

## ADVANCED SERVICES STATEMENT OF WORK SOW TERMS & CONDITIONS AGREEMENT

If you purchase project-related or consultancy services directly from Cisco pursuant to an Advanced Services Statement of Work ("SOW"), and if you do not have an effective agreed upon Master Services Agreement, Advanced Services Agreement or other master services agreement covering SOW-based services with Cisco, then **both Cisco and Customer hereby agree that** any such SOW **will be** governed by the terms and conditions set forth in this SOW Terms & Conditions Agreement ("Agreement"), which is hereby incorporated into, and made a part of, the SOW by this reference. To the extent there is a conflict between the terms of the SOW and this Agreement, the terms of this Agreement **shall control**, unless explicitly stated otherwise in the SOW. The terms of the SOW, including this Agreement, are limited to the scope of such SOW, and **shall not be applicable** to any other SOWs **which may be executed** between the parties. Any capitalized terms not defined herein **shall have the meaning** ascribed to such terms in the SOW.

**1. Definitions** are those in Appendix A (Glossary of Terms) at the end of this Agreement.

**2. Orders.** Customer **shall, upon and subject to approval by Cisco, purchase** Services **by** issuing a Purchase Order. Each Purchase Order **must be** signed/sealed, as applicable, if requested by Cisco, or (in the case of electronic transmission) sent, by an authorized representative, indicating the SOW project identification number, specific Services, quantity, price, total purchase price, bill-to and ship-to addresses, tax exempt certifications, if applicable, reference to the SOW, and any other special instructions. No contingency contained on any Purchase Order **shall be binding** upon Cisco. The terms of the SOW **shall apply**, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms **are** deemed rejected by Cisco.

**3. Advanced Services – Statements of Work.**

- a. The Services **will be provided by Cisco** pursuant to the terms and conditions of the SOW. Cisco may use subcontractors (under separate contract to Cisco) to perform the Services, or portion(s) thereof.
- b. The SOW **may only be amended by a written document** signed by each party's authorized representative, and per the change management procedures set forth therein.
- c. The SOW exclusively defines the scope of the Services that Cisco **shall provide** to Customer.

**4. Pricing.**

- a. All prices specified in the SOW are exclusive of any taxes, fees, duties or other applicable amounts. Customer **shall pay the taxes** related to Services purchased pursuant to the SOW, or Customer **shall present an exemption certificate** acceptable to the taxing authorities. Applicable

taxes, if any, **will be billed** as a separate item on the invoice. Cisco **reserves the right to** increase the Service fee in the event Customer determines any withholding tax obligation prevents Cisco from receiving the specified prices for such Services set forth in the SOW.

**5. Payment and Invoicing.**

- a. **Payment.** All Purchase Orders **are** subject to credit approval and, subject thereto, payment terms **are** net thirty (30) days from the date of invoice. **Unless otherwise agreed by Cisco**, all payments **must be made** in the currency used by the Cisco Systems entity with which Customer has placed its Purchase Order. **Any sum not paid by Customer** when due will bear interest from the due date until paid at a rate of: (i) ten (10) per cent per annum or (ii) the maximum rate permitted by law, whichever is less.

- b. **Invoicing.** Cisco **will invoice** Customer upon completion of each Milestone as defined in the SOW, per the SOW's Milestone schedule. Invoices **may** contain multiple Milestones. The SOW Milestone schedule supersedes any Milestones identified in a Purchase Order; nevertheless, unless otherwise mutually **agreed upon** via a change management procedure, the total invoiced amounts for SOW Milestones **shall not** exceed the total amount of Customer's Purchase Order. If the SOW does not contain a Milestone schedule, Cisco **will invoice** Services performed under such SOW as set forth in such SOW.

**6. Term and Termination.**

- a. The term of the SOW **will commence** on the SOW Effective Date and continue until last Milestone completion, unless otherwise specified in the SOW.

# Summary of Comments on KAA-Cisco-SOW\_Terms\_and\_Conditions.pdf

Page: 1

 Number: 1	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 9:17:55 PM
Redundant			
 Number: 2	Author: Ken	Subject: Comment on Text	Date: 8/25/2014 8:07:13 PM
The SOW has been entered into, so use the simple present tense: "is".			
 Number: 3	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 9:18:24 PM
Language of policy; use "will."			
 Number: 4	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 9:24:23 PM
Language of policy; use "do not apply" or "will not apply" (we could have a thrilling debate over which is preferable).			
 Number: 5	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 8:41:11 PM -05'00'
Omit. For one thing, "may," meaning "might" in this case, doesn't make sense. And "executed" is unnecessary.			
 Number: 6	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 9:20:24 PM
Language of policy; use "have the meaning."			
 Number: 7	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 8:52:30 PM -05'00'
Instead of passive-voice language of policy, make it active-voice language of obligation.			
 Number: 8	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 9:40:36 PM
Use "may" instead.			
 Number: 9	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 9:21:03 PM
Doesn't make sense to phrase this as an obligation; should be a condition.			
 Number: 10	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 9:22:30 PM
When using language of obligation to express a condition, add an introductory phrase that provides context.			
 Number: 11	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 8:55:37 PM -05'00'
Instead of language of policy, say that Cisco may reject Purchase Orders?			
 Number: 12	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 8:56:38 PM -05'00'
Instead of language policy, say Customer shall pay within a specified period?			
 Number: 13	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 8:57:08 PM -05'00'
Use active voice.			
 Number: 14	Author: Ken	Subject: Comment on Text	Date: 8/25/2014 7:30:28 PM
Language of policy; use "will bind".			
 Number: 15	Author: Ken	Subject: Comment on Text	Date: 8/25/2014 4:14:29 PM
Could use active-voice language of obligation, using "shall," but I think it makes more sense as a condition to valid payment.			
 Number: 16	Author: Ken	Subject: Comment on Text	Date: 8/25/2014 8:33:55 PM
Language of policy. Because this applies in connection with future purchase orders, use "will apply."			
 Number: 17	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 8:59:06 PM -05'00'
Say instead if Customer fails to pay on time an amount owed, that amount will bear interest.			
 Number: 18	Author: Ken	Subject: Comment on Text	Date: 8/22/2014 12:21:47 PM
Relates to a contingent future event, so use "will be"			
 Number: 19	Author: Ken	Subject: Comment on Text	Date: 8/25/2014 6:57:56 PM
It's not language of policy. I'd use instead "may".			
 Number: 20	Author: Ken	Subject: Comment on Text	Date: 8/25/2014 8:18:57 PM
This should be language of policy: "Cisco's performance of Services will be subject to the SOW."			
 Number: 21	Author: Ken	Subject: Comment on Text	Date: 8/25/2014 8:41:02 PM
Since it's clear that we're dealing with invoices issued by Cisco, I'm not inclined to make Cisco the subject here.			
 Number: 22	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 9:00:35 PM -05'00'
Use active voice.			

Comments from page 1 continued on next page

## ADVANCED SERVICES STATEMENT OF WORK

### SOW TERMS & CONDITIONS AGREEMENT

If you purchase project-related or consultancy services directly from Cisco pursuant to an Advanced Services Statement of Work ("SOW"), and if you do not have an effective agreed upon Master Services Agreement, Advanced Services Agreement or other master services agreement covering SOW-based services with Cisco, then **both Cisco and Customer hereby agree that** any such SOW **will be** governed by the terms and conditions set forth in this SOW Terms & Conditions Agreement ("Agreement"), which is hereby incorporated into, and made a part of, the SOW by this reference. To the extent there is a conflict between the terms of the SOW and this Agreement, the terms of this Agreement **shall control**, unless explicitly stated otherwise in the SOW. The terms of the SOW, including this Agreement, are limited to the scope of such SOW, and **shall not be applicable** to any other SOWs **which may be executed** between the parties. Any capitalized terms not defined herein **shall have the meaning** ascribed to such terms in the SOW.

1. **Definitions** are those in Appendix A (Glossary of Terms) at the end of this Agreement.

2. **Orders.** Customer **shall, upon and subject to approval by Cisco, purchase** Services by issuing a Purchase Order. Each Purchase Order **must be** signed/sealed, as applicable, if requested by Cisco, or (in the case of electronic transmission) sent, by an authorized representative, indicating the SOW project identification number, specific Services, quantity, price, total purchase price, bill-to and ship-to addresses, tax exempt certifications, if applicable, reference to the SOW, and any other special instructions. No contingency contained on any Purchase Order **shall be binding** upon Cisco. The terms of the SOW **shall apply**, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms **are** deemed rejected by Cisco.

#### 3. Advanced Services – Statements of Work.

- a. The Services **will be provided by Cisco** pursuant to the terms and conditions of the SOW. Cisco may use subcontractors (under separate contract to Cisco) to perform the Services, or portion(s) thereof.
- b. The SOW <sup>24</sup> **may only be amended by a written document** signed by each party's authorized representative, and per the change management procedures set forth therein.
- c. The SOW exclusively defines the scope of the Services that Cisco <sup>26</sup> **shall provide** to Customer.

#### 4. Pricing.

- a. All prices specified in the SOW are exclusive of any taxes, fees, **duties** or other applicable amounts. Customer <sup>28</sup> **shall pay the taxes** related to Services purchased pursuant to the SOW, or Customer <sup>29</sup> **shall present an exemption certificate** acceptable to the taxing authorities. Applicable

taxes, if any, **will be billed** as a separate item on the invoice. Cisco **reserves the right to** increase the Service fee in the event Customer determines any withholding tax obligation prevents Cisco from receiving the specified prices for such Services set forth in the SOW.

#### 5. Payment and Invoicing.

- a. **Payment.** All Purchase Orders **are subject to** credit approval and, subject thereto, payment terms **are net thirty (30) days** from the date of invoice. Unless otherwise **agreed by Cisco**, all payments **must be made** in the currency used by the Cisco Systems entity with which Customer has placed its Purchase Order. **Any sum not paid by Customer** when due will bear interest from the due date until paid at a rate of: (i) ten (10) per cent per annum or (ii) the maximum rate permitted by law, whichever is less.
- b. **Invoicing.** Cisco **will invoice** Customer upon completion of each Milestone as defined in the SOW, per the SOW's Milestone schedule. Invoices **may** contain multiple Milestones. The SOW Milestone schedule supersedes any Milestones identified in a Purchase Order; nevertheless, unless otherwise mutually **agreed upon** via a change management procedure, <sup>23</sup> the total invoiced amounts for SOW Milestones <sup>23</sup> **shall not** exceed the total amount of Customer's Purchase Order. If the SOW does not contain a Milestone schedule, Cisco <sup>25</sup> **shall invoice** Services performed under such SOW as set forth in such SOW.

#### 6. Term and Termination.

- a. The term of the SOW <sup>27</sup> **shall commence** on the SOW Effective Date and continue until last Milestone completion, unless otherwise specified in the SOW.

- T** Number: 23 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:01:22 PM -05'00'  
You could use "must," but I'm inclined to use active-voice language of prohibition, using "shall not".
- 
- T** Number: 24 Author: Ken Subject: Comment on Text Date: 12/1/2014 8:46:18 PM -05'00'  
Express as a condition ("No amendment to the SOW will be effective unless in writing"). Could also say "To amend ... , the parties must." I prefer the former, but I have yet to articulate exactly why.
- 
- T** Number: 25 Author: Ken Subject: Comment on Text Date: 8/22/2014 2:26:37 PM  
Express as language of discretion, using "may."
- 
- T** Number: 26 Author: Ken Subject: Comment on Text Date: 12/1/2014 8:47:45 PM -05'00'  
This doesn't create an obligation, so I'd say "provides." See MSCD 3.336.
- 
- T** Number: 27 Author: Ken Subject: Comment on Text Date: 8/25/2014 7:06:48 PM  
Because this is language of policy referring, I presume, to a date that is known when the SOW is entered into, I'm inclined to use "commences". But I'm also not inclined to get worked up about this.
- 
- T** Number: 28 Author: Ken Subject: Comment on Text Date: 12/1/2014 8:51:33 PM -05'00'  
Strictly speaking, Cisco doesn't care whether the customer pays its taxes, Cisco just wants to make it clear that it's not responsible; I'd say "Customer is responsible for." See MSCD 3.100.
- 
- T** Number: 29 Author: Ken Subject: Comment on Text Date: 12/1/2014 8:52:09 PM -05'00'  
This would be better expressed not as an obligation but as a conditional clause ("unless Customer presents").
-

- b. Cisco <sup>1</sup>shall have a lead-time of up to forty-five (45) days from acceptance of Purchase Order for scheduling of Services.
- c. The SOW, and any Services being performed hereunder, <sup>3</sup>may be terminated immediately by either party upon written notice:
- (i) if the other party breaches any of the material provisions of the SOW and the breach is not capable of <sup>5</sup>being cured or after providing thirty (30) days written notice to the breaching party if the breaching party fails to cure such breach within such period;
  - (ii) if the other party: (w) ceases, or threatens to cease to carry on business as a going concern; or (x) becomes or <sup>6</sup>may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or (y) a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets; or (z) an event similar to any of the foregoing occurs under applicable law; or
  - (iii) if, except as provided in Section 15 below, either party assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under the SOW, without the prior written consent of the other party, or in the event of a sale of all or substantially all of such party's assets, or transfer of a controlling interest in such party to an unaffiliated third party. Notwithstanding the foregoing: (y) Cisco <sup>8</sup>reserves the right to subcontract Services to any Affiliate or third party organization to provide Services to Customer, and (z) Cisco may assign the SOW or all or any portion of its rights and obligations hereunder, to any Affiliate of Cisco.
- d. If Services fees <sup>11</sup>are not paid when due and payment <sup>12</sup>is not been received within thirty (30) days after notice from Cisco of such past due payment, Cisco may withhold the provision of Services until all amounts past due <sup>14</sup>are paid in full, and/or immediately terminate the SOW or any Services provided hereunder.
- e. Upon termination of the SOW, Customer shall pay Cisco for all work Cisco has performed up to the effective date of termination at the agreed upon prices, fees and expense reimbursement rates.

## 7. Confidentiality.

- a. <sup>16</sup>Customer and Cisco agree that in connection with the SOW and their relationship, <sup>17</sup>they may obtain Confidential Information. 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 under the SOW, <sup>2</sup>or shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, Cisco <sup>4</sup>shall be authorized to disclose Customer's Confidential Information to subcontractors, contractors or employees of a Cisco entity who have a legitimate business need to have access to such information. The receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration at any time and for any reason of the SOW. The obligations of confidentiality do 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 the SOW; (ii) prior to disclosure hereunder was already rightfully in the receiving party's possession; or (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information <sup>7</sup>to the receiving party. The receiving party <sup>7</sup>will be authorized to disclose Confidential Information pursuant to a valid order issued by a court, government agency or relevant regulatory authority (including a stock exchange), provided that the receiving party provides where practicable: (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure.

- b. <sup>9</sup>either party may disclose, advertise, or publish the terms and conditions of the SOW without the prior written consent of the other party. Any press release or publication regarding the SOW <sup>10</sup>subject to prior review and written approval of the parties.

## 8. Warranty.

- a. <sup>13</sup>ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, CISCO HEREBY DISCLAIMS AND CUSTOMER <sup>15</sup>WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION: (I) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT OR ACCURACY, OR (II) ARISING FROM ANY COURSE OF

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- 
- T** Number: 1 Author: Ken Subject: Comment on Text Date: 8/25/2014 4:18:08 PM  
Could use language of policy w/ "will," as it's a contingent future event. But I'd say instead "Cisco will not be required to schedule Services sooner than 45 days after ..."
- 
- T** Number: 2 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:10:22 PM -05'00'  
Use instead "shall not." See this blog post: [www.adamsdrafting.com/nor-shall/](http://www.adamsdrafting.com/nor-shall/).
- 
- T** Number: 3 Author: Ken Subject: Comment on Text Date: 7/28/2014 10:07:10 PM  
Use active voice.
- 
- T** Number: 4 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:11:01 PM -05'00'  
Use instead "may".
- 
- T** Number: 5 Author: Ken Subject: Comment on Text Date: 7/28/2014 10:07:43 PM  
Use the active voice.
- 
- T** Number: 6 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:06:45 PM -05'00'  
Possibility not discretion: use "might," although one could argue that that's too speculative.
- 
- T** Number: 7 Author: Ken Subject: Comment on Text Date: 7/28/2014 10:11:29 PM  
Use "may."
- 
- T** Number: 8 Author: Ken Subject: Comment on Text Date: 7/28/2014 10:08:10 PM  
Use "may."
- 
- T** Number: 9 Author: Ken Subject: Comment on Text Date: 8/22/2014 12:26:56 PM  
OK: see 3.234.
- 
- T** Number: 10 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:13:07 PM -05'00'  
Instead of language of policy, say that each party shall not issue a press release without approval.
- 
- T** Number: 11 Author: Ken Subject: Comment on Text Date: 7/28/2014 10:08:29 PM  
Use the active voice.
- 
- T** Number: 12 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:07:37 PM -05'00'  
Use active voice.
- 
- T** Number: 13 Author: Ken Subject: Comment on Text Date: 7/28/2014 10:11:59 PM  
Use the active voice.
- 
- T** Number: 14 Author: Ken Subject: Comment on Text Date: 7/28/2014 10:09:06 PM  
Use the active voice.
- 
- T** Number: 15 Author: Ken Subject: Comment on Text Date: 8/22/2014 11:10:21 AM  
Language of performance: "hereby waives"
- 
- T** Number: 16 Author: Ken Subject: Comment on Text Date: 7/28/2014 10:09:33 PM  
Redundant.
- 
- T** Number: 17 Author: Ken Subject: Comment on Text Date: 9/15/2014 9:24:01 PM  
Not language of discretion. Instead, say that they parties might (or expect to) disclose confidential information to each other. And put it in language of declaration, with the parties acknowledging.

DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY.

- b. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY <sup>3</sup>HALL BE, AT CISCO'S OPTION, RE-PERFORMANCE OF THE SERVICES; OR TERMINATION OF THE SOW AND RETURN OF THE PORTION OF THE SERVICE FEES PAID TO CISCO BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES.

- d. TO THE EXTENT ALLOWED UNDER LOCAL LAW, CISCO AND CUSTOMER <sup>1</sup>AGREE THAT THE FOREGOING SECTIONS 8 AND 9 FAIRLY ALLOCATE THE RISKS IN THIS AGREEMENT BETWEEN THE PARTIES. CISCO AND CUSTOMER FURTHER <sup>2</sup>AGREE THAT THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT THE LIMITATIONS SPECIFIED IN THIS SECTION <sup>4</sup>HALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THE SOW OR ANY LIMITED REMEDY HEREUNDER.

#### 9. Limitation of Liability and Consequential Damages Waiver.

- a. TO THE EXTENT REQUIRED UNDER LOCAL LAW, NOTHING IN THIS AGREEMENT <sup>6</sup>HALL LIMIT: (I) CISCO'S, ITS AFFILIATES', OFFICERS', DIRECTORS', EMPLOYEES', AGENTS' AND SUPPLIERS' COLLECTIVE LIABILITY TO CUSTOMER FOR BODILY INJURY OR DEATH CAUSED BY THEIR NEGLIGENCE, OR (II) CISCO'S LIABILITY FOR FRAUDULENT MISREPRESENTATION OR IN THE TORT OF DECEIT.
- b. ALL LIABILITY OF CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER THE SOW OR OTHERWISE HOWSOEVER ARISING <sup>8</sup>HALL BE LIMITED TO THE MONEY <sup>9</sup>PAID TO CISCO UNDER THE SOW DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).
- c. SUBJECT TO THE EXCEPTIONS SET OUT IN SECTION 9(a), OR CUSTOMER'S BREACH OF SECTION 10, IN NO EVENT <sup>10</sup>HALL EITHER PARTY, ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOST REVENUE, LOST PROFITS, LOST BUSINESS OPPORTUNITY, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

#### 10. License.

- a. Cisco <sup>5</sup>grants to Customer a non-exclusive and non-transferable license to use for Customer's internal business use only: (i) Software provided as a result of the Services, if any, solely in object code form; (ii) other Deliverables specified in the SOW, if any, and (iii) Data Collection Tools, if any (collectively and individually, the "Licensed Materials"). In addition, Cisco <sup>7</sup>grants to Customer a right to modify and create derivative works of any Scripts provided by Cisco to Customer pursuant to this Agreement, solely for Customer's internal business use. These license grants do not include the right to sublicense. Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials solely on Customer's behalf for Customer's direct benefit, provided 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.
- b. Nothing in this Agreement or the SOW alters or affects the Intellectual Property rights and/or licenses provided with any Cisco Products. The terms and conditions provided with the Software, or in the absence of such terms, the license posted at <http://www.cisco.com/go/warranty> ("End User License Agreement"), are hereby incorporated into this Agreement by this reference. To the extent there is a conflict between the terms of the End User License Agreement and this Agreement, <sup>11</sup>the terms of the End User License Agreement <sup>11</sup>apply, unless explicitly stated otherwise in this Agreement. The provisions in this Section apply only to those Services, Deliverables and other Intellectual Property provided by Cisco to Customer pursuant to the SOW.
- c. <sup>12</sup>Except as otherwise provided herein, Customer <sup>12</sup>use Software solely on Cisco Hardware. Customer may also use Application Software on third party hardware and as expressly authorized

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	Number: 1	Author: Ken	Subject: Comment on Text	Date: 8/22/2014 10:18:59 AM
Language of declaration: use "acknowledge."				
	Number: 2	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 9:20:44 PM -05'00'
Same.				
	Number: 3	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 10:13:32 PM
Language of policy; use "is."				
	Number: 4	Author: Ken	Subject: Comment on Text	Date: 8/22/2014 10:19:43 AM
Language of policy; use "apply".				
	Number: 5	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 9:21:35 PM -05'00'
Language of performance; add "hereby".				
	Number: 6	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 10:14:14 PM
Language of policy; use "limits."				
	Number: 7	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 10:16:11 PM
Language of performance; add "hereby."				
	Number: 8	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 10:14:44 PM
Language of policy; use "is limited."				
	Number: 9	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 9:19:49 PM -05'00'
Paid by whom? Use active voice instead.				
	Number: 10	Author: Ken	Subject: Comment on Text	Date: 7/28/2014 10:15:30 PM
Language of policy; use "will."				
	Number: 11	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 9:22:56 PM -05'00'
Use "apply" instead?				
	Number: 12	Author: Ken	Subject: Comment on Text	Date: 8/22/2014 11:13:44 AM
Instead "shall not use Software except on"?				



in the Software Documentation. In the case of Data Collection Tools that include Hardware, Customer <sup>1</sup> may only use the Software included with such Data Collection Tools solely 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 otherwise set forth in the SOW.

- d. The license rights granted in this Section <sup>2</sup> are perpetual, provided Customer is not in breach of this Agreement or the SOW. Notwithstanding the above, the license for Data Collection Tools will terminate upon the earlier of: (i) the expiration or termination of the Services pursuant to which the Data Collection Tools were provided; or (ii) Cisco's request to Customer that the Data Collection Tool(s) be returned to Cisco.
- e. Except as otherwise expressly set forth in this Agreement or the SOW, Customer shall not (and <sup>4</sup> shall not permit a third party to): (i) download more than one copy of the Software; (ii) copy, in whole or in part, any Software, Deliverable or Data Collection Tool; (iii) make error corrections or derivative works of, or otherwise modify, decompile, decrypt, reverse engineer, disassemble or reduce all or any portion of any Software, Deliverable or Data Collection Tool to human-readable form; or (iv) transfer, sublicense, rent, lease, distribute, or sell any Software, Deliverables or Data Collection Tools. Customer acknowledges that <sup>5</sup> does not receive any implied licenses under this Agreement, and all rights not expressly granted herein <sup>6</sup> are reserved to Cisco.
- f. When Customer updates or upgrades a copy of Software to a new release, Customer shall not thereafter use concurrently, except for a limited period of parallel testing, that new release and any previous release of the Software. Customer shall not re-use, host or have hosted for later re-use, or transfer any previous release of the Software to any other device(s).
- g. Customer <sup>7</sup> grants to Cisco a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback (as defined below) to use and incorporate into any or all Services, Products, Deliverables, Data Collection Tools, Reports, Scripts and Cisco Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute, and create derivative works of such Intellectual Property for any and all purposes whatsoever, and Customer acknowledges that it will have no rights in or to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology as a result of Cisco's use of

any such Intellectual Property. For purposes of this Agreement, "Customer Feedback" means all oral or written communications regarding improvements or changes to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology that Customer provides to Cisco.

## 11. Ownership.

- a. Each party <sup>3</sup> will retain the exclusive ownership of all of 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 that are owned by a party prior to commencement of any Services hereunder, or that are otherwise developed by or for such party outside the scope of this Agreement ("Pre-Existing Technology").
- b. Except as otherwise expressly set forth in this Agreement or the SOW, Cisco owns and will continue to own all right, title, and interest in and to the Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, 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 at all times retains 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. Third Party Products will at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

12. **Force Majeure.** Except for the obligation to pay monies due and owing, neither party <sup>8</sup> shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, industry wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party <sup>9</sup> shall be

## Page: 4

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**I** Number: 1 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:27:36 PM -05'00'  
Ambiguity? See MSCD 3.155.

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**I** Number: 2 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:28:32 PM -05'00'  
Instead add to granting language?

---

**I** Number: 3 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:42:24 PM -05'00'  
Say instead "owns".

---

**I** Number: 4 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:29:18 PM -05'00'  
Feasible?

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**I** Number: 5 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:29:58 PM -05'00'  
Tense? Instead, say "Cisco is not granting it".

---

**I** Number: 6 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:36:08 PM -05'00'  
As in g., say that Customer acknowledges it has no other rights.

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**I** Number: 7 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:34:38 PM -05'00'  
Add "hereby".

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**I** Number: 8 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:44:18 PM -05'00'  
Language of policy, so use "will".

---

**I** Number: 9 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:43:55 PM -05'00'  
Language of policy, so use "will".

extended for a period equal to the period during which such event prevented such party's performance.

### 13. Applicable Law and Jurisdiction.

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

- (i) 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 the SOW is with Cisco Systems, Inc.;
- (ii) 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 the SOW is with Cisco Systems Canada Co.;
- (iii) England and the English Courts shall have exclusive jurisdiction over any claim arising under this Agreement if the SOW is with Cisco Systems International B.V. or Cisco Systems Services B.V. or Cisco International Limited or Cisco Systems (Italy) S.r.l or Cisco International Limited Sp. z o.o. Oddzial w Polsce; or Cisco International Limited, Sucursal em Portugal;
- (iv) Japan and the Tokyo District Court shall have exclusive jurisdiction over any claim arising under this Agreement if the SOW is with Cisco Systems G.K.;
- (v) 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 the SOW is with Cisco Systems Australia Pty Ltd;
- (vi) the Republic of South Africa, if this Agreement or any Statement of Work is with Cisco Technology and Services (South Africa) (Proprietary) Limited and the South Gauteng High Court of South Africa shall have exclusive jurisdiction over any claims arising under thereunder.

(vii) the Russian Federation, if the SOW is with LLC Cisco Systems. All disputes arising out of or in connection with this Agreement, including any questions regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (LCIA), which Rules are deemed to be incorporated by reference into this Section. The place of arbitration shall be London, England, the number of arbitrators shall be three and the language to be used in the arbitral proceedings shall be English; or

(viii) the People's Republic of China; provided, however, that to the extent that the laws of the People's Republic of China do not stipulate, relevant international practice and customs shall apply, and any claim arising under this Agreement shall be submitted to the Hong Kong International Arbitration Centre ("HKIAC") for final and binding arbitration in Hong Kong upon the request of either party with a Notice to the other party, if the SOW is with Cisco Systems (China) Information Technology Services Limited. For any claim submitted to the HKIAC as set forth in this Section, the following terms shall apply. There shall be a sole arbitrator appointed in accordance with the rules of the HKIAC prevailing as of the Effective Date, except to the extent as modified in this Agreement. If the parties fail to agree on the choice of sole arbitrator within twenty (20) days from the date on which the respondent receives the notice of arbitration, the HKIAC shall make the appointment. The arbitrator will be bound by the provisions of this Agreement and shall be made aware of the terms hereof prior to his appointment. The arbitrator shall have no power or authority to make or issue any award that provides for punitive or exemplary damages. The arbitration proceedings shall be conducted in English and in accordance with the HKIAC Procedures for the Administration of International Arbitration in force as of the Effective Date. However, if any rules are in conflict with the provisions of this Section, including the provisions concerning the appointment of a sole arbitrator, the provisions of this Section shall prevail. Upon rendering a decision, the arbitrator shall state in writing the basis for the decision. The arbitrator's decision shall be final and binding upon the parties. Application may be made by a party to a court of competent jurisdiction for the recognition and enforcement of an arbitral award rendered by the sole arbitrator pursuant to this Section. The costs of arbitration and attorneys' fees and disbursements shall be

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- T** Number: 1 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:50:22 PM -05'00'  
Instead of language of obligation, say that arbitration will be the exclusive way of resolving disputes. See <http://www.adamsdrafting.com/aaa-launches-tool-to-create-adr-clauses-bfd/>.
- 
- T** Number: 2 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:44:52 PM -05'00'  
Language of policy, so use "will".
- 
- T** Number: 3 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:52:41 PM -05'00'  
Instead of language of policy, perhaps say that it is a condition to valid arbitration that it be conducted in the specified city.
- 
- T** Number: 4 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:53:38 PM -05'00'  
Instead of language of policy, make it a condition to valid arbitration?
- 
- T** Number: 5 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:54:02 PM -05'00'  
Instead of language of policy, make it a condition to valid arbitration?
- 
- T** Number: 6 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:45:23 PM -05'00'  
Language of policy, so use "will".
- 
- T** Number: 7 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:55:02 PM -05'00'  
Didn't annotate this clause.
- 
- T** Number: 8 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:45:50 PM -05'00'  
Language of policy, so use "will".
- 
- T** Number: 9 Author: Ken Subject: Comment on Text Date: 12/1/2014 9:46:08 PM -05'00'  
Language of policy, so use "will".

borne by the losing party, unless otherwise determined by the arbitration award. Except for the matters under dispute, the parties shall each continue to fulfill their respective obligations (and shall be entitled to exercise their rights) under this Agreement.

b. Notwithstanding the foregoing, either party shall at all times have the right to commence proceedings in any other court of its choice for interim injunctive relief in the event of threatened or actual breach of Intellectual Property rights or provisions regarding protection and non-disclosure of Confidential Information.

c. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

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

**15. Assignment.** Except as provided below, neither party may assign or delegate its rights or obligations under the SOW (other than: (i) the right to receive any amount due, which shall be freely assignable, or (ii) to Customer's parent or majority-owned subsidiary company of sufficient net worth to meet any potential liability under the SOW) without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that any such assignment shall not relieve the assigning entity of any obligation to pay monies that were owed prior to the date of the assignment. Notwithstanding the foregoing: (a) Cisco serves the right to subcontract Services to any Affiliate or third party organization to provide Services to Customer, and (b) Cisco may assign the SOW or all or any portion of its rights and obligations hereunder, to any Affiliate of Cisco.

**16. Notices.** All notices required or permitted under the SOW shall be in writing and will be deemed given one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications shall be sent to the addresses set forth on the cover sheet of the SOW or such other address may be designated by a party by giving written notice to the other party pursuant to this paragraph. Notwithstanding the above, notices regarding general

changes in pricing, policies or programs may also be by posting on Cisco.com or by e-mail or fax.

**18. Entire Agreement.** The SOW, including this Agreement, is the complete agreement between the parties concerning the subject matter of the SOW and replaces any prior oral or written communications between the parties, except as agreed between the parties. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein. The SOW may only be modified by a written document executed by the parties hereto.

**19. No Waiver.** The waiver by either party of any right provided under the SOW shall not constitute a subsequent or continuing waiver of such right or of any other right under the SOW.

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

**21. Attorneys' Fees.** To the extent allowed under local law, in any suit or proceeding relating to the SOW, the prevailing party shall 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 the SOW, and shall survive expiration or termination and shall not be merged into any such judgment.

**22. Third Party Rights.** If the SOW is with Cisco Systems International B.V. or Cisco Systems Services B.V. or Cisco International Limited (as applicable), no person who is not a party to the SOW shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.

**23. Survival.** Sections 5 (Payment and Invoicing), 6 (Term and Termination), 7 (Confidentiality), 8 (Warranty), 9 (Limitation of Liability and Consequential Damages Waiver), 10 (License), 11 (Ownership), 12 (Force Majeure), 13 (Applicable Law and Jurisdiction), 14 (Export Control), 16 (Notices), 17 (Entire Agreement), 18 (No Waiver), 19 (Severability), 20 (Attorneys' Fees), 21 (Third Party Rights), 22

## Page: 6

1	Number: 1	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:05:02 PM -05'00'
	Use active voice.			
1	Number: 2	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 9:55:57 PM -05'00'
	Use instead "may".			
1	Number: 3	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:05:50 PM -05'00'
	Instead of language of limited discretion, should be condition to effectiveness.			
1	Number: 4	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:06:15 PM -05'00'
	Language of policy, so use "will not".			
1	Number: 5	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 9:59:26 PM -05'00'
	Language of obligation, using "reasonable efforts"?			
1	Number: 6	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:06:37 PM -05'00'
	Language of policy, so use "will be".			
1	Number: 7	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:06:54 PM -05'00'
	Language of policy, so use "will"			
1	Number: 8	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:00:15 PM -05'00'
	Say "is".			
1	Number: 9	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:07:38 PM -05'00'
	Use instead "may".			
1	Number: 10	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:02:17 PM -05'00'
	See <a href="http://www.adamsdrafting.com/how-to-address-unreasonable-withholding-of-consent/">http://www.adamsdrafting.com/how-to-address-unreasonable-withholding-of-consent/</a> .			
1	Number: 11	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:02:40 PM -05'00'
	Language of policy, so use "will not".			
1	Number: 12	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:02:55 PM -05'00'
	Use "may" instead.			
1	Number: 13	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:08:17 PM -05'00'
	Language of policy, so use "will not".			
1	Number: 14	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:07:57 PM -05'00'
	Language of policy, so use "will".			
1	Number: 15	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:09:03 PM -05'00'
	Use instead "may".			
1	Number: 16	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:03:30 PM -05'00'
	Doesn't make sense as language of policy. Instead, make it a condition to valid notice.			
1	Number: 17	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:03:59 PM -05'00'
	Same.			
1	Number: 18	Author: Ken	Subject: Comment on Text	Date: 12/1/2014 10:04:17 PM -05'00'
	Omit.			

(Survival), the Glossary of Terms Appendix and Exhibit 2: SOW Process and Terms & Conditions shall survive the termination or expiration of the SOW.

*[Appendix A, Glossary of Terms, Follows]*





## APPENDIX A GLOSSARY OF TERMS

**Affiliate** with respect to a party, means any corporation, firm, partnership, limited liability company or other entity, whether *de jure* or *de facto*, that directly or indirectly owns, is owned by, or is under common ownership with such party to the extent of at least fifty percent (50%) of the equity having the power to vote on or direct the affairs of such party, and any person, firm, partnership, corporation, limited liability company or other entity actually controlled by, controlling, or under common control with such party.

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

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

**Confidential Information** means proprietary and confidential information received by Cisco or Customer in connection with the SOW 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.

**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.

**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).

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

**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 Cisco applicable Application Software Documentation; and
- (ii) Cisco support of the Application Software.

This page contains no comments