

**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 \_\_\_\_\_ (the “Customer”) and is entered into as of the date of last signature below (the “Effective Date”).

This Agreement consists of:

1. DIR Contract No. DIR-TSO-4167;
2. this signature page;
3. the Services Agreement Terms and Conditions below; and
4. the Service Descriptions of the Services Customer has chosen to purchase (as posted at <http://www.cisco.com/go/servicedescriptions> or <https://www.cisco.com/c/en/us/about/legal/cloud-and-software/cloud-terms.html>, as applicable), as at the time of purchase of such Services by Customer, which are incorporated in this Agreement by this reference.

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.

<b>Customer</b> <hr/> <b>(“Customer”)</b>	<b>Cisco Systems, Inc.</b> <hr/> <b>(“Cisco”)</b>
<hr/> Authorized Signature	<hr/> Authorized Signature
<hr/> Print Name	<hr/> Print Name
<hr/> Title	<hr/> Title
<hr/> Date	<hr/> Date

## 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 Smart Net Total Care 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.
- 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, as set forth in the Service Descriptions at <https://www.cisco.com/c/en/us/about/legal/cloud-and-software/cloud-terms.html> .
- h. **“Confidential Information”** subject to Appendix A, to DIR Contract No. DIR-TSO-4167, means proprietary and confidential information received by Cisco or Customer in connection with this 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 (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 as described in Appendix A, Section 11C, of DIR Contract No. DIR-TSO-4167.
- o. **“Hardware”** means tangible Cisco equipment, devices, or components made available to Customers.
- 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, neighbouring 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 as indicated in Appendix C, DIR Contract No. DIR-TSO-TMP-425.
- v. **“Product”** means Cisco Hardware and Software products that are made generally available.
- w. **“Purchase Order”** or **“PO”** means a written or electronic order from Customer 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> or <https://www.cisco.com/c/en/us/about/legal/cloud-and-software/cloud-terms.html>, as applicable) at the time of purchase, 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 to Customer 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/servicesdescriptions>).
- gg. **“Third Party Products”** means third party hardware and/or software, and all upgrades/updates thereto, included in the Appendix C Pricing Index to DIR Contract No. DIR-TSO-4167, 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), as of the date the purchase is made.

## 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. The terms of DIR Contract No. DIR-TSO-4167 and this Agreement apply, regardless of any additional or conflicting terms on any Purchase Order or other documentation submitted by Customer to Cisco, and any such additional terms are deemed rejected by Cisco.

- 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.

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

- a. Prices for Services shall be:
  - i. those specified in Appendix C, DIR Contract No. DIR-TSO-4167, 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 as specified in a written Statement of Work signed by Cisco and Customer, in accordance with Appendix C, DIR Contract No. DIR-TSO-4167.
- b. Taxes will be handled in accordance with Appendix A, Section 8.E, DIR Contract No. DIR-TSO-4167. Cisco may require Customer to provide copies of any applicable tax exempt certifications.
- c. Unless agreed to by the parties in writing, Cisco will invoice Services performed under a Service Description in accordance with Appendix A, Section 8.I, DIR Contract No. DIR-TSO-4167. Fees for Services performed under a Statement of Work shall be invoiced as specified in the relevant SOW.
- d. Payment shall be made in accordance with Appendix A, Section 8.J, DIR Contract No. DIR-TSO-4167.

#### **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 in accordance with Appendix A, Section 8.I, DIR Contract No. DIR-TSO-4167 if it finds that unauthorized Technical Support Services are being provided. This Service fee will be in accordance with Appendix C, DIR Contract No. DIR-TSO-4167.
- 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. Subject to Customer’s compliance with the terms of DIR Contract No. DIR-TSO-4167, this Agreement, and any applicable AS Service Description or SOW, and the End User License Agreement, 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 14.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 in Appendix D, DIR Contract No. DIR-TSO-4167 (the "**End User License Agreement**" or the "**EULA**").
- 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 non-exclusive, 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 ATTACHED AS EXHIBIT 1 TO THIS AGREEMENT.

**9. LIMITATION AND EXCLUSION OF LIABILITY**

- a. LIMITATION OF LIABILITY SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10K, TO DIR CONTRACT NO. DIR-TSO-4167.

**10. 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 in order to provide Customer the services purchased under this Agreement.
- c. To the extent allowable under record retention laws and policies, 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 10 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. To the extent allowable under the Texas Public Information Act, the receiving party will be authorized to disclose Confidential Information pursuant to a Texas Public Information Act request or 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.

## 11. CONTENT, PRIVACY AND DATA PROTECTION

- a. Cisco makes no claim to Customer's Content and Cisco will not sell or otherwise release or distribute Customer's Content to third parties except as provided for in this Agreement.
- 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, or (iii) 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 (upon request) return or destroy Customer's Content after the termination of the Services. Cisco may make a reasonable charge, as first agreed upon by Customer, for returning Customer's Content, including for returning Content in a requested specific format.
- e. 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. Subject to Appendix A, Section 10C, to DIR Contract No. DIR-TSO-4167, 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.

## 12. CLOUD SERVICES

- a. The fees for Cloud Services may also include overage amounts or usage charges, if described in the relevant Service Description and as set forth in Appendix C, DIR Contract No. DIR-TSO-4167.
- 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, there shall be three (3) one (1) year renewal options, which may be exercised (at Cisco’s option and Customer’s concurrence) by Cisco’s issuance of thirty (30) days advance written notice and Customer’s concurrence prior to the then-effective expiration date (each “**Renewal Term**”).
- 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 in the attached Exhibit 2.
- 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.

### 13. TERM AND TERMINATION

- a. The term of this Agreement shall be as set forth in Section 2, DIR Contract No. DIR-TSO-4167.
- 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. 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 thirty (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 according to Appendix A, Section 11.B, to DIR Contract No. DIR-TSO-4167
- e. 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.
- f. Subject to Sections d and **Error! Reference source not found.** 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.

#### 14. ASSIGNMENT AND SUBCONTRACTING

- a. Assignment of this Agreement shall be handled in accordance with Appendix A, Section 4.D, DIR Contract No. DIR-TSO-4167.
- 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, except as agreed to in writing by Cisco.
- 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.

#### 15. 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.

#### 16. MISCELLANEOUS

- a. Cisco may modify or discontinue Service features to comply with applicable laws and regulations. Cisco will comply with all applicable laws in the provision of the Services to Customer. However, if this paragraph is invoked and, as a result, the value to Customer of the Service is materially impaired, then Customer in its sole discretion may terminate the Service.
- 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.

**17. 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 Texas, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law.

The state courts in Travis County, Texas shall have exclusive jurisdiction over any claim arising under this Agreement.

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. Force Majeure. Force Majeure will be handled in accordance with Appendix A, Section 11.C, to DIR Contract No. DIR-TSO-4167.
- c. No Waiver. The waiver by either party of any right provided under DIR Contract No. DIR-TSO-4167 or under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
- d. Severability. If one or more terms of DIR Contract No. DIR-TSO-4167 or 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.
- e. [RESERVED].
- f. 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.
- g. Entire Agreement. DIR Contract No. DIR-TSO-4167 and this Agreement are the complete agreement between the parties concerning the subject matter of this Agreement and replace 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. DIR Contract No. DIR-TSO-4167 and this Agreement may only be modified by a written document executed by both parties.
- h. Notices. All notices will be handled in accordance with Appendix A, Section 12, DIR Contract No. DIR-TSO-4167.
- i. 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 (Limitation and Exclusion of Liability), 10 (Confidentiality), 11 (Content, Privacy and Data Protection), 12 (Cloud Services), 13 (Term and Termination), and 14 (Assignment and Subcontracting).
- j. 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 1**

## Cisco Severity and Escalation Guidelines

End-User must assign a severity to all problems submitted to Cisco.

**Severity 1** means an existing Network or Environment is down or there is a critical impact to End User's business operation. End User and Cisco both will commit full-time resources to resolve the situation.

**Severity 2** means operation of an existing Network or Environment is severely degraded or significant aspects of End User's business operation are negatively impacted by unacceptable Network or Environment performance. End User and Cisco both will commit full-time resources during Standard Business Hours to resolve the situation.

**Severity 3** means operational performance of the Network or Environment is impaired, although most business operations remain functional. End User and Cisco both are willing to commit resources during Standard Business Hours to restore service to satisfactory levels.

**Severity 4** means information is required on Cisco product capabilities, installation, or configuration. There is little or no impact to End User's business operation. End User and Cisco both are willing to provide resources during Standard Business Hours to provide information or assistance as requested.

If you do not believe that adequate progress is being made or that the quality of Cisco service is satisfactory, we encourage you to escalate the problem to the appropriate level of management by asking for the TAC duty manager.

**Figure 1 Cisco Escalation Guideline**

Elapsed Time*	Severity 1	Severity 2	Severity 3	Severity 4
1 hour	TAC Team Alert (Mgr copied)			
2 Hour	TAC Manager (Global Mgrs and Duty Managers copied)			
4 hours		TAC Team Alert (Mgr copied)		
5 Hours	TAC Director	TAC Manager (Global Mgrs and Duty Managers copied)		
12 Hours	TAC Director Second Alert			
24 hours	VP, Global Technical Center	TAC Director		
48 hours	President	VP, Global Technical Center		
72 hours			TAC Manager	
96 hours		President	TAC Director	TAC Manager

\* Severity 1 escalation times are measured in calendar hours—24 hours per day, 7 days per week. Severity 2, 3, and 4 escalation times correspond with Standard Business Hours.

**EXHIBIT 2**

## Cloud Service Acceptable Use Policy

Use of any Cisco Cloud Services web portal, APIs, platform, services, applications, projects or marketplace (collectively, "Services") provided by Cisco Systems, Inc. or its direct or indirect affiliates ("Cisco") is subject to this Acceptable Use Policy ("Policy"). If there is a conflict between this Policy and the applicable agreement between You and Cisco ("Agreement"), the Agreement will prevail.

This Policy applies to anyone who uses the Services, including without limitation the legal entity or individual doing business with Cisco, for clarity including resellers ("Customer"), and any third party permitted by the Customer to use or access the Services ("End Users"). Customers are required to inform End Users of this Policy. Customers and End Users are referred to in this Policy as "You".

You agree not to use, or encourage, promote, facilitate or instruct others to use the Services to:

- Commit or encourage fraudulent or other illegal activities in violation of any applicable law, regulation,
- Infringe or misappropriate any copyright, trademark or other intellectual property, proprietary right, license right, or legal content protections
- Use, store, share, host, copy, distribute, display, publish, transmit or send content that is offensive, inflammatory, hateful, defamatory, discriminatory, obscene, abusive, invasive of privacy, harmful to others, or otherwise objectionable
- Access or probe any network, computer or communications system, software application, or network or computing device systems ("Systems") without authorization, including but not limited to breaches, vulnerability scans or penetration testing
- Attack, abuse, interfere with, surreptitiously intercept, or disrupt any users, Systems or services, including but not limited to Denial of Service (DoS), unauthorized monitoring or crawling, distribution of malware (including but not limited to viruses, Trojan horses, worms, time bombs, spyware, adware, or cancelbots)
- Distribute unwanted, unsolicited or harassing mass e-mail or other messages, promotions, advertising, or solicitations ("Spam")
- Alter, forge or obscure mail headers or assume a sender's identity without the sender's express permission, nor collect replies to messages sent from

another internet service provider if those messages violate this Policy or the acceptable use policy of that provider

- Disable, interfere with, abuse, disrupt, intercept, circumvent or otherwise violate the security of the Services

Cisco has the right, but does not assume the obligation, to monitor and investigate violations of this Policy. Failure to comply with or breach of this Policy constitutes a material breach of the terms and conditions upon which You are permitted to use the Services, and at any time, may result in Cisco taking any and all actions in its sole discretion, including with immediate effect based on our reasonable judgment, including but not limited to:

- warnings;
- suspending or terminating access to the Services;
- removing or prohibiting access to content that violates this Policy;
- further legal action against You; and/or
- disclosure of such information to law enforcement authorities as Cisco reasonably feels is necessary or appropriate.

If You are under the jurisdiction of the United States Digital Millennium Copyright Act, and You believe that the Services are being used to violate Your copyright, please follow our DMCA policy located at [http://www.cisco.com/web/siteassets/legal/terms\\_condition.html](http://www.cisco.com/web/siteassets/legal/terms_condition.html). If Your Content has been removed, please see our DMCA policy for the counter-notice process.