

## ADVANCED SERVICES AGREEMENT

YOU MUST CAREFULLY READ AND ACCEPT THIS ADVANCED SERVICES AGREEMENT (THE “**AGREEMENT**”) BEFORE CISCO WILL ACCEPT YOUR PURCHASE ORDER FOR ADVANCED SERVICES. **IF YOU DO NOT AGREE TO THIS AGREEMENT, CLICK THE “DECLINE” BUTTON AT THE END OF THIS AGREEMENT.** IF YOU AGREE TO THIS AGREEMENT, CLICK THE “ACCEPT” BUTTON AT THE END OF THIS AGREEMENT, WHICH SHALL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT.

This Agreement is entered into by and between you (the “**Customer**”) and the Cisco entity with which you have placed your Purchase Order, which shall be: This Agreement is entered into by and between you (the “**Customer**”) and the Cisco entity with which you have placed your Purchase Order, which shall be: Cisco Systems, Inc. (for U.S. the Caribbean, Antarctica or Latin America); Cisco Systems Canada Co. (for Canada); Cisco Systems International B.V. (for China, India or the Republic of Korea, the Netherlands or the Russian Federation); Cisco Systems (Italy) s.r.l., (for Italy); Cisco Systems G.K. (for Japan); Cisco Systems Australia Pty Ltd (for Australia); Cisco International Limited (for Asia Pacific region (excluding Australia, China, India, the Republic of Korea and Japan), Israel, Middle East Kuwait, Libya, Saudi Arabia, or United Arab Emirates (UAE)), Africa, Central and Eastern Europe (excluding the Russian Federation), the European Economic Area (EEA) (excluding Italy and the Netherlands), Western Europe or the Commonwealth of Independent States (CIS) (respectively, “**Cisco**”). Central and Eastern Europe means Albania, Bosnia and Herzegovina, Croatia, Republic of Moldova, Serbia and Montenegro, and the former Yugoslav Republic of Macedonia. European Economic Area (EEA) means the then-current member states of the European Union (EU) and the then-current member states of the European Free Trade Association (EFTA). For the avoidance of doubt, this definition includes Switzerland. Western Europe means Andorra, Monaco and San Marino. Commonwealth of Independent States (CIS) means Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Ukraine and Uzbekistan).

This Agreement consists of:

- (i) the Terms and Conditions below; and
- (ii) the Service Descriptions of the Advanced Services which Customer has chosen to purchase, as posted [here](#), as at the time of purchase of such Services by Customer, which are incorporated in this Agreement by this reference.

## TERMS AND CONDITIONS

### 1. DEFINITIONS

- a. **Accepted** means the Customer’s binding acceptance of this Agreement via Cisco’s click-accept web interface application.
- b. **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 Smart Net or Software Application Services.
- c. **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).
- d. **Application Software** means non-resident or standalone Cisco-branded Software Products listed on Cisco’s Global Price List.
- e. **Cisco’s Privacy Statement** means the Cisco Privacy Statement as set out [here](#) from time to time.

- f. **Confidential Information** means proprietary and confidential information received by Cisco or Customer in connection with the Agreement and their relationship. Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party, as well as, in the case of Cisco, any information posted on Cisco.com.
- g. **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.
- h. **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 Advanced Services.
- i. **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.
- j. **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.
- k. **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.
- l. **Hardware** means tangible Cisco equipment, devices, or components.
- m. **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).
- n. **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)].
- o. **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].
- p. **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.
- q. **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].

- r. **Price List** means the price list for services applicable in the country where the Services are ordered or delivered.
  - s. **Product** means Cisco Hardware and Software products that are made generally available.
  - t. **Purchase Order or PO** means a written or electronic order to Cisco for the Advanced Services to be provided by Cisco under the Agreement.
  - u. **Reports** means reports, recommendations, network configuration diagrams, and related non-Software Deliverables provided by Cisco pursuant to the Agreement.
  - v. **Scripts** means software scripts, macros and batch files provided by Cisco pursuant to the Agreement.
  - w. **Service Description** means a description of the business and technical terms of the applicable Advanced Services (located [here](#)), which is incorporated into this Agreement. A Service Description provides an overview of the relevant Advanced Services and any additional related terms.
  - x. **Services** means a Cisco service offering described in the applicable SOW or Service Description, to be selected by Customer and specified in the Purchase Order.
  - y. **Software** means the software programs provided by Cisco, including any copies, Updates, upgrades, modifications, enhancements, and any derivative works thereof.
  - z. **Statement of Work or SOW** means the documents agreed upon by the parties that define the Advanced Services and Deliverables, if any, to be provided by Cisco.
  - aa. **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.
  - bb. **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.
  - cc. **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.
  - dd. **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 Advanced Services directly from Cisco.
  - b. The applicable SOW(s) and/or Service Description(s) exclusively define the scope of the Advanced 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, Advanced Services do not include any elements excluded by Cisco's "Services not Covered" document which can be found [here](#).

### 3. ORDERS

- a. Customer shall purchase Advanced 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 Advanced 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 Advanced 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 Advanced 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 Advanced Services fee if a withholding prevents Cisco from receiving the amount otherwise due to Cisco for the Advanced 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 Advanced Services performed under a Service Description in advance of the performance of such Advanced Services. Fees for Advanced 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. 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 Advanced 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 Advanced 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.

## 6. LICENSES

- a. The provisions of this Section apply only to those Advanced Services and Deliverables and other Cisco Intellectual Property provided by Cisco to Customer under this Agreement.
- b. Cisco grants to Customer a worldwide, non-exclusive license to use:
  - i. Software provided in conjunction with the Advanced 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 12.a below.

- c. 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.

- d. 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 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.
- e. Nothing in this Agreement shall alter or affect the Intellectual Property rights and/or licenses provided with any Products.
- f. To the extent Software is provided incidental or as a component to the Advanced Services, the use of the Software will be governed by the terms and conditions [here](#) (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 this Agreement will apply.
- g. 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.
- h. The duration of the license rights granted in this Section will be specifically provided in the applicable EULA, Service Description or SOW.
- i. 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.
- j. Customer shall not receive any implied licenses under this Agreement, and Cisco reserves all rights not expressly granted under this Agreement.
- k. 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.
- l. 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.

## 7. WARRANTY

- a. CISCO WARRANTS TO CUSTOMER THAT ALL ADVANCED 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 ADVANCED SERVICES; OR
  - ii. TERMINATION OF THIS AGREEMENT OR THE APPLICABLE ADVANCED SERVICES 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 ADVANCED SERVICES IN ACCORDANCE WITH THE SEVERITY AND ESCALATION GUIDELINES WHICH CAN BE FOUND [HERE](#).

## 8. 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. A BREACH OF SECTION 9 (CONFIDENTIALITY); 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 6 (LICENSES);
    - 2. FAILURE TO PAY ANY AMOUNTS DUE TO CISCO UNDER THIS AGREEMENT.
- b. SUBJECT TO SECTION a 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; OR

iii. LOST OR DAMAGED DATA.

IN THIS SECTION b, REFERENCES TO "LOSS" REFERS TO ANY AND ALL KINDS OF LOSS OR DAMAGE INCLUDING, WITHOUT LIMITATION, ANY DAMAGES, FINES, COSTS, CHARGES OR FEES.

c. SUBJECT TO SECTIONS a AND b ABOVE, EACH PARTY'S TOTAL AGGREGATE LIABILITY IS LIMITED TO THE GREATER OF:

- i. US\$100,000; OR
- ii. THE MONEY PAID OR PAYABLE TO CISCO UNDER THIS AGREEMENT DURING THE 12 MONTH PERIOD PRIOR TO THE EVENT THAT FIRST GAVE RISE TO SUCH LIABILITY.

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 18 MONTHS AFTER THE EVENT THAT CREATES THE ACTION OR CLAIM.

e. REFERENCES IN THIS SECTION 8 TO:

- i. A "PARTY" INCLUDES A PARTY'S AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS, AND
- ii. "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.

**9. 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 shall not use such Confidential Information other than as expressly authorized by the disclosing party. The receiving party shall not disclose any such Confidential Information to third parties without the disclosing party's written consent.
- 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) 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 9 shall not apply to information:
  - i. which has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement;



- ii. which was already rightfully in the receiving party's possession prior to disclosure under this Agreement; or
  - iii. which 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 prior review and written approval of both parties.

#### 10. CONTENT, PRIVACY AND DATA PROTECTION

- a. 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.
- b. Cisco will use Content and Submission Data in accordance with this Agreement, the applicable SOW or Services Description and Cisco's Privacy Statement (including applicable SaaS Descriptions and Supplemental Privacy Information), 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, support or improve the provision of 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.
- c. 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.
- d. 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 and where permitted by law. Customer is responsible for obtaining consent from its Users to such processing and transfer of Content and Submission Data, including international transfers.

## 11. 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. Cisco reserves the right to make changes to the scope and content of all or any part of the Advanced 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 Advanced Services. This section does not apply to Services provided under a SOW.
- c. This Agreement and any Advanced 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.
- d. If Advanced 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 Advanced Services until all overdue amounts are paid in full, or terminate immediately this Agreement and any Advanced Services.
- e. Either party may request termination of this Agreement and any Advanced 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 (a) to (d) above which may affect its financial situation.

- f. 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.
- g. Subject to Sections e and f 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.
- h. If notice of termination of any Advanced Services is given (i) Cisco shall continue to provide such Advanced Services until the effective date of such termination and (ii) Customer shall pay Cisco for such Advanced Services up to the effective date of termination.

- i. Where Customer is entitled to terminate this Agreement pursuant to this Section 11, 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.

## 12. 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 Advanced Services to one or more third party organizations. Any such subcontract shall not relieve Cisco of any of its obligations under this Agreement.

## 13. NOTICES

- a. 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 deliverysubject to written verification of receipt.
- b. All communications shall be sent to the parties' respective 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.
- c. Notwithstanding the above, notices from Cisco regarding general changes in pricing, Advanced Services, policies or programs may also be by posting on Cisco.com or by e-mail or fax.

## 14. APPLICABLE LAW AND JURISDICTION

- a. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of:

**Commented [CH(1):** May need to replace this with the full list of entities/governing law etc. Check to make sure all entities in D are here

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, and the State and Federal courts of California shall have exclusive jurisdiction over any claim arising under this Agreement, if your Purchase Order is placed with Cisco Systems, Inc.;

the Province of Ontario and the federal laws of Canada applicable therein, as if performed wholly within the province and without giving effect to the principles of conflicts of law, and the courts of the Province of Ontario shall have exclusive jurisdiction over any claim arising under this Agreement, if your Purchase Order is placed with Cisco Systems Canada Co.;

England and the English Courts shall have exclusive jurisdiction over any claim arising under this Agreement if your Purchase Order is placed with Cisco Systems International B.V or Cisco International Limited;

Japan and the Tokyo District Court shall have exclusive jurisdiction over any claim arising under this Agreement if your Purchase Order is placed with Cisco Systems G.K.;

Italy and the courts of Milan shall have exclusive jurisdiction over any claim arising under this Agreement if your Purchase Order is placed with Cisco Systems (Italy) s.r.l.;

the State of New South Wales, Australia, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the State and Federal Courts of New South Wales shall have exclusive jurisdiction over any claim arising under this Agreement, if your Purchase Order is placed with Cisco Systems Australia Pty Ltd.

- b. Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.
- c. 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.

#### 15. 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. Cisco Products, technology and Advanced 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.
- c. 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. 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.
- e. 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.
- f. 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. Except where expressly stated otherwise, each party shall bear all costs and expenses incurred by it under or in connection with this Agreement.
- h. The waiver by either party of any right under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
- i. If one or more terms of this Agreement becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such term shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. 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.
- j. Sections 1, and 4 to 15 shall survive the termination or expiration of this Agreement.
- k. 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 other conditions, understandings, agreements, representations, or warranties expressed or implied. This Agreement may only be modified by a written document executed by both parties.
- l. 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.