

IBSG SOW TERMS AND CONDITIONS

If you engage Cisco to perform services pursuant to an IBSG Statement of Work ("SOW"), then both Cisco and Client 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 Section 12 of 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. **Confidentiality.** Client and Cisco agree that in connection with this Agreement and their relationship, they may obtain Confidential Information. Exchanges and disclosures of Confidential Information shall be governed by the Master Non-Disclosure Agreement between the parties ("NDA") which is incorporated herein by reference. The purpose of the disclosures, under the NDA, shall be amended to include fulfilling a party's obligations under this Agreement. The term of the NDA (for the purpose of this Agreement) shall coincide with the term of this Agreement.

Client may, in its discretion, provide suggestions, comments or other feedback with respect to the Services and/or Deliverables (collectively, "Feedback") to Cisco. Notwithstanding the NDA, Cisco shall have no confidentiality obligation with respect to the Feedback, and shall be free to disclose and use Feedback without obligation of any kind to Client.

Neither party shall disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other party. Any press release or publication regarding this Agreement is subject to prior review and written approval of the parties. Notwithstanding the foregoing, Cisco may publish a customer testimonial if authorized in a SOW.

2. **Services Provided "AS IS".** THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY DELIVERABLES, DOCUMENTS, PLANS, SPECIFICATIONS AND OTHER INFORMATION AND KNOW-HOW PROVIDED BY CISCO, ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY WHATSOEVER. CISCO SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

3. **Consequential Damages Waiver.** EXCEPT FOR A PARTY'S BREACH OF SECTION 1 (CONFIDENTIALITY), NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR THE LOSS OF DATA, INFORMATION OF ANY KIND, BUSINESS, PROFITS, OR OTHER COMMERCIAL LOSS, HOWEVER CAUSED, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY AGREES THAT THE LIMITATIONS SPECIFIED IN THIS SECTION SHALL APPLY EVEN IF ANY REMEDY PROVIDED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL REMEDY.

4. **Licenses.**

4.1 License Grant by Cisco. Subject to Client's compliance with the terms of this Agreement and any SOW, and subject to any additional terms which may be set forth in a SOW, Cisco grants to Client a worldwide, non-exclusive and non-transferable license to use for Client's internal business use the Deliverables specified in a SOW (collectively and individually, the "**Cisco**

Licensed Materials”). This license grant does not include the right to sublicense; provided that Client may permit its suppliers, subcontractors and other related third parties to use the Cisco Licensed Materials solely on Client’s behalf for Client’s benefit, provided that Client ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of Cisco’s rights in such Cisco Licensed Materials as are specified in this Agreement.

Nothing in this Agreement or any SOW shall alter or affect the Intellectual Property rights and/or licenses provided with any Cisco products. The provisions in this Section apply only to those Deliverables provided by Cisco to Client.

4.2 License Grant by Client. Subject to Cisco’s compliance with the terms of this Agreement and any SOW, and subject to any additional terms which may be set forth in a SOW, Client grants to Cisco a worldwide, non-exclusive and non-transferable license to use in connection with this Agreement the Client’s Pre-existing Technology defined in Section 5 (collectively and individually, the “**Client Licensed Materials**”). This license grant does not include the right to sublicense; provided that Cisco may permit its suppliers, subcontractors and other related third parties to use the Client Licensed Materials solely in connection with the Agreement, provided that Cisco ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of Client’s rights in such Client Licensed Materials as are specified in this Agreement.

Nothing in this Agreement or any SOW shall alter or affect the Intellectual Property rights and/or licenses provided with any Client products.

4.3 Duration of License Grant. The license rights granted in this Section are perpetual, provided that the applicable licensee is not in breach of this Agreement. Each party agrees that it receives no implied licenses under this Agreement, and all rights not expressly granted herein are reserved to the licensing party.

5. **Ownership.** 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 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**”).

Cisco owns and will continue to own all right, title and interest in and to the Services, Deliverables, Cisco products and Feedback, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces it to practice, and all Intellectual Property in any of the foregoing, but excluding any Client Pre-Existing Technology and Client Data which may be contained therein (collectively, “**Cisco Intellectual Property**”).

Notwithstanding this Section 5, the Parties may agree to alternative ownership terms if expressly set forth in a SOW.

6. **Loaned Property from Cisco.** Cisco may provide Client, at no charge, with certain equipment, and other property (“Loaned Property”), as more particularly described in the applicable Statement of Work, to facilitate the Services to be performed by Cisco hereunder. Client

acknowledges that the Loaned Property is loaned only for the purpose of allowing Cisco to perform the Services and that Cisco retains ownership of all right, title and interest to the Loaned Property, and all Intellectual Property Rights therein and thereto. Client agrees not to (i) copy, modify or make derivative works based upon, or reverse engineer, disassemble, or decompile the Loaned Property without the prior written approval from Cisco or (ii) sell, license, rent, disclose, encumber or transfer the Loaned Property to any third party. The Loaned Property shall be promptly returned to Cisco upon request or upon termination of this Agreement.

7. **Applicable Law and Jurisdiction.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. In addition, either party may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party.
8. **Assignment.** Neither this Agreement nor any right or obligation under this Agreement shall be assigned by a party without the other's prior written consent, which will not be unreasonably withheld or delayed. Any attempted assignment shall be void and of no effect. Notwithstanding the foregoing, the parties may assign this Agreement and any right or obligation under it without the other's approval, to an affiliate.
9. **Subcontracting.** Cisco reserves the right to subcontract Services to a third party organization to provide Services to Client. Any such subcontract shall not relieve Cisco of any of its obligations under this Agreement.
10. **Notices.** All notices required or permitted under this Agreement will 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 will be sent to the addresses set forth on the first page of this Agreement or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph.
11. **Entire Agreement.** This Agreement is the complete agreement between the parties concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties, except as agreed between the parties. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein. This Agreement may only be modified by a written document executed by the parties hereto, including, without limitation, any special terms referenced in Section 12 of the SOW.
12. **No Waiver.** The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
13. **Severability.** In the event that one or more terms of this Agreement becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such term shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of this Agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this Agreement by written notice with immediate effect to the other.
14. **Third Party Rights.** No person who is not a party to this Agreement shall be entitled to enforce or take the benefit of any of its terms.

15. **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.
16. **Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "**Counterpart Image**") shall be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. In the event that a party delivers a Counterpart Image in place of an originally-executed counterpart, such party shall retain the originally-executed counterpart in its files for at least the duration of the term hereof.
17. **Headings.** Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.
18. **Survival.** Sections 1 (Confidentiality), 2 (Services Provided "AS IS"), 3 (Consequential Damages Waiver), 4 (Licenses), 5 (Ownership), 6 (Loaned Property from Cisco), 7 (Applicable Law and Jurisdiction), 8 (Notices), 9 (Entire Agreement), 10 (No Waiver), 11 (Severability), 12 (Third Party Rights), 13 (No Agency), 18 (Survival) and the Glossary of Terms shall survive the termination or expiration of this Agreement.



EXHIBIT A

GLOSSARY OF TERMS

Client means the entity requesting Services for its own internal use.

Client Data means any data that is produced from Cisco's algorithms or processes based on Client-specific data.

Confidential Information has the meaning set forth in the NDA.

Deliverable(s) means, with respect to each SOW, the items to be delivered by Cisco to Client as set forth in an applicable SOW, including, without limitation, any reports, scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes or other technology provided or developed by Cisco (or a third party acting on Cisco's behalf) pursuant to this Agreement.

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).

Services means the consulting services to be provided to Client as described in a SOW.

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 to Client.