected Offeror/Vendor acknowledges that for the purposes of this Contract it will be designated as a "school official" with "legitimate educational interests" in the University education records, as those terms have been defined under FERPA and its implementing regulations, and the Selected Firm/Vendor agrees to abide by the limitations and requirements imposed on school officials. Selected Firm/Vendor will use the education records only for the purpose of fulfilling its duties under this Contract for University's and its students' benefit, and will not share such data with or disclose it to any third party except as provided for in this Contract, required by law, or authorized in writing by the University.

##### **Negotiated Response:**

Cisco and VCU are in mutual agreement that VCU intends to delete this entire Section XI.W – FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) included in RFP#7365172JC from the resulting Contract between Cisco and VCU.



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## 12. Section XII.B

Requirement: AUDIT: The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.

### Negotiated Response:

Cisco and VCU are in mutual agreement that Section XII. B shall be replaced in its entirety with the following language:

“Cisco and its Authorized Resellers shall maintain complete records of purchases and amounts billable to and payments made by the Purchasing Agencies under the resulting contract in accordance with generally accepted accounting principles and practices for audit purposes only. The Purchasing Agency will give Cisco 30 days’ advance written notice, to perform an audit of Cisco’s and/or the Authorized Resellers’ records, identified above, as it pertains only to the Purchasing Agency. The Purchasing Agency’s audits are limited to once per year, and such audit will be conducted during normal business hours and shall not duly interrupt or interfere with normal business operations. No withstanding the foregoing, in the event that such an audit is conducted by a third party, such third party shall, prior to conducting such an audit, execute a confidentiality agreement for the benefit of Cisco in a form reasonably satisfactory to Cisco.”

## 13. Section XII.F

Requirement: CANCELLATION OF CONTRACT: The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon sixty (60) days written notice to the Contractor. In the event the initial contract period is for more than twelve (12) months, the resulting contract may be terminated by either party, without penalty, after the initial twelve (12) months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

### Negotiated Response:

Cisco agrees to withdraw the exception that it took in its original response to RFP#7365172JC and agrees to the requirements of this provision in its entirety.

## 14. Section XII.L

Requirement: INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the



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materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods, or equipment delivered.

**Negotiated Response:**

Cisco and VCU are in mutual agreement that Section XII.L in RFP#7365172JC shall be replaced in its entirety with the following language:

Cisco shall defend, indemnify, and hold harmless the other, its corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorney's fees), including without limitation those based on contract or tort, arising out of or in connection with a claim, suit or proceeding brought by a third party arising from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them. Such indemnification obligation shall be subject to and limited by the Commonwealth of Virginia's laws regarding contributory/comparative negligence. Pursuant to Chapter 5, Title 2.2 of the Code of Virginia, appointment of Special Counsel is subject to the approval of the Office of the Attorney General of the Commonwealth of Virginia. Upon approval by the Office of the Attorney General of the Commonwealth of Virginia, Cisco shall be granted the right to defend the Purchasing Agency against all suits, claims, and demands in connection with the Agreement.

The foregoing indemnification obligations are conditioned upon the indemnified party promptly notifying Cisco in writing of the claim, suit, or proceeding for which Cisco is obligated under this Section, cooperating with, assisting, and providing information to Cisco as reasonably required, and granting Cisco the exclusive right to defend or settle such claim, suit, or proceeding in accordance with Chapter 5, Title 2.2 of the Code of Virginia.

**15. Section XII.M**

**Requirement: LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the Contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

**Negotiated Response:**

Cisco and VCU are in mutual agreement that Section XII.M in RFP#7365172JC shall be replaced in its entirety with the following language:

To the maximum extent permitted by applicable law, the Contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data, business, anticipated savings, opportunity, goodwill or reputation or use of the products, supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) bodily injury or death resulting directly from the negligence of the other party; (b) fraud or fraudulent misrepresentation; (c) a



breach of confidentiality as provided for under this Contract; and (d) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement or any liability that cannot be excluded or limited under applicable law.

EACH PARTY'S TOTAL AGGREGATE LIABILITY IS LIMITED TO THE GREATER OF: (A) ONE HUNDRED THOUSAND DOLLARS (\$100,000); OR (B) THE AMOUNTS PAID TO THE CONTRACTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT THAT FIRST GAVE RISE TO SUCH LIABILITY.

#### **16. Section XII.O**

Requirement: PREVENTIVE MAINTENANCE: The Contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.

Negotiated Response:

Cisco and VCU are in mutual agreement that Section XII.O in RFP#7365172JC shall be replaced in its entirety with the warranty available on Cisco.com at [http://www.cisco.com/c/en/us/products/warranty-listing.html#~warranty\\_documents](http://www.cisco.com/c/en/us/products/warranty-listing.html#~warranty_documents).

#### **17. Section XII.Q**

Requirement: RENEWAL OF CONTRACT: This contract may be renewed by the Commonwealth upon written agreement of both parties for four (4) successive one year periods, under the terms of the current contract, and at a reasonable time (approximately 60 days) prior to the expiration. The contract discounts which are applied to the Cisco Global Price List for the product(s) and services shall remain the same as in the initial term of the contract during all optional renewal terms unless market conditions dictate increasing the contract discount(s). Contract prices based on unit prices may be negotiated only at the time of renewal; however, in no case shall the costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by no more than the percentage increase or decrease in the services category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve (12) months for which statistics are available.

Negotiated Response:

Cisco and VCU are in mutual agreement that Section XII.Q in RFP#7365172JC shall be replaced in its entirety and that Cisco will honor its contract discount pricing of the Global Price List as set forth in Section VIII.A of RFP#7365172JC through the full term of the resulting Contract.

#### **18. Section XII. S**

Requirement: WARRANTY (COMMERCIAL): The Contractor agrees that the supplies or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the Contractor gives any customer for such supplies or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the proposal.



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**Negotiated Response:**

Cisco and VCU are in mutual agreement that Section XII.S in RFP#7365172JC shall be replaced in its entirety and that Cisco and VCU agree that the products or services furnished under the award resulting from this solicitation shall be covered by the standard Cisco warranty that is accessible via the following link: [http://www.cisco.com/c/en/us/products/warranty-listing.html#~warranty\\_documents](http://www.cisco.com/c/en/us/products/warranty-listing.html#~warranty_documents). The rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation or the resulting contract.

**19. Section XIII.B**

Requirement: SOURCE CODE: In the event the Contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Commonwealth shall be entitled to have use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the Commonwealth shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the Commonwealth in this respect shall survive for a period of twenty years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.

**Negotiated Response:**

Cisco and VCU are in mutual agreement that Section XIII.B in RFP#7365172JC shall be replaced in its entirety and both parties agree that Cisco, as a standard policy, does not provide source code to its end users. Given the resources that are accessible to Cisco, Cisco does not anticipate an event where it would cease to maintain experienced staff and/or resources to provide required software maintenance but in the event that an issue like this should arise in the future, Cisco would work in good faith to ensure that any required software maintenance is completed per the requirements outlined in the resulting contract.

**20. Section XIII.C**

Requirement: SOFTWARE UPGRADES: The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the Contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the Contractor sells or licenses the upgraded software under similar circumstances.

**Negotiated Response:**

Cisco and VCU are in mutual agreement that Section XIII.C in RFP#7365172JC shall be replaced in its entirety and both parties agree that software upgrades are available through SMARTnet contracts or can be purchased separately on the Global Price List.

## 21. Section XIII.D

Requirement: THIRD PARTY ACQUISITION OF SOFTWARE: The Contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The Contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.

### Negotiated Response:

Cisco and VCU are in mutual agreement that Section XIII.D in RFP#7365172JC shall be replaced in its entirety and both parties agree that Cisco agrees to the first sentence of XIII.D but respectfully takes exception to the remaining portions of the section. With respect to the second and third sentences, Cisco proposes the following language: "The Contractor further agrees that it will work in good faith to mitigate any material changes to the terms of the contract due to any future potential acquisitions."

## 22. Section XIII.E

Requirement: TITLE OF SOFTWARE: By submitting an offer, the Offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.

### Negotiated Response:

Cisco and VCU are in mutual agreement that Section XIII.E in RFP#7365172JC shall be replaced in its entirety and both parties agree to the following language in lieu thereof:

Cisco disclaims, all warranties, conditions, and other terms of non-infringement or title with respect to any Product as a standard policy; however, Cisco will have the obligation and right to defend any claim, action, suit, or proceeding ("Intellectual Property Rights Claim", or "IPR Claim") brought against the Purchasing Agency so far as it is based on a claim that any Product supplied under these Terms of Sale infringes Third Party IPR (as defined below). Cisco will indemnify the Purchasing Agency 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. Cisco's obligations to defend the IPR Claim and indemnify the Purchasing Agency are conditional upon:

- a) The Purchasing Agency notifying Cisco promptly in writing of the IPR Claim or threat thereof

In accordance with Chapter 5, Title 212 of the Code of Virginia, the Purchasing Agency shall give Cisco full and exclusive authority for the conduct of the defense and settlement of the IPR Claim and any subsequent appeal





The Purchasing Agency giving Cisco all information and assistance reasonably requested by Cisco in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.

For purposes of this Agreement, Third Party IPR means a United States copyright existing as at the Effective Date or a United States patent issued as at the Effective Date.

If an IPR Claim has been made, or in Cisco's opinion is likely to be made, the Purchasing Agency agrees to permit Cisco, at Cisco's option and expense, either to: (a) procure for the Purchasing Agency the right to continue using the Product; (b) replace or modify the Product so that there is no longer an infringement; or (c) immediately terminate both parties' respective rights and obligations under these Terms of Sale with regard to the Product, in which case the Purchasing Agency will promptly return the Product to Cisco and Cisco will refund to the Purchasing Agency the price originally paid by the Purchasing Agency to Cisco for the Product, as depreciated or amortized by an equal annual amount on a straight line basis over 3 years from date of original shipment.

Notwithstanding the foregoing, Cisco has no liability for, and the Purchasing Agency will defend and indemnify Cisco against, any IPR Claim arising from:

- a) the combination, operation, or use of a Product with any third-party product, device, or software
- b) the amount or duration of use which the Purchasing Agency makes of the Product, revenue earned by the Purchasing Agency from services it provides that use the Product, or services offered by the Purchasing Agency to external or internal Purchasing Agencies
- c) the alteration or modification of any Product supplied under these Terms of Sale
- d) Cisco's compliance with the Purchasing Agency's designs, specifications, or instructions
- e) The Purchasing Agency's use of the Product after Cisco has informed the Purchasing Agency of modifications or changes required to avoid such an IPR Claim if the alleged infringement would have been avoided by implementation of Cisco's recommended modifications or changes.

This Section states the entire obligation of Cisco and its suppliers, and the exclusive remedy of the Purchasing Agency, in respect of any infringement or alleged infringement of any intellectual property rights or proprietary rights. This indemnity obligation and remedy are given to the Purchasing Agency solely for its benefit and in lieu of, and Cisco disclaims, all warranties, conditions, and other terms of non-infringement or title with respect to any Product.

### **23. Section XIII.F**

**Requirement: WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU references, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or



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subcontractors shall insert any shutdown device following delivery of the equipment and software.

**Negotiated Response:**

Cisco and VCU are in mutual agreement that Section XIII.F in RFP#7365172JC shall be replaced in its entirety and both parties agree that the standard Cisco warranties available on Cisco.com at [http://www.cisco.com/c/en/us/products/warranty-listing.html#~warranty\\_documents](http://www.cisco.com/c/en/us/products/warranty-listing.html#~warranty_documents) shall apply in lieu thereof.

**24. Section XIII.G**

**Requirement: SECTION 508 COMPLIANCE:** All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the Code of Virginia.

**Negotiated Response:**

Cisco and VCU are in mutual agreement that Section XIII.G in RFP#7365172JC shall be replaced in its entirety and both parties agree to the following language in lieu thereof:

"Cisco provides customers with access to Voluntary Product Accessibility Templates (VPATs) for our products. These are documents that contain the list of requirements needed for a product to conform to Section 508 of the Rehabilitation Act. The template format allows vendors to state their products' conformance to Section 508, requirement by requirement. They provide information on any visual, aural, and cognitive features available. These VPATs for hundreds of Cisco products are available online at:

[http://www.cisco.com/web/about/responsibility/accessibility/legal\\_regulatory/vpats.html](http://www.cisco.com/web/about/responsibility/accessibility/legal_regulatory/vpats.html)

The Cisco Accessibility Program is a global companywide, including Cisco.com, effort that stresses the importance of creating accessible products throughout Cisco, with customers, and with our deployment partners. We help ensure that Cisco products conform to accessibility regulations, and we make accessibility a priority consideration at every stage of the Cisco product life cycle.

The showcase of the program is the Cisco Accessibility Design and Evaluation Lab, located in San Jose, California. Here Cisco works with accessibility experts and people with disabilities to design and build products that are usable by all people. We test and validate with a full range of assistive technologies. We demonstrate how our customers' employees with disabilities can use our products. And we benefit from immediate, relevant feedback from our most demanding customers—Cisco employees with disabilities. (Contact your Cisco account manager to learn more or to schedule a tour of the facility).



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The Cisco Accessibility Program maintains detailed, current knowledge of global accessibility and usability laws, regulations, and standards. For example, Cisco tests products against U.S. standards that include Section 508 of the Rehabilitation Act, Section 255 of the Telecommunications Act, and the Americans with Disabilities Act. Internationally, Cisco adheres to guidelines such as those published by the World Wide Web Consortium (W3C). Cisco also contributes to accessibility standards and guidelines created by the International Telecommunications Union (ITU), the Internet Engineering Task Force (IETF), and the Telecommunications Industry Association (TIA).

At Cisco we approach accessibility with a philosophy of openness, willingly sharing our technological innovations with others through wide participation in industry groups. And we work with third-party vendors to enhance our solutions for broader accessibility.”

## **25. Attachment A – Cisco Software License Terms**

### **Negotiated Response:**

Cisco and VCU are in mutual agreement that the Cisco End User License Agreement and Supplemental End User License Agreement(s) may be accessed via the following link:  
<https://www.cisco.com/c/en/us/about/legal/cloud-and-software/software-terms.html>.

### **Negotiated Terms based on Cisco’s Responses to VCU Questions dated October 6, 2017**

#### **Question:**

1. There is a statement in the proposal that the offer is good for ninety (90) days from the date of proposal submission. Please confirm that the Cisco proposal submitted on May 23, 2017 is valid until VCU reaches an award decision for RFP #7365172JC.

#### **Negotiated Response:**

Yes, Cisco confirms that the proposal submitted May 23, 2017, is valid until VCU reaches an award decision, but not later than May 23, 2018.

#### **Question:**

2. There is a statement in the proposal that the proposal except for pricing is non-binding. Please withdraw this statement and confirm that the entire proposal along with any negotiated modifications to the proposal is binding.

#### **Negotiated Response:**

Cisco withdraws the entire sentence containing the non-binding statement in the first sentence of the Legal Disclaimer on page ii of the Cisco proposal and replaces the sentence with “Thank you for the opportunity to submit this binding proposal for now-available products listed in our quotes for your consideration. Any mutually negotiated and agreed upon written modification(s) to the proposal shall also be binding.”



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**Question:**

3. Cisco agreed to the mandatory freight terms F.O.B. Destination/Pre-paid. Please confirm that the phrase "with inside delivery" was just inadvertently omitted and Cisco agrees that the freight terms include inside delivery not just when installation is purchased. Confirm agreement with the inside delivery terms of our current contract: "Inside Delivery means delivery that is into a secure, inside area. This is distinct from "Desktop Delivery" where the Buyer may specify the precise indoor location for final delivery." Confirm that Cisco has read and understood that the VCU secure, inside delivery area does not have a loading dock or forklift for pallet sized deliveries so the supplier needs to supply unloading capabilities.

**Negotiated Response:**

Cisco confirms that it can agree to providing F.O.B Destination/Pre-paid with "inside delivery" with a mutual understanding that "inside delivery" shall be the same delivery arrangement as under the current VCU/Cisco contract. For clarification purposes, "inside delivery" shall mean that Cisco Products shall be delivered to the customer's designated warehouse or dock as set forth in the purchase order and unloaded inside such facility that is set up primarily to accept the delivery of Cisco Products and other shipments as normal course of business. The parties have agreed that "inside delivery" does not mean delivery of Cisco Products to a room, office and/or closet inside a building where additional resources and/or special equipment may be required. However, if a customer requires a special delivery arrangement outside of the standard definition as proposed above, the customer may request such arrangement from an authorized reseller with the understanding that the quote from the authorized reseller may include additional fees. Notwithstanding the foregoing, VCU understands and agrees that inside delivery may not be available for certain orders due to site conditions and/or requirements.

**Question:**

4. Even with the extensive subcontractor (reseller) onboarding process proposed, a 6-8 week implementation period appears overly long. Can Cisco shorten the time before the authorized resellers can begin accepting orders and delivering products and services?

**Negotiated Response:**

Please be advised that the estimated timeline (6-8 weeks) for the partner qualifying and onboarding process was based on the significant number of resellers (existing and new) who have already expressed interest to be on the new contract as authorized resellers, if Cisco is awarded. In any event, we will ensure that the authorized resellers can begin to accept orders and delivering products and services on the effective date of the new contract, assuming that it will be January 1, 2018. Once Cisco receives written notice from VCU that it is awarded the new contract (even though the contract and other paperwork may still be pending execution), Cisco can immediately begin the partner qualifying and onboarding process, subject to VCU's approval and any other guidance, as applicable.

Additionally, as we discussed, we would greatly appreciate the ability to add partners semi-annually under the new contract (instead of annually) since there has historically been such a strong interest among the reseller community to participate in the VCU/Cisco contract. Having the ability to onboard at least twice per year will allow Cisco to enable new resellers who may



have technical expertise to support new Cisco offers that become available through our acquisitions of new technologies. Furthermore, as you are aware, Cisco performs partner performance reviews to remove non-compliant and/or non-performing resellers and actively replaces those with more motivated resellers who can support VCU and VASCUPP customers throughout the Commonwealth.

**Question:**

5. On page 31 of the Cisco proposal, there is a Note that three (3) or five (5) SMARTnet maintenance terms are paid at the beginning of the subscription term. State agencies in the Commonwealth of Virginia cannot pay upfront for multi-year agreements unless there is an additional 5.0% discount for each year that is paid upfront. For example, to pay for a five (5) year agreement at the beginning of the term, an additional 20.0% discount is required. Please revise the payment language to allow for annual payments on multi-year SMARTnet maintenance services and/or allow for an additional 5.0% for each year that is paid ahead of the annual payment.

**Negotiated Response:**

As discussed at the in-person meeting on September 29, 2017, this question is related to #8 below. Please see our response to #8 below, which also applies to this question.

**Question:**

6. SmartNet issues:
  - a. Now that SMARTnet is not included for the first year, what can Cisco offer for the occasional issues with needing a firmware update/image for devices that are not on SMARTnet? How does Cisco to address this going forward at no/low cost to VCU? (This will mainly be access points and distro and access switches...not an issue for devices that are on SMARTnet.)
  - b. Can Cisco offer software updates included in lifetime warranty coverage?
  - c. Other ways of getting required software updates for bug fixes, new features, etc. at no/low costs

**Negotiated Response:**

- a. Purchasing Smart Net Total Care at the time of sale is the best way to meet the need for any updates, images, fixes, etc., on all Cisco products. Additionally, some products can be supported through other programs such as many access switches being covered by the IOS policy detailed in response b. below. In addition, many products do not require a maintenance contract to receive software updates: Access Points (APs) get updates and fixes through the Smart Net Total Care coverage on their wireless controller; distribution switches, line cards, and modules receive updates via the Smart Net Total Care on the chassis in which they are installed.
- b. Cisco Basic Warranties cover all Cisco hardware and software. Cisco also provides 23 different Solution and Segment Warranties that apply to particular hardware and software products, some of which include software updates. Additionally, Cisco Software Policy



provides software updates for 14 different Catalyst Switch Series primarily used for access or distribution switching.

All of these programs are available on a global basis. See Attachment 1 for descriptions of all Cisco warranties.

The majority of products VACUPP users have traditionally purchased are covered by the Enhanced Limited Lifetime Warranty (eLLW). The eLLW includes:

- Warranty applies to Cisco Catalyst 3850, 3K-X, 2K-S, C2KSF, and 2960C switches.
- Warranty duration: As long as the original end user continues to own or use the product.
- In the event of discontinuance of product manufacture, Cisco warranty support is limited to 5 years from the announcement of discontinuance.
- Hardware replacement: Where available, Cisco or its service center will use commercially reasonable efforts to ship a replacement part for next-day replacement. Where next business day is not available, a replacement will be shipped the same business day if the RMA is received before the fulfillment warehouse cut-off time. Actual delivery times might vary depending on customer location.
- Warranty includes 90 days of Technical Assistance Center (TAC) support during local business hours, 8 hours per day, 5 days per week.
- Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).
- Warranty allows guest access only to Cisco.com.

**All Warranty Information:**

The file tabs on the Cisco.com Product Warranty page contain descriptions, terms, FAQs, and further detail on all of the warranty types listed above:

[https://www.cisco.com/c/en/us/products/warranty-listing.html#~tab-additional\\_warranty](https://www.cisco.com/c/en/us/products/warranty-listing.html#~tab-additional_warranty)

**Cisco Software Updating Policy:**

[https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-4500-series-switches/product\\_bulletin\\_c25-696974.html?referring\\_site=RE&pos=3&page=https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-3750-x-series-switches/product\\_bulletin\\_c25-607000.html](https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-4500-series-switches/product_bulletin_c25-696974.html?referring_site=RE&pos=3&page=https://www.cisco.com/c/en/us/products/collateral/switches/catalyst-3750-x-series-switches/product_bulletin_c25-607000.html) or <https://www.cisco.com/c/en/us/products/warranty-listing.html#~tab-field> .

**Cisco Warranty Finder:**

Find warranty coverage on particular Cisco products:

<https://connectthedots.cisco.com/connectdots/serviceWarrantyFinderRequest?fl=sf>.

- c. The simplest way of getting software updates, bug fixes, and new features at lower costs is to purchase multiyear Smart Net Total Care coverage at the time of the hardware purchase.



Another option for customers to get coverage at lower costs is to initiate an Enterprise Service Agreement (ESA), Enterprise License Agreement (ELA), and Software Support Service (SWSS). These offers are designed to ease support and licensing costs and management for customers. The agreements are not available on at a master contract-level basis because they both require hardware and software scoping at the customer level. Cisco would be glad to discuss these opportunities with VCU or any of the individual VASCUPP contract users.

**Question:**

7. Warranty and SMARTnet replacement subject to standard manufacturer delay and third business day shipping if new equipment is requested. Can delivery lead time for new replacement equipment be improved?

**Negotiated Response:**

Cisco understands that predictable lead times are critical for your customers' success and satisfaction. We also understand that business priorities are always changing and that in exceptional cases, a need to request expedites for DOA or equipment damaged in shipping will be important to manage urgent business needs. If such a need arises for a customer, their first point of contact should be the authorized reseller through which the product was purchased. The authorized reseller will work with the customer to process an RMA and an Expedite Request on their behalf. The customer may also contact the Cisco Account Manager if the issue requires further escalation.

**Question:**

8. Discussion of discount improvements for:
  - Cisco Products: Offered 35.0% - minimum requested Data 45.0%, Voice 50.0%
  - Cisco Software: Offered 35.0% - minimum requested 45.0%
  - Cisco Advanced Services: Offered 0%
  - SMARTnet NBD: Offered 1 year 25.0%, 3 year 28.0%, 5 year 30.0% - minimum requested for all SMARTnet offerings, not just NBD is 30.0% for a 1 year, 40.0% for 3 years, 45.0% for 5 years Is there an opportunity for deeper discounts than requested for higher maintenance orders with, as a suggestion, a tiered discount structure based on volume?

**Negotiated Response:**

First, Cisco wishes to respectfully clarify that the discounts offered in our bid response are as follows:

**Table 1. Cisco Product Categories**

<i>Cisco Base Discount Category</i>	<i>Product Family</i>	<i>Minimum Discount* (Educ and Gov)</i>
Core	Any Product Family not listed in Compute, Market or Net. Subject to the introduction of future categories	35%



Compute	Unified Computing System (UCS) Product Families	35%
Market	Cloud Services (i.e., SaaS) and Future Software offerings	10%
Net	Third-party software and other products	0%

\*Cisco offers the same minimum product discounts to all authorized contract users. Higher Education, K-12 Education, Local and State Government customers can all take advantage of the product discounts listed in Table 1. The discounts provided are floor discounts and individual transactions may qualify for additional, incremental (deeper) discounts or incentives offered by Cisco's authorized resellers at their sole discretion on a case-by-case basis.

**Table 2. Cisco Smart Net Total Care Discounts**

<i>Cisco SMART Net Total Care</i>	<i>Discount % (Education)</i>	<i>Discount % (Government)</i>
1-Year Contract	30.00%	10.00%

As confirmed at our in-person meeting, the discounts provided are floor discounts (minimum guarantees) and individual transactions may qualify for additional, incremental (deeper) discounts or incentives offered by Cisco's authorized resellers at their sole discretion on a case-by-case basis. This is no different than how our current VCU contract operates today.

All partners are eligible for Cisco promotions, such as Cisco's Opportunity Incentive Program, which will increase the partner's discount on a specific opportunity within this vehicle. Cisco will ensure that the contract webpage at [www.cisco.com](http://www.cisco.com) for the new contract is clear on how these minimum guaranteed discounts work and that deeper discounts may be available through the authorized resellers at their sole discretion.

Notwithstanding the foregoing, for large-volume purchases or strategic opportunities (i.e., multi-year purchase commitments), we encourage the customers to reach out to Cisco and its authorized resellers for a discussion on deeper pricing based on the dollar value and strategic nature of each opportunity.

Additionally, since this RFP is an IDIQ contract with no volume commitments, the pricing offered in Cisco's bid response is comparable to other customers with similar IDIQ contracts (i.e., quantity 1, with no volume commitments) and similar Ts & Cs.

**Question:**

9. Confirm the discounts are offered to higher education, K-12, and Government users of the contract.

**Negotiated Response:**

Tables 1 and 2 define the discounts Cisco is offering. All customer types (Education and Government) are offered the same hardware discounts shown in Table 1. Cisco product discounts are divided into the four distinct categories shown in Table 1: one general category, and three special categories. The general category is called "Core." It includes all Cisco products except





those specifically assigned to a special category. The special categories are “Compute,” “Market,” and “Net.” Compute includes all UCS product families, Market includes all Cisco cloud and Cisco software (SaaS) products, and Net is made up of any third-party software that is listed on the Cisco GPL.

Education customers (Higher Ed and K-12) receive a higher discount than Government customers on their Smart Net Total Care services purchases as shown in Table 2.

**Table 1. Cisco Product Categories**

<i>Cisco Base Discount Category</i>	<i>Product Family</i>	<i>Minimum Discount* (Educ and Gov)</i>
Core	Any Product Family not listed in Compute, Market or Net. Subject to the introduction of future categories	35%
Compute	Unified Computing System (UCS) Product Families	35%
Market	Cloud Services (i.e., SaaS) and Future Software offerings	10%
Net	Third-party software and other products	0%

\*Cisco offers the same minimum product discounts to all authorized contract users. Higher Education, K-12 Education, Local and State Government customers can all take advantage of the product discounts listed in Table 1. The discounts provided are floor discounts and individual transactions may qualify for additional, incremental (deeper) discounts or incentives offered by Cisco’s authorized resellers at their sole discretion on a case-by-case basis.

**Table 2. Cisco Smart Net Total Care Discounts**

<i>Cisco SMART Net Total Care</i>	<i>Discount % (Education)</i>	<i>Discount % (Government)</i>
1-Year Contract	30.00%	10.00%

**Question:**

10. Service Hourly Rates: Cisco offered the hourly rates below in the 2010 proposal that are the same both with and without travel and living expenses:

- Level 6 - \$160
- Level 5 - \$140
- Level 4 - \$120

Depending on the level and whether travel and living expenses are included, there is a range of service hourly rates for the authorized subcontractors from \$90 - \$250 with most of the service hourly rates at the lower end of the range. These rates have not increased during any of the terms of the current agreement. Cisco submitted significantly higher service hourly rates for the initial one year term of the contract with service hourly rates

quoted for the potential annual renew years 2-5 that exceed the percentage cap on annual price increases at the time of renewal. Does Cisco plan to offer services directly or only from the authorized subcontractors?

**Negotiated Response:**

To clarify, under Cisco's bid response, Cisco offered two types of services:

- Authorized Partner Services
- Cisco Advanced Services.

**Authorized Partner Services**

The authorized partners will provide basic installation and configuration services on a time and material basis. Cisco will solicit labor rates from the authorized partners as part of the onboarding process. Cisco cannot set the partners' labor rates, but we can inform them that VCU expects labor rates to be competitive in nature and comparable to the rates quoted on the current contract. We will also inform them not to include travel and living expense costs in their base rates. Any travel and living expense costs included in their quotes will need to conform to the University Travel Policy for VCU customers, or to the specific travel and living expense policies of other end-users.

**Cisco Advanced Services**

Cisco Advanced Services offerings inherently incorporate the collective intellectual capacity, capabilities, skills and knowledge of the Advanced Services organization, which is used by the methodologies employed throughout individual customer engagements. The Cisco Advanced Services portfolio has the flexibility to address unique customer requirements through the definition of a Statement of Work (SOW) focused on specific tasks, deliverables, and schedule milestones that are performed on a fixed-price basis.

Cisco Advanced Services are Commercial Items as defined in FAR 2.201. Due to the "Commercial Item" nature of our products and consulting services, Cisco does not have T&M type labor categories and labor rates. Rather all services are offered on a Firm Fixed Price (FFP) basis only.

Cisco Advanced Services works with customers to develop a SOW to define the requirements, milestones, and deliverables to meet their needs. The SOW is then evaluated based on the level-of-effort and resources needed to meet those milestones and produce the deliverables for their unique network. A FFP for the entire SOW is then presented to the customer for consideration. Since each SOW and each network being supported is unique, there is no like-for-like comparison between engagements.

We initially submitted Not To Exceed (NTE) labor rates in Tables 7 and 8 of our response in an effort to be compliant with the RFP requirements. Based on our discussions with you regarding how our Advanced Services are offered, we feel it best to formally request removal the Cisco labor rate Tables 7 and 8 in our original response to avoid any confusion the end users may have if they are incorporated into the final contract.

**Question:**

11. In the Pricing Schedule Cisco proposed hourly service rates that are also significantly higher than the current hourly service rates. What written commitment can Cisco provide that the partners/resellers hourly service rates shall remain in the same range as the current contract for onsite and remote work and competitive lower hourly service rates for service levels 1-3? What process is used to define the hourly service rates for nights, weekends and holiday work? Clarify whether the onsite hourly rates include travel and living expenses or whether any travel and living expenses are reimbursed based on the University Travel Policy?

**Negotiated Response:**

Due to anti-trust laws, Cisco cannot dictate or mandate that the partners' rates shall remain in the same range as the current contract. They must have complete discretion to determine their own rates. However, Cisco can solicit partner rates (all 6 Levels per the RFP) and advise them that VCU is interested in competitive rates for nights, weekends, and holidays. In addition, per our discussion on Friday, we will advise them that their rates should not be inclusive of any travel and living expenses since such costs are subject to the University Travel Policy or other applicable customer travel policies.

**Question:**

12. Is the pricing offered the most favorable pricing offered to any customer for the same volume at this particular time? What additional discounts or price breaks can be offered? Provide a revised Pricing Schedule for any lower unit prices and deeper discounts.

**Negotiated Response:**

The pricing offered in Cisco's bid response is comparable to contract pricing (not transactional pricing) offered to other state or local governmental entities in the U.S. that purchase substantially the same quantity of Cisco Products and Services under the new VCU/Cisco contract ("Contract") and under the same or similar terms and conditions.

Notwithstanding the foregoing, since this RFP is an IDIQ contract with no volume commitments, the pricing offered in Cisco's bid response is comparable to other customers with similar IDIQ contracts (i.e., quantity 1, with no volume commitments) and similar Ts &Cs. As stated in our bid response, the discounts offered are just the minimum, baseline contract pricing. All partners are eligible for Cisco promotions, such as Cisco's Opportunity Incentive Program, which will increase the partner's discount on a specific opportunity within this vehicle. Furthermore, for large-volume purchases or strategic opportunities, Cisco will entertain incremental discount points to partners based on the dollar value and strategic nature of each opportunity. Lastly, similar to our current contract, the authorized resellers can and will likely provide additional (deeper), incremental discounts on a transactional case-by-case basis at their sole discretion.



## Attachment 1

### Cisco Response to Cisco2017TermContractNegotiationQuestions

### Warranty Overview

Cisco products currently come with one of the following warranties.

<i>Warranty</i>	<i>Entitlement Descriptions</i>
Cisco 90-day Limited Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty duration: 90 days.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part within 10 working days after receipt of the RMA request. Actual delivery times might vary depending on customer location.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco End-User Software License Agreement and Limited Software Warranty	<ul style="list-style-type: none"> <li>■ Warranty duration: 90 days.</li> <li>■ Warranty provides that the media on which the software is furnished will be free of defects in materials and workmanship under normal use and that the software substantially conforms to its published specifications.</li> <li>■ Software is provided "as is," and in no event does Cisco warrant that the software is error free or that customer will be able to operate the software without problems or interruptions.</li> <li>■ Software warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, commences not more than 90 days after original shipment by Cisco).</li> <li>■ The end-user license agreement grants to customer a nonexclusive and nontransferable license to use for customer's internal business purposes the software and the documentation for which the customer has paid the required license fees.</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco 1-Year Limited Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty duration: 1 year.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part within 10 working days after receipt of</li> </ul>



<i>Warranty</i>	<i>Entitlement Descriptions</i>
	<p>the RMA request. Actual delivery times might vary depending on customer location.</p> <ul style="list-style-type: none"> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco 2-Year Limited Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty duration: 2 years.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part within 10 working days after receipt of the RMA request. Actual delivery times might vary depending on customer location.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco 3-Year Limited Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty duration: 3 years.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part within 10 working days after receipt of the RMA request. Actual delivery times might vary depending on customer location.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco 1-Year Limited Hardware and 1-Year Limited Software Warranty	<ul style="list-style-type: none"> <li>■ Hardware warranty duration: 1 year.</li> <li>■ Software warranty duration: 1 year.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part for delivery within 10 working days after receipt of the defective product at Cisco's site. Actual delivery times of replacement products might vary depending on customer location.</li> <li>■ Both hardware and software warranties commence from the date of shipment to customer (and in case of resale by a Cisco reseller, commencing not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>



<i>Warranty</i>	<i>Entitlement Descriptions</i>
Cisco 5-Year Limited Hardware and 1-Year Limited Software Warranty	<ul style="list-style-type: none"> <li>■ Warranty is available on optical hardware and software products.</li> <li>■ Hardware warranty duration: 5 years.</li> <li>■ Software warranty duration: 1 year.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part for delivery within 15 working days after receipt of the defective product at Cisco's site. Actual delivery times of replacement products might vary depending on customer location.</li> <li>■ Both hardware and software warranties commence from the date of shipment to customer (and in case of resale by a Cisco reseller, commencing not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Limited Lifetime Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty applies to Cisco Catalyst 3K, 3K-G, 3K-E, 2960 and 4K switches. Some limitations apply.</li> <li>■ Warranty duration: As long as the original end user continues to own or use the product.</li> <li>■ In the event of discontinuance of product manufacture, Cisco warranty support is limited to 5 years from the announcement of discontinuance.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part within 10 working days after receipt of the RMA request. Actual delivery times might vary depending on customer location.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Enhanced Limited Lifetime Warranty	<ul style="list-style-type: none"> <li>■ Warranty applies to Cisco Catalyst 3850, 3K-X, 2K-S, C2KSF, and 2960C switches.</li> <li>■ Warranty duration: As long as the original end user continues to own or use the product.</li> <li>■ In the event of discontinuance of product manufacture, Cisco warranty support is limited to 5 years from the announcement of discontinuance.</li> <li>■ Hardware replacement: Where available, Cisco or its service center will use commercially reasonable efforts to ship a replacement part for next-day replacement. Where next business day is not available, a replacement</li> </ul>



Warranty	Entitlement Descriptions
	<p>will be shipped the same business day if the RMA is received before the fulfillment warehouse cut-off time. Actual delivery times might vary depending on customer location.</p> <ul style="list-style-type: none"> <li>■ Warranty includes 90 days of Technical Assistance Center (TAC) support during local business hours, 8 hours per day, 5 days per week.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Small Business Pro Limited 5-Year Hardware Warranty	<ul style="list-style-type: none"> <li>■ Available for Cisco Small Business Pro Switch.</li> <li>■ Warranty duration: 5 years.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part within 10 working days after receipt of the RMA request. Actual delivery times might vary depending on customer location.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Small Business Product 1-Year Limited Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty duration: 1 year.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part for delivery upon receipt of the defective product at Cisco's site. Part will be shipped using ground shipping with shipping charges prepaid.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Small Business Product 3-Year Limited Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty duration: 3 years.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part for delivery upon receipt of the defective product at Cisco's site. Part will be shipped using ground shipping with shipping charges prepaid.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco</li> </ul>



<i>Warranty</i>	<i>Entitlement Descriptions</i>
	<p>reseller, not more than 90 days after original shipment by Cisco).</p> <ul style="list-style-type: none"> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
<p>Cisco Small Business Product 5-Year Limited Hardware Warranty</p>	<ul style="list-style-type: none"> <li>■ Warranty duration: 5 years.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part for delivery upon receipt of the defective product at Cisco's site. Part will be shipped using ground shipping with shipping charges prepaid.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
<p>Cisco Small Business Product Limited Lifetime Hardware Warranty</p>	<ul style="list-style-type: none"> <li>■ In the event of discontinuance of product manufacture, Cisco warranty support is limited to 5 years from the announcement of discontinuance.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part for delivery upon receipt of the defective product at Cisco's site. Part will be shipped using ground shipping with shipping charges prepaid.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
<p>Cisco Small Business Product Enhanced Limited Lifetime Hardware Warranty</p>	<ul style="list-style-type: none"> <li>■ Warranty duration: As long as the original end user continues to own or use the product.</li> <li>■ In the event of discontinuance of product manufacture, Cisco warranty support is limited to 5 years from the announcement of discontinuance.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement for next business day delivery, where available. Otherwise, commercially reasonable efforts will be used to ship a replacement part for delivery upon receipt of the defective product at Cisco's site. Actual delivery times may vary depending on customer location.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco</li> </ul>





<i>Warranty</i>	<i>Entitlement Descriptions</i>
	<p>reseller, not more than 90 days after original shipment by Cisco).</p> <ul style="list-style-type: none"> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Unified Computing 3-Year Limited Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty is applicable to Cisco Unified Computing System products only.</li> <li>■ Hardware warranty duration: 3 years.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part within the next Cisco business day after receipt of the RMA request. Actual delivery times of replacement products might vary depending on customer location.</li> <li>■ Software, including freeware operating systems and applications, is provided "as is," and in no event does Cisco warrant that the software is error free or that the customer will be able to operate the software without problems or interruptions.</li> <li>■ Both hardware and software warranties commence from the date of shipment to customer (and in case of resale by a Cisco reseller, commencing not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Limited 1-Year Return for Repair (RFR) Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty applies to select service provider video, transport, and access hardware only.</li> <li>■ Warranty duration: 1 year.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to repair or replace the defective product and ship the repaired or replacement part for delivery within 30 working days. Actual delivery times might vary depending on customer location.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Limited 3-Year RFR Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty applies to select service provider video, transport, and access hardware only.</li> <li>■ Warranty duration: 3 years.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to repair or replace the defective product and ship the repaired or replacement part for delivery within 30 working days.</li> </ul>



Warranty	Entitlement Descriptions
	<p>Actual delivery times might vary depending on customer location.</p> <ul style="list-style-type: none"> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Limited 5-Year RFR Hardware Warranty	<ul style="list-style-type: none"> <li>■ Warranty applies to select service provider video, transport, and access hardware only.</li> <li>■ Warranty duration: 5 years.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to repair or replace the defective product and ship the repaired or replacement part for delivery within 30 working days. Actual delivery times might vary depending on customer location.</li> <li>■ Hardware warranty commences from the date of shipment to customer (and in case of resale by a Cisco reseller, not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>
Cisco Limited 5-Year Hardware and 5-Year Software Warranty for Qualified Service Providers	<ul style="list-style-type: none"> <li>■ Warranty is applicable to qualified optical hardware and software products only.</li> <li>■ Warranty duration: 5 years.</li> <li>■ Software duration: 5 years.</li> <li>■ Hardware replacement: Cisco or its service center will use commercially reasonable efforts to ship a replacement part for delivery within 15 working days after receipt of the defective product at Cisco's site. Actual delivery times of replacement products might vary depending on customer location.</li> <li>■ Both hardware and software warranties commence from the date of shipment to customer (and in case of resale by a Cisco reseller, commencing not more than 90 days after original shipment by Cisco).</li> <li>■ Warranty allows guest access only to Cisco.com.</li> </ul>

Warranties provide limited liability for Cisco or its designated representative to repair and/or replace defects in Cisco products. They are generally limited in both the duration and the support they offer. Warranties generally do not include Cisco Technical Assistance Center (TAC) support, software updates, or any of the additional benefits obtained under a support service contract. It is the responsibility of Cisco or Cisco's designated representative to repair and/or replace the Cisco product within the time



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frame identified in the warranty card or license agreement that accompanied the originally purchased Cisco product. Cisco reserves the right to refund the purchase price as its exclusive warranty remedy.

Elements covered under a Cisco warranty are:

- **Hardware:** This guarantees that the hardware will be free of defects in material and workmanship under normal use, or it will be replaced by Cisco or Cisco's designated representative.
- **Software:** This guarantees that the physical media are free from defects, or they will be replaced by Cisco. Also, the warranty guarantees that the software generally conforms to the published specifications for the product. Software is provided "as is," and in no event does Cisco warrant that the software is error free or that customer will be able to operate the software without problems or interruptions. Warranty does not include software updates.

**Note:** Some Cisco Catalyst fixed switches are covered by the Cisco Catalyst OS software update policy. The software policy is not a part of warranty and is subject to change without notice.

You can use our [Warranty Finder](#) to determine which Cisco warranty applies to a specific product or product family. However, your rights and Cisco's obligations are determined solely by the warranty card (if any) accompanying your Cisco product, and warranty coverage is applicable only to the original end-user customer.

## Warranty and Related Hyperlinks:

Cisco End License User Agreement (EULA):

<https://www.cisco.com/c/en/us/products/end-user-license-agreement.html>

Supplemental End User License Agreement (SEULA) page:

<https://www.cisco.com/c/en/us/about/legal/cloud-and-software.html>

Cisco 90-Day Limited Hardware Warranty Terms:

<https://www.cisco.com/c/en/us/td/docs/general/warranty/English/901DEN.html>

Cisco 90-Day Limited Software Terms:

[https://www.cisco.com/c/en/us/td/docs/general/warranty/English/90DAY\\_WARR\\_EN.html](https://www.cisco.com/c/en/us/td/docs/general/warranty/English/90DAY_WARR_EN.html)

**MASTER SERVICES AGREEMENT**

This Agreement is entered into between Cisco Systems, Inc., having a principal place of business at 170 West Tasman Drive, San Jose, California, 95134 ("**Cisco**"), and Virginia Commonwealth University, having a principal place of business at 912 W Grace St , 5th Floor , Richmond , Virginia , 23284, United States (the "**Customer**") and is entered into as of the date of last signature below (the "**Effective Date**").

This Agreement consists of:

1. this signature page;
2. the Terms and Conditions below; and
3. the Service Descriptions of the Services Customer has chosen to purchase (as posted at <http://www.cisco.com/go/servicedescriptions>), as at the time of purchase of such Services by Customer, which are incorporated in this Agreement by this reference.
4. Exhibit A: End User License Agreement

Each party, as evidenced by the signature below by its authorized representative, acknowledges that it has read and agrees to this Agreement in its entirety.

**Virginia Commonwealth University**

**Cisco Systems, Inc.**

\_\_\_\_\_  
 ("**Customer**")

\_\_\_\_\_  
 ("**Cisco**")

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Authorized Signature

*KAROL KAIN GRAY*

*Phil Lozano*

Print Name  
*Vice President for  
Finance and Budget*

Print Name  
Director, Finance

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

December 13, 2017

\_\_\_\_\_  
 Date

**APPROVED BY LEGAL**

## TERMS AND CONDITIONS

### 1. DEFINITIONS

- a. **"Advanced Services"** means the services set forth in the Service Description(s) and/or SOW(s) selected by the Customer. Advanced Services do not include Cisco's core maintenance services, such as Smartnet or Software Application Services.
- b. **"Affiliate"** with respect to a party, means any entity that directly or indirectly controls, or is controlled by, or is under common control with such party. **"Control"** means: (i) that entity directly or indirectly owns more than 50% of the relevant party; or (ii) that entity has the ability to direct the affairs of the relevant party through any lawful means (e.g. a contract that allows control).
- c. **"Application Software"** means non-resident or standalone Cisco-branded Software Products listed on Cisco's Global Price List.
- d. **"Beta Cloud Services"** means a "beta" or pilot version of part or all of a Cloud Service which is not a final release and which may exhibit errors or other inconsistencies.
- e. **"Cisco Branded"** means a Service bearing a trademark or service mark of Cisco Systems, Inc. or any Cisco Affiliate.
- f. **"Cisco's Privacy Statement"** means the Cisco Privacy Statement as set out at <http://www.cisco.com/web/siteassets/legal/privacy.html> from time to time.
- g. **"Cloud Service"** means a Service delivered 'in the cloud', i.e. via infrastructure owned by Cisco or by a third party engaged by Cisco to make such infrastructure available.
- h. **"Confidential Information"** means proprietary and confidential information received by Cisco or Customer in connection with this Agreement and their relationship and is conspicuously marked as confidential, proprietary or the like or, in the case of confidential information disclosed orally, clearly identified as confidential, proprietary or the like at the time of oral disclosure and confirmed as confidential, proprietary or the like in writing within 14 days by the disclosing party. 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 secret information of the disclosing party, as well as, in the case of Cisco, any information posted on Cisco.com (to the extent such information is not publicly accessible).
- i. **"Content"** means all visual, written or audible communications, files, data documents, videos, recordings, or any other material displayed, posted, uploaded, stored, exchanged or transmitted on or through Customer's use of the Services or otherwise provided on a Site.
- j. **"Data Collection Tools"** means Hardware and/or Software tools that support Cisco's ability to provide troubleshooting on cases, data analysis, and report generation capabilities as part of the Services.
- k. **"Deliverable(s)"** means, with respect to each Service Description and/or SOW, the items to be delivered by Cisco as specified in an applicable Service Description and/or SOW, including, without limitation, any Software, Reports, Data Collection Tools, and/or Scripts.
- l. **"Documentation"** means 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.

- m. **"Equipment List"** means the list of Hardware and/or Software for which Cisco provides Technical Support Services.
- n. **"Force Majeure Event"** means an event beyond the affected party's reasonable control, including (without limitation) accidents, severe weather events, acts of God, actions of any government agency, epidemic, pandemic, acts of terrorism, or the stability or availability of the Internet or a portion thereof.
- o. **"Hardware"** means tangible Cisco equipment, devices, or components.
- p. **"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).
- q. **"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)].
- r. **"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].
- s. **"Milestone"** means a specific goal, objective or event pertaining to Advanced Services described under the terms of the SOW or AS Service Description, as applicable.
- t. **"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].
- u. **"Price List"** means the price list for services applicable in the country where the Services are ordered or delivered.
- v. **"Product"** means Cisco Hardware and Software products that are made generally available.
- w. **"Purchase Order"** or **"PO"** means a written or electronic order to Cisco for the Services to be provided by Cisco under the Agreement.
- x. **"Reports"** means reports, recommendations, network configuration diagrams, and related non-Software Deliverables provided by Cisco pursuant to the Agreement.
- y. **"Scripts"** means software scripts, macros and batch files provided by Cisco pursuant to the Agreement.
- z. **"Service Description"** means a description of the business and technical terms of the applicable Service (located at <http://www.cisco.com/go/servicedescriptions>) which is incorporated into this Agreement. A Service Description provides an overview of the relevant Service and any additional terms related to the Service.
- aa. **"Services"** means a service offering described in the applicable SOW or Service Description, to be selected by Customer and specified in the Purchase Order.

- bb. **"Site"** means a website or online space related to a Service.
- cc. **"Software"** means the software programs provided by Cisco, including any copies, Updates, upgrades, modifications, enhancements, and any derivative works thereof.
- dd. **"Statement of Work or SOW"** means the documents agreed upon by the parties that define the Services and Deliverables, if any, to be provided by Cisco.
- ee. **"Submission Data"** means certain technical data and related information that may be collected by certain Services or submitted by Customer, as set forth in the applicable Services Description.
- ff. **"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>).
- gg. **"Third Party Products"** means third party hardware and/or software, and all upgrades/updates thereto, that are designated by Cisco as required for: (i) the operation of Application Software in conformance with the relevant Documentation; and/or (ii) Cisco support of the Application Software.
- hh. **"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 any separately licensed and priced Software release that contains an enhanced configuration or feature set.
- ii. **"User"** means Customer's employees, contractors, agents, customers or other third parties (invited by Customer) who use the Services.

## 2. SCOPE

- a. This Agreement describes the terms and conditions for Customer's purchases of Services directly from Cisco. Such Services may include Advanced Services, Technical Support Services and Cloud Services.
- b. The applicable SOW(s) and/or Service Description(s) exclusively define the scope of the Services that Cisco shall provide to Customer. To the extent there is a conflict between the terms of a SOW or Service Description and this Agreement, the terms of this Agreement prevail, unless explicitly stated otherwise in the SOW.
- c. Unless otherwise explicitly agreed in writing, Services do not include any elements excluded by Cisco's "Services not Covered" document which can be found at [https://www.cisco.com/legal/Services\\_Not\\_Covered.pdf](https://www.cisco.com/legal/Services_Not_Covered.pdf).
- d. When using the Services, Customer may sometimes separately purchase services or goods (including software) provided by another company. Customer's use of such services or goods may be subject to separate terms between Customer and the provider (which Cisco will notify to Customer in advance), and Cisco shall have no liability or obligation relating to those services or goods.

## 3. ORDERS

- a. Customer shall purchase Services by issuing a Purchase Order, which is subject to credit approval by Cisco. Each Purchase Order must be sent by an authorized representative of Customer,

indicating the specific Services, quantity, price, total purchase price, requested delivery dates, bill-to address, shipping instructions (if applicable), site location or point of installation address, contract reference (if any), project ID (if applicable) and any other special instructions. Cisco may require Purchase Orders to be signed by an individual representative of Customer rather than generated electronically.

- b. Cisco may elect not to proceed with performing SOW-based Advanced Services until both Customer and Cisco have signed the applicable SOW and Cisco has received a valid Purchase Order. Each SOW, once signed by both parties, will become a part of this Agreement.
- c. This Agreement enables Customer to purchase Services in multiple countries. The parties acknowledge that, depending on the particular country in which Services are to be performed, Customer may need to submit a PO to the local Cisco entity for such country, and that a separate agreement between the local Customer affiliate and the local Cisco affiliate may be required.

#### **4. PRICING, INVOICING AND PAYMENT**

- a. Prices for Services shall be:
  - i. those specified in Cisco's then-current Price List less any applicable then-current discount at the time of acceptance of the Purchase Order by Cisco;
  - ii. as set out in a written price quotation provided by Cisco to Customer, or
  - iii. as specified in a written Statement of Work signed by Cisco and Customer.
- b. All stated prices are exclusive of any applicable freight, handling, shipping or insurance charges, taxes, fees and duties or other similar amounts. Customer shall pay all taxes related to Services purchased pursuant to this Agreement (other than taxes based on Cisco's net income). Cisco will show any applicable taxes as a separate item on the invoice. Cisco may gross up any Services fees if a withholding prevents Cisco from receiving the amount otherwise due to Cisco for the Services. Cisco may require Customer to provide copies of any applicable tax exempt certifications.
- c. Unless otherwise specified in the Service Description or otherwise agreed by the parties in writing, Cisco will invoice Services performed under a Service Description in advance of the performance of such Services. Fees for Services performed under a Statement of Work shall be invoiced as specified in the relevant SOW.
- d. Payment terms are net 30 days from the date of invoice. Unless otherwise agreed, all payments shall be made in the currency specified in the relevant quotation or SOW. Any sum not paid by Customer when due shall bear interest from the due date to the date of payment, at a rate of 10 per cent per annum, or the maximum rate permitted by law, whichever is less. Interest shall be calculated on a daily basis and shall accrue both before and after any judgment.
- e. Customer may withhold amounts that it reasonably and in good faith disputes as to the amounts owed. Customer will pay any undisputed fees. If Customer withholds any payment due to a dispute, it must notify Cisco in writing of any disputed fees within 15 days of the invoice date and provide Cisco with written details of the dispute. After Cisco receives notice of the dispute, Cisco will work with Customer in good faith to resolve the dispute. If the parties are unable to resolve the dispute within 30 days from receipt of such notice, Cisco may terminate the Services by giving Customer 10 days' written notice.

#### **5. TECHNICAL SUPPORT SERVICES**



- a. Customer will be entitled to receive Technical Support Services for Products on an Equipment List only if Customer provides information requested by Cisco to validate the Services entitlement for the relevant Product, including but not limited to a serial number evidencing that Services have been purchased for the Product, site location, contract number, and Product type.
- b. If Customer cannot provide validation information as stated in Section a above, and Cisco nonetheless agrees to provide Technical Support Services for Products, Customer shall pay for such Services at Cisco's then-current time and materials or non-contract service rates. Cisco will not be responsible for any discrepancy in such Services due to or arising from incomplete or inaccurate information provided by Customer.
- c. From time to time (upon reasonable advance notice) Cisco may perform an inventory review of Customer's installed base and review serial numbers and other records to validate the Customer's entitlement to Technical Support Services.
- d. Cisco will charge a Service fee if it finds that unauthorized Technical Support Services are being provided. This Service fee may include amounts which should have been paid, interest, and attorneys' and audit fees.
- e. Customer shall take all necessary action (for example, disabling passwords) to ensure that any former employees and contractors do not access or use the Services.

## 6. OWNERSHIP

- a. Each party will retain the exclusive ownership of all its pre-existing Intellectual Property, Confidential Information and materials (including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology) which are
  - i. owned by a party prior to commencement of any Services under this Agreement; or
  - ii. otherwise developed by or for such party outside the scope of this Agreement
 (the "**Pre-Existing Technology**").
- b. Except as otherwise expressly stated in this Agreement or an applicable SOW, Cisco owns and will continue to own all right, title and interest in and to its Pre-Existing Technology as well as the Services, Products, Deliverables, Software (including Data Collection Tools, recommendations, reports, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by Cisco or a third party acting on Cisco's behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing (collectively, "**Cisco Intellectual Property**").
- c. As between Customer and Cisco, Customer shall at all times retain all right, title and interest in and to all of Customer's Pre-Existing Technology and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter, other than Cisco Intellectual Property.
- d. All Intellectual Property in relation to Third Party Products shall at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

## 7. LICENSES

- a. Cisco grants to Customer a worldwide, non-exclusive license to use:
- i. Software provided in conjunction with the Services, if any, solely in object code form;
  - ii. Data Collection Tools, if any; and
  - iii. other Cisco Intellectual Property to the extent required to fully utilize the Deliverables or Services provided
- (collectively and individually, the “**Licensed Materials**”). Such license is for Customer’s internal business use only and is subject to Customer’s compliance with the terms of this Agreement. Such license may only be transferred in accordance with Section 15.a below.
- b. In addition, Cisco grants to Customer the right:
- i. to copy the Deliverables, in whole or in part; and
  - ii. to modify and create derivative works of any Scripts provided by Cisco to Customer pursuant to this Agreement in each case solely for Customer’s internal business use.
- c. The above license grants do not include the right to sublicense. However, Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials and Cloud Services solely on Customer’s behalf for Customer’s benefit. Customer must ensure that any such use is subject to license restrictions and confidentiality obligations at least as protective of Cisco’s rights in such Licensed Materials as are specified in this Agreement. Customer is solely responsible for all Services usage using any of its account number(s), password(s), or other login credential(s). Customer agrees to use reasonable means to protect such login details from unauthorized disclosure or use by third parties.
- d. Nothing in this Agreement shall alter or affect the Intellectual Property rights and/or licenses provided with any Products.
- e. To the extent Software is provided incidental or as a component to the Services, the use of the Software will be governed by the terms and conditions in Cisco’s End User License Agreement, attached hereto, (the “**End User License Agreement**” or the “**EULA**”) as published by Cisco from time to time. To the extent there is a conflict between the terms of the End User License Agreement and this Agreement, the terms of the End User License Agreement will apply, unless explicitly stated otherwise in this Agreement.
- f. In the case of Data Collection Tools that include Hardware, Customer will use any Software included with such Data Collection Tools only on the Hardware provided with such Data Collection Tools. In the case of Data Collection Tools that consist of Software only, Customer may use such Data Collection Tools on Hardware or third party hardware, unless the applicable EULA, Service Description or SOW provides otherwise.
- g. The duration of the license rights granted in this Section will be specifically provided in the applicable EULA, Service Description or SOW.
- h. Except as otherwise expressly stated in this Agreement or an applicable SOW, Customer shall not (and shall not permit a third party to):
- i. download more than one copy of the Software;
  - ii. copy, in whole or in part, any Licensed Materials;

- iii. make error corrections or derivative works of any Licensed Materials;
  - iv. modify, decompile, decrypt, reverse engineer or disassemble any Licensed Materials;
  - v. reduce all or any portion of any Licensed Materials to human-readable form; or
  - vi. transfer, sublicense, rent, lease, distribute, or sell, any Licensed Materials.
- i. Customer shall not receive any implied licenses under this Agreement, and Cisco reserves all rights not expressly granted under this Agreement.
  - j. When Customer updates or upgrades a copy of Software to a new release, Customer shall not use the new Software release and the corresponding copy of the previous Software release concurrently (except for a limited period of parallel testing and migration and for archive purposes). Under no circumstances shall the previous release be re-used or transferred to any other device(s), or otherwise hosted for potential later reuse.
  - k. Customer hereby grants to Cisco a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback including the right to use and incorporate Customer Feedback into any product or service for any purposes whatsoever without any financial or other obligation to Customer or any attribution to Customer. For the purposes of this Section, "**Customer Feedback**" means all oral or written communications which Customer provides to Cisco regarding improvements or changes to any product or service.

## 8. WARRANTY

- a. CISCO WARRANTS TO CUSTOMER THAT ALL SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE PERFORMED IN A WORKMANLIKE MANNER AND (WHERE APPLICABLE) WILL MATERIALLY COMPLY WITH THE RELEVANT SERVICE DESCRIPTION.
- b. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT CISCO'S OPTION:
  - i. RE-PERFORMANCE OF THE SERVICES; OR
  - ii. TERMINATION OF THIS AGREEMENT OR THE APPLICABLE SERVICE AND THE REIMBURSEMENT BY CISCO TO CUSTOMER OF THE PORTION OF THE SERVICE FEES PAID TO CISCO BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES.

IN ORDER TO RECEIVE THIS REMEDY, CUSTOMER MUST PROMPTLY NOTIFY CISCO OF A BREACH OF THIS WARRANTY.

- c. EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED BY (I) STATUTE, (II) COMMON LAW OR (III) OTHERWISE, IN RELATION TO THE SERVICES ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.
- d. CUSTOMER MAY ESCALATE ANY UNRESOLVED ISSUE WITH THE SERVICES IN ACCORDANCE WITH THE SEVERITY AND ESCALATION GUIDELINES WHICH CAN BE FOUND AT [http://www.cisco.com/web/about/doing\\_business/legal/service\\_descriptions/docs/Cisco\\_Severity\\_and\\_Escalation\\_Guidelines.pdf](http://www.cisco.com/web/about/doing_business/legal/service_descriptions/docs/Cisco_Severity_and_Escalation_Guidelines.pdf).

## 9. PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT INDEMNIFICATION

- a. Cisco will defend any claim(s) against Customer that a Cisco-Branded Service infringes third party patents, copyrights or registered trademarks (the "Claim") and will indemnify Customer against the final judgment entered by a court of competent jurisdiction or any settlements arising out of a Claim.
- b. Customer shall:
  - i. promptly notify Cisco in writing of the Claim (or threat thereof), and any subsequent litigation updates; and
  - ii. cooperate with Cisco in the defense of the Claim (including any statements to third parties regarding the Claim), and grant Cisco full and exclusive control of the defense and settlement of the Claim and any subsequent appeal.

If Customer fails to notify Cisco promptly of the Claim, and that failure prejudices Cisco's ability to defend, settle or respond to the Claim, then Cisco's obligation to defend or indemnify Customer with respect to that Claim will be reduced to the extent Cisco has been prejudiced. In addition, such failure to provide prompt notification shall relieve Cisco of any obligation to reimburse for Customer attorneys' fees incurred prior to notification.

- c. If a Claim is made or appears likely, Customer agrees to permit Cisco to procure for Customer the right to continue using the Cisco-Branded Service, or to replace or modify the Cisco-Branded Service with one that is at least functionally equivalent. If Cisco determines that none of those alternatives is reasonably available, then Cisco will refund to Customer a pro rata portion of the price originally paid by Customer to Cisco for such Cisco-Branded Service for the remainder of the unexpired term.
- d. Cisco has no obligation for any Claim based on:
  - i. compliance with any designs, specifications, requirements or instructions provided by Customer or a third party on Customer's behalf;
  - ii. modification of a Cisco-Branded Service by Customer or a third party;
  - iii. the amount or duration of use made of the Cisco-Branded Service, revenue earned through use of the Cisco-Branded Service, or services offered through use of the Cisco-Branded Service; or
  - iv. combination, operation or use of a Cisco-Branded Service with non-Cisco products, software, services or business processes.
- e. This Section states Cisco's entire obligation and Customer's exclusive remedy regarding any claims for intellectual property infringement.

## 10. LIMITATION AND EXCLUSION OF LIABILITY

- a. Nothing in this Agreement limits or excludes the liability of:
  - i. Either party to the other for:
    - 1. bodily injury or death resulting directly from the negligence of the other party;
    - 2. fraud or fraudulent misrepresentation;
    - 3. ; or

4. any liability that cannot be limited or excluded under applicable law.
- ii. Customer to Cisco arising out of:
    1. Customer's breach of Section 7 (Licenses) or;
    2. Failure to pay any amounts due to Cisco under this Agreement.
- b. Subject to Section 10a above and Section 10c below, each party's total aggregate liability is limited to the greater of:
    - i. One hundred thousand dollars (US\$100,000); or
    - ii. the money paid to Cisco under this Agreement during the twelve (12) month period prior to the event or circumstances that first gave rise to such liability.
  - c. Subject to Section 10a above, and notwithstanding anything else in this Agreement to the contrary, neither party will be liable for any:
    - i. special, incidental, indirect or consequential damages;
    - ii. loss of any of the following: profits, revenue, business, anticipated savings, use of any product or service, opportunity, goodwill or reputation;
    - iii. lost or damaged data; or
    - iv. wasted expenditure (other than any expenditure necessarily incurred to discharge the innocent party's duty or to mitigate its losses).

This limitation of liability applies whether the claims are contract, tort (including negligence), misrepresentation or otherwise. This limitation of liability is in the aggregate and not per incident.

- d. Except for Customer's breach of Cisco's intellectual or proprietary rights, neither party may bring a claim under this Agreement more than 24 months after the event that creates the action or claim.
- e. References in this Section 10 to (a) a "**party**" includes a party's affiliates, officers, directors, employees, agents and suppliers and (b) "**liability**" includes liability arising from contract, tort (including negligence), under any indemnity, strict liability or otherwise, in each case even if a party has been informed of the possibility of that liability. In Section c, references to "**loss**" refers to any and all kinds of loss or damage including, without limitation, any damages, fines, costs, charges, fees or other liability.

## 11. CONFIDENTIALITY

- a. Customer and Cisco acknowledge that they may each obtain Confidential Information in connection with this Agreement and their relationship. The receiving party shall at all times keep in trust and confidence all such Confidential Information, and may use such Confidential Information solely for the purpose of furtherance of the business relationship between the parties as provided in this Agreement.
- b. Notwithstanding the above, Cisco shall be authorized to disclose Customer's Confidential Information to contractors or employees of a Cisco entity who have a legitimate business need to have access to such information.
- c. Upon termination or expiration of this Agreement (for any reason and at any time), the receiving

party shall if so requested, immediately cease use of and return to the disclosing party or destroy all Confidential Information (including all copies thereof) in the receiving party's possession, custody, or control, provided that the receiving party may keep archival copies for regulatory purposes and to enforce its rights and subject to the obligations of confidentiality herein.

- d. This Section 11 shall not apply to information which: (i) has entered the public domain except where such entry is the result of the receiving party's breach of this Agreement; (ii) was rightfully in the receiving party's possession prior to disclosure under this Agreement; or (iii) is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party.
- e. The receiving party will be authorized to disclose Confidential Information as may be required by applicable law pursuant to a valid order issued by a court or government agency or relevant regulatory authority (including a stock exchange), provided that the receiving party provides: (i) prior written notice to the disclosing party of such obligation; and (ii) the opportunity to oppose such disclosure.
- f. Nothing in this Agreement will prohibit either party from developing or having developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that such party does not violate any of its obligations under this Agreement in connection with such development. In addition, either party shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein, provided such Confidential Information is not expressly incorporated in a tangible form provided by the disclosing party.
- g. Neither party shall disclose the terms and conditions of this Agreement without the prior written consent of the other party. Any press release or publication regarding this Agreement is subject to both the prior review and the written approval of both parties.

## 12. CONTENT, PRIVACY AND DATA PROTECTION

- a. Cisco makes no claim to Customer's Content and Cisco will not sell Customer's Content to third parties.
- b. Customer is solely responsible for its Content. Customer grants Cisco a worldwide, royalty-free, sublicensable license to use, modify, reproduce and distribute the Content, only as reasonably required to provide the Services. Where the Services include a publicly accessible Site with Customer's Content, Cisco may also publicly perform or publicly display such Content in order to provide the Services.
- c. Cisco will use Content and Submission Data in accordance with this Agreement, the applicable Services Description and Cisco's Privacy Statement, which is incorporated into this Agreement by reference. Cisco will not use, disclose or otherwise process Content and Submission Data other than (i) as reasonably necessary to provide the Services, (ii) where instructed or permitted by Customer, (iii) to exercise or protect Cisco's legal rights or (iv) as required by applicable law.
- d. Except as otherwise specified in a Service Description, Cisco will limit access and use of Customer's Content to Cisco employees and contractors as needed to deliver the Services. Cisco will (if so requested) return or destroy Customer's Content after the termination of the Services (provided that Cisco may retain a limited number of copies of such content in archival format for its record keeping and to enforce its rights). Cisco may make a reasonable charge for activities

relating to the return of Customer's Content including provision of such Content in a specific format.

- e. By using a Service and accepting this Agreement Customer agrees that Cisco may collect, use, store and process Content and Submission Data (including outside the country or territory where Customer is located), and transfer such Content and Submission Data to any of Cisco's Affiliates and/or authorized subcontractors or agents worldwide for their use and processing, only in connection with the provision of Services. Customer is responsible for obtaining consent from its Users to such processing and transfer of Content and Submission Data, including international transfers.
- f. Cisco will comply with all privacy and data protection laws applicable to Cisco's provision of the Services. Some of Customer's Content or other data may be subject to governmental regulation or otherwise may require security measures beyond those specified by Cisco for the relevant Service. Customer agrees not to input such Content or to otherwise provide such data unless Cisco has first agreed in writing to provide additional required security measures. Cisco is not responsible for compliance with any privacy or data protection law or regulatory provisions applicable to Customer or its industry and not generally applicable to Cisco's provision of the Services.

### 13. CLOUD SERVICES

- a. The fees for Cloud Services may also include overage amounts or usage charges, if described in the relevant Service Description.
- b. The initial term of an Order for Cloud Services (the "**Initial Term**") commences on the date the Cloud Services are available for use by you and lasts for the period stated in the Order. After such initial term, unless the Order states otherwise, there will be an automatic renewal term of the same length (the "**Renewal Term**") unless Customer notifies Cisco in writing at least 30 days before the end of the Initial Term or then current Renewal Term that it does not want to renew the Cloud Services.
- c. If the fees for Cloud Services will change for the Renewal Term, Cisco will notify Customer reasonably in advance of the renewal. If Customer agrees with the fee changes, it may do nothing and the new fees will apply for the upcoming Renewal Term.
- d. Use of the Cloud Services is subject to Cisco's Acceptable Use Policy ("**AUP**") for Cloud Services set out at [http://www.cisco.com/web/about/doing\\_business/legal/terms-conditions/cloud-services-acceptable-use-policy.html](http://www.cisco.com/web/about/doing_business/legal/terms-conditions/cloud-services-acceptable-use-policy.html).
- e. Cisco may modify the computing environment used to provide Cloud Services, as long as such changes do not materially degrade the features, functionality or security of the Cloud Services.
- f. Customer will comply with all applicable laws and regulations related to its receipt and use of the Cloud Services. Customer must ensure that it has the right to use all features of the Cloud Services in its jurisdiction. The Cloud Services may not be available in all countries and may not be available for use in any particular location.
- g. Cisco may offer Customer the opportunity to use and evaluate Beta Cloud Services to get Customer's Feedback. Beta Cloud Services may contain bugs, errors and other problems and Customer accepts the Beta Cloud Services "AS-IS" without any express or implied support or warranty of any kind. Customer may be required to provide Feedback to use Beta Cloud Services. Cisco makes no representations, promises or guarantees that the Beta Cloud Services will ever be generally released. If a Beta Cloud Service is discontinued, unless otherwise provided in a separate written agreement, Cisco will give Customer reasonable advance notice that the Beta Cloud Service is being discontinued so that Customer can download its Content. After that, Cisco

may suspend or terminate access to the Beta Cloud Service and delete any Content or data on the Beta Cloud Service without any liability to Customer.

- h. If Cisco gives Customer access to any Cloud Services for evaluation purposes, Customer can only use such Services in a non-production environment and for the period Cisco notifies Customer of in writing. If no evaluation period is specified, such Cloud Services will be available for 30 days from when you first access such Cloud Services. Regardless of any other terms in this Agreement, the Cloud Services provided for evaluation purposes are provided "AS-IS" without any express or implied support or warranty of any kind. If Customer violates this Section, Cisco may charge Customer fees for its use.

#### 14. TERM AND TERMINATION

- a. The term of this Agreement shall commence on the Effective Date and shall continue for a period of one year. Such term will be renewed automatically for successive one-year terms unless either party gives written notice to terminate at least 60 days before the end of the then-current term.
- b. Where the parties have agreed to an Equipment List for which Cisco is to provide Technical Support Services, the term of such Equipment List shall commence on the date stated on the relevant Purchase Order, which may be up to 60 days following the date of issue of that Purchase Order. Unless otherwise agreed, the term of an Equipment List is 12 months and shall be renewed automatically for successive one year terms, unless either party notifies the other of its intent to terminate at least 60 days prior to the expiration of the then-current one year term. If Cisco agrees to provide Technical Support Services after expiry of an Equipment List, Customer shall pay for such Services at Cisco's then-current time and materials or non-contract service rates.
- c. Cisco reserves the right to make changes to the scope and content of all or any part of the Services, including terminating availability of a given Service, subject to giving Customer at least 30 days' prior notice of such changes. Such changes will become effective only upon the renewal date of the affected Services. This Section does not apply to Services provided under a SOW.
- d. This Agreement and any Services provided hereunder may be terminated immediately by either party upon written notice if the other party breaches any of the material provisions of this Agreement and
  - i. the breach is not capable of being cured or
  - ii. the other party fails to cure such breach within 30 days after receiving written notice requiring such breach to be cured.
- e. If Services fees are not paid when due and payment has not been received within 30 days after notice from Cisco of such past due payment, Cisco may withhold the provision of Services until all overdue amounts are paid in full, or terminate immediately this Agreement and any Services.
- f. Either party may request termination of this Agreement and any Services hereunder to the court appointed administrator or receiver or similar officer under applicable law if:
  - i. the other party ceases to carry on business as a going concern;
  - ii. the other party becomes insolvent or the subject of bankruptcy proceedings;
  - iii. any step is taken for the institution of voluntary or involuntary proceedings in bankruptcy or liquidation; in relation to the other party; or



- iv. the other party has a receiver or similar officer appointed with respect to the whole or a substantial part of its assets.

Each party will inform the other in writing of any threat of the events described in (i) to (iv) above which may affect its financial situation.

- g. If Customer places Purchase Orders which are accepted by Cisco following termination or expiration of this Agreement, such Purchase Orders shall be governed by the terms and conditions of this Agreement in effect immediately prior to such termination or expiration, unless the parties agree otherwise. However, acceptance by Cisco of any such Purchase Order will not be considered to be an extension or renewal of the term of this Agreement.
- h. Subject to Sections d and e above, the term of a SOW shall be as specified in that SOW and each Service provided under this Agreement shall expire at the end of its respective term, which may be after the termination of this Agreement becoming effective.
- i. If notice of termination of any Service is given (i) Cisco shall continue to provide such Service until the effective date of such termination and (ii) Customer shall pay Cisco for such Services up to the effective date of termination.
- j. Where Customer is entitled to terminate this Agreement pursuant to this Section 14, it shall in its sole discretion be entitled to terminate only the affected Purchase Order(s) that are the subject of the event that gave rise to the right to terminate.

#### **15. ASSIGNMENT AND SUBCONTRACTING**

- a. Neither this Agreement nor any right or obligation under this Agreement may be assigned by a party without the other party's prior written consent, which will not be unreasonably withheld or delayed. Any attempted assignment shall be void and of no effect. However, Cisco may assign this Agreement and any right or obligation under it to an Affiliate without Customer's approval.
- b. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all amounts due under this Agreement whether arising before or after such assignment.
- c. Cisco may subcontract the performance of the Services to one or more third party organizations. Any such subcontract shall not relieve Cisco of any of its obligations under this Agreement.

#### **16. EXPORT, Re-EXPORT, TRANSFER & USE CONTROLS**

Cisco products, technology and Services are subject to U.S. and local export control laws and regulations. The parties shall comply with such laws and regulations governing use, export, re-export and transfer of Products and technology and shall obtain all required U.S. and local authorizations, permits or licenses.

#### **17. MISCELLANEOUS**

- a. Cisco may modify or discontinue Services features to comply with applicable laws and regulations. Cisco will comply with all applicable laws in the provision of the Services to Customer.
- b. The Software and related documentation are "commercial items" as defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and Defense Federal Acquisition Regulation Supplement ("DFAR") 227.7202-1 through 227.7202-4, and notwithstanding any other provision to the contrary in any agreement into which this Agreement

may be incorporated, Government end users will acquire the Software and related documentation with only those rights set forth in this Agreement. Any license provisions that are inconsistent with federal procurement regulations are not enforceable against the U.S. Government.

## 18. GENERAL

- a. Choice of Law. The validity, interpretation, and performance of this Agreement shall be governed by and construed under the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law.

The Federal District Court, Northern District of California or the Superior Court of Santa Clara County, California shall have exclusive jurisdiction over any claim arising under this Agreement, provided that either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.

The parties agree that the UN Convention on Contracts for the International Sale of Goods shall not apply to the interpretation or enforcement of this Agreement.

- b. Dispute Resolution. Cisco and Customer agree that any conflict, dispute, controversy, or claim arising out of or relating to this Agreement or the relationship created by this Agreement, including questions of arbitrability, whether sounding in tort or contract (together or individually a "Dispute"), shall be finally resolved in accordance with the following process:

- i. Escalation of Disputes. Subject to Section x below, the parties agree to attempt to resolve each Dispute by first escalating the Dispute to their respective business managers. Within fourteen (14) calendar days of written notice of a Dispute, the business managers will meet in person or by phone and work in good faith to resolve the Dispute.
- ii. Mandatory, Non-Binding Mediation. Subject to Section x below, if the parties are unable to resolve the Dispute in accordance with Section i above, either party may initiate a mandatory, non-binding mediation. The mediation shall be in accordance with the JAMS mediation procedures then in effect. The JAMS mediation procedures are hereby incorporated by reference into this clause.
- iii. The parties shall share all fees and costs of the mediation proceedings.
- iv. All communications made during the course of the mediation by either of the parties or the mediator are intended to be confidential and privileged to the extent permitted by law.
- v. Binding Arbitration. SUBJECT TO SECTION x BELOW, IF THE PARTIES ARE UNABLE TO RESOLVE THE DISPUTE THROUGH THE MEDIATION PROCESS WITHIN SIXTY (60) CALENDAR DAYS OF THE APPOINTMENT OF THE MEDIATOR, OR SUCH FURTHER PERIOD AS THE PARTIES SHALL AGREE TO IN WRITING, THE DISPUTE SHALL BE REFERRED TO AND FINALLY RESOLVED BY BINDING ARBITRATION UNDER THE JAMS ARBITRATION RULES THEN IN EFFECT, WHICH ARE HEREBY INCORPORATED BY REFERENCE INTO THIS CLAUSE.
- vi. The arbitration tribunal shall consist of a sole arbitrator, selected in accordance with the JAMS arbitration rules. The arbitrator shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an adequate opportunity to discover relevant information regarding the subject matter of the Dispute.
- vii. Cisco shall pay all fees and costs of the arbitration proceedings. After the arbitrator issues the written award, however, the prevailing party may apply to the arbitrator for recovery of all reasonable costs and expenses associated with the arbitration, including, but not limited to,

the fees of the arbitrator, administrative fees, and reasonable attorneys' fees. Such costs and expenses will be awarded at the arbitrator's discretion.

- viii. Notwithstanding anything to the contrary, the arbitrator shall exceed his or her powers if the arbitrator awards damages inconsistent with the provisions set forth in Section 10 of this Agreement. The parties irrevocably waive the award of any such damages.
- ix. The language to be used in the arbitration shall be English.
- x. Preliminary Relief. At any point after a Dispute has arisen, in the event interim or provisional relief is necessary to protect the rights or property of a party under Section 11 of this Agreement or otherwise prior to the resolution of the Dispute, either party may, without waiving any process or remedy under this Agreement, seek such relief from any court of competent jurisdiction.
- c. Force Majeure. Neither party shall be liable for any delay or failure in non-monetary performance obligations due to a Force Majeure Event. The time for performance of the obligations and rights of the defaulting party shall be extended for a period equal to the duration of the Force Majeure Event.
- d. 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.
- e. Severability. If one or more terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or 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. However, if this paragraph is invoked and, as a result, the value of this Agreement is materially impaired for either party, then the affected party may terminate this Agreement by written notice with immediate effect.
- f. 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, and other professionals 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.
- g. 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.
- h. Entire Agreement. This Agreement 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 in writing between the parties. There are no conditions, understandings, agreements, representations or warranties, expressed or implied. This Agreement may only be modified by a written document executed by both parties.
- i. Notices. All notices required or permitted under this Agreement shall be in writing. Notices will be deemed to have been given (i) one day after deposit with a commercial express courier specifying next day delivery; or (ii) two days for international courier packages specifying two-day delivery,

with written verification of receipt.

All communications shall be sent to the parties' addresses shown on the first page of this Agreement or to such other address as may be designated from time to time by a party by giving at least 14 days' written notice to the other party.

Notwithstanding the above, notices from Cisco regarding general changes in pricing, Services, policies or programs may also be by posting on Cisco.com (or any other website used by Cisco) or by e-mail or fax.

- j. Survival. The following sections shall survive the expiration or earlier termination of this Agreement: Sections 1 (Definitions), 4 (Pricing, Invoicing and Payment), 5 (Technical Support Services), 6 (Ownership), 7 (Licenses), 8 (Warranty), 9 (Patent, Copyright and Trademark Infringement Indemnification), 10 (Limitation and Exclusion of Liability), 11 (Confidentiality), 12 (Content, Privacy and Data Protection), 13 (Cloud Services), 14 (Term and Termination), and 15 (Assignment and Subcontracting).
- k. 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. If 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 this Agreement.

## EXHIBIT A

### CISCO END USER LICENSE AGREEMENT

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Europe (excluding Italy), Middle East, Africa, Asia (excluding Japan and China) or Oceania (excluding Australia)	Laws of England	English Courts
Japan	Laws of Japan	Tokyo District Court of Japan
Australia	Laws of the State of New South Wales	State and Federal Courts of New South Wales
Italy	Laws of Italy	Court of Milan
China	Laws of the People's Republic of China	Hong Kong International Arbitration Center
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