



Master Services Agreement – Cisco Systems, Inc

This Agreement is entered into by and between Cisco Systems, Inc., ("Cisco") a California corporation authorized to do business in the State of Texas and having its principal place of business at 170 West Tasman Drive, San Jose, California, 9513 and the City of College Station ("Customer"), a Texas home-rule municipal corporation having its principal place of business at 1101 Texas Avenue, College Station, Texas 77840 as of the date of last signature below.

This Agreement consists of (i) this signature page, (ii) the Master Services Terms and Conditions (including the Glossary of Terms) and (iii) the Services Descriptions of the Services Customer has elected to purchase, which are incorporated in this Agreement by this reference:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

CITY OF COLLEGE STATION

BY: _____
Ron Silvia, Mayor

Date: _____

ATTEST:

Connie Hooks, City Secretary

Date

APPROVED:

Glenn Brown, Acting City Manager
Date: _____

Roxanne Nemark

City Attorney
Date: _____

Jeff Kersten, Finance & Strategic
Planning Director
Date: _____

CISCO SYSTEMS, INC.

Anthony Sawastano

Authorized Signature

Anthony Sawastano

Name

V.P. Finance

Title

JULY 28, 2005

Date

Cisco Systems, Inc.
170 W. Tasman Drive
San Jose, CA 95134-1706

STATE OF California
COUNTY OF Santa Clara

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 23th day of July, 2005 by Anthony Sapastano in his/her capacity as VP Finance of Cisco Systems, a corporation, on behalf of said corporation.



Carol Faye Bailey
Notary Public in and for
the State of California

STATE OF TEXAS)
COUNTY OF BRAZOS)

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ___ day of _____, 200___, by _____, in the capacity as Mayor of the **City of College Station**, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for
the State of Texas



Master Services Agreement – Terms and Conditions

1. **Definitions** are those set out in the Glossary of Terms at the end of the Agreement.
2. **Scope:** This Agreement describes the terms and conditions for (i) Purchases by Customer of Services and (ii) delivery by Cisco of the Services according to the options ordered by Customer or otherwise provided by Cisco to Customer. Cisco will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid, (ii) a valid Software license has been granted and (iii) Customer provides information requested by Cisco such as valid serial numbers, and/or site location and/or contract number and/or Product type.
3. **Orders:** Where payment is directly to Cisco, Customer shall, upon and subject to credit approval by Cisco, purchase Services by issuing a P.O. Each P.O. must be signed, if requested by Cisco, or (in the case of electronic transmission) sent, by an authorized representative, indicating the specific Services, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference if any, and any other special instructions. No contingency contained on any P.O. shall be binding upon Cisco. The terms of this Agreement shall apply, regardless of any additional or conflicting terms on any P.O. or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms are deemed rejected by Cisco.
4. **Pricing:** For Direct Purchases, prices for Services shall be (i) those specified in Cisco's then-current Price List less any applicable discount at the time of acceptance of the P.O. by Cisco, or (ii) those set forth in a written price quotation submitted by Cisco. All stated prices are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other amounts. Any taxes related to Services purchased pursuant to this Agreement shall be paid by Customer or Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible.

In the event that Customer is unable to provide valid and applicable serial number(s) for Product and Cisco agrees to provide Services, then Service fees payable by Customer shall be at Cisco's then-current time and materials or non contract service rates.

For Indirect Purchases, Authorized Channels are free to determine their resale prices unilaterally. Customer understands that no employee or representative of Cisco or anyone else has any authority to determine such resale prices,
- or to limit the Authorized Channels pricing discretion with respect to Services.
5. **Payment and payment term:** For Direct Purchases, upon and subject to credit approval by Cisco, payment terms shall be net thirty (30) days from the date of invoice. Unless otherwise agreed by Cisco, all payments shall be made in the currency used by the Cisco Systems entity with which Customer has placed its P.O.

All undisputed amounts payable under this Agreement that remain unpaid for more than thirty (30) days are subject to TEX. GOV'T. CODE SECTION 2251.001 ET. SEQ. as amended

If at any time payment of any undisputed fees due have not been made, Cisco may withhold the provision of Services until complete payment has been received.
6. **Term and Termination:**
 - (a) The term of this Agreement shall commence on the last of signature of the signature page to which these Terms and Conditions are attached and shall continue for a period of one (1) year. Such term will be renewed automatically for successive one (1) year terms unless either party notifies the other in writing of its intent to terminate at least sixty (60) days prior to the expiration of the current one (1) year term.
 - (b) The term of an Equipment List shall commence on the date set forth on such Equipment List, which may be up to one hundred twenty (90) days following the date of P.O. acceptance by Cisco. Cisco shall notify Customer via e-mail or other form of electronic transmission of its acceptance or rejection of Customer's P.O. The term of an Equipment List shall be for a period of one (1) year and shall be renewed automatically for successive one (1) year terms, unless either party notifies the other of its intent to terminate in writing at least thirty (30) days prior to the expiration of the current one (1) year term.
 - (c) The term of each SOW shall be stated in the SOW.

This Agreement, any Equipment List and/or any SOW may be terminated immediately by either party upon written notice:

 - (i) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of 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: (i) ceases to carry on business as a going concern; or (ii) becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or (iii) a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets; or (iv) an event similar to any of the foregoing occurs under applicable law.
- (iii) Either party assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under this Agreement, Equipment List and/or 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 above, Cisco shall be authorized to transfer or assign any of its rights or responsibilities to another wholly owned subsidiary of Cisco Systems, Inc. without the consent of the other party. Cisco shall promptly notify Customer of such transfer or assignment.

If undisputed Services fees are not paid when due and payment has not been received within fifteen (15) days after notice from Cisco of such past due payment, Cisco may terminate immediately the Agreement, any Equipment List and/or any SOW.

Cisco reserves the right to make changes to the scope and content of the Services or part thereof at any time upon ninety (90) days prior notice. Such changes will become effective upon renewal of the affected Equipment Lists and/or SOWs. Customer may terminate this Agreement upon ninety (90) days prior written notice to Cisco if it does not agree to a change of scope or content made by Cisco. In such case, Cisco shall continue to provide Services until the next Equipment List Anniversary Date or SOW expiration date.

In the event that, following termination or expiration of this Agreement, Customer or the Authorized Channel places P.O.s and Cisco accepts such P.O.s, then any such P.O.s shall be governed by the terms and conditions of this Agreement notwithstanding the earlier expiration or termination of this Agreement; provided, however, that acceptance by Cisco of any such P.O. will not be considered to be an extension of the term of the Agreement nor a renewal thereof.

Each Equipment List and SOW hereunder shall terminate immediately upon termination of this Agreement, unless otherwise agreed by Cisco.

Upon termination of this Agreement, for any reason whatsoever, any Equipment List or SOWs, Customer shall pay Cisco for all undisputed work performed under the affected Equipment Lists or SOWs up to the effective date of termination at the agreed upon prices, fees and expense reimbursement rates.

7. Confidentiality:

Customer and Cisco agree that in connection with this Agreement and their relationship, they may obtain Confidential Information. The receiving party shall at all times, both during the term of this Agreement and for a period of at least three (3) years after its termination or expiration, 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 this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the receiving party's written consent. 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, and who have been advised of the obligations of confidentiality and agree to be bound by them or, alternatively, are under pre-existing obligations of confidentiality substantially similar to those set out in this Agreement.

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 this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) 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 to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, 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.

Neither party shall disclose, advertise, or publish this Agreement (or any portion thereof) without the prior written consent of the other party unless such information is disclosed by the receiving party pursuant to statutory requirement, such as the Texas Open Records Act, or a valid order issued by a court or government agency, provided that the receiving party provides (a) prior written notice to the disclosing party of such obligation and (b) the opportunity to oppose such disclosure, or assert other such rights as provided by such statute. Any press release or publication regarding this Agreement is subject to both parties' prior review and written approval.

- 8. **WARRANTY:** ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, CISCO HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, (B) ARISING FROM ANY COURSE OF

DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY 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 SHALL BE, AT CISCO'S OPTION, RE-PERFORMANCE OF THE SERVICES; OR TERMINATION OF THIS AGREEMENT OR THE APPLICABLE EQUIPMENT LIST OR SOW AND RETURN OF THE PORTION OF THE FEES PAID TO CISCO BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES.

9. **Patent and Copyright Indemnity:** Cisco will have the obligation and the right to defend any claim, suit or proceeding ("IPR Claim") brought against Customer so far as it is based on a claim that any Service supplied under this Agreement infringes Third Party IPR (as defined below). Cisco will indemnify the Customer against any final judgment entered in respect of such an IPR Claim by a court of competent jurisdiction and against any settlements arising out of such an IPR Claim. Cisco's obligations to defend the IPR Claim and indemnify the Customer are conditional upon: (a) the Customer promptly notifying Cisco in writing of the IPR Claim or threat thereof; (b) Cisco having full and exclusive authority and sole control of the defense and of all related settlement negotiations of the IPR Claim and any subsequent appeal; and (c) the Customer providing all information and assistance reasonably requested by Cisco in such defense and settlement of the IPR Claim and any subsequent appeal.

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

If an IPR Claim has been made, or in Cisco's opinion is likely to be, commenced Cisco shall, at its option and expense, either (a) procure for the Customer the right to continue using the Service; (b) replace or modify the Service so that it becomes non-infringing or (c) immediately terminate both parties' respective rights and obligations under this Agreement with regard to the Service, in which case Cisco will refund to Customer the price originally paid by Customer to Cisco for the remainder of any period for which Service will not be provided following such termination. Notwithstanding the foregoing, Cisco has no liability for, any claim against Cisco based upon: (a) the combination, operation, or use of any Service supplied under this Agreement with Customer's own products, equipment, devices, or software not supplied by Cisco; (b) the amount or duration of use which Customer makes of the Service, revenue earned by Customer from services it provides which utilize the Service, or services offered by Customer to external or internal customers; (c) the alteration or modification of any Service supplied under this Agreement; (d) Cisco's compliance with Customer's designs, specifications, or instructions; or (e) Customer's use of the Service after Cisco has informed Customer of modifications or changes in the Service required to avoid such an IPR Claim if the alleged infringement would have been avoided by implementation of Cisco's recommended modifications or changes. THIS SECTION STATES THE ENTIRE OBLIGATION OF CISCO AND ITS SUPPLIERS, AND THE EXCLUSIVE REMEDY OF CUSTOMER, IN RESPECT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY

INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS. THIS INDEMNITY OBLIGATION AND REMEDY ARE GIVEN TO CUSTOMER SOLELY FOR ITS BENEFIT AND IN LIEU OF, AND CISCO DISCLAIMS, ALL WARRANTIES, CONDITIONS AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO ANY SERVICE.

10. **LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES WAIVER:** NOTHING IN THIS AGREEMENT SHALL LIMIT CISCO'S OR ITS SUPPLIERS' LIABILITY FOR (1) PERSONAL INJURY OR DEATH CAUSED BY ITS NEGLIGENCE; OR (2) CISCO'S LIABILITY IN THE TORT OF DECEIT OR FOR FRAUD.

THE LIABILITY OF EITHER PARTY TO THE OTHER OR TO ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY COLLATERAL CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE SHALL BE LIMITED TO THE GREATER OF (I) AMOUNTS PAID OR PAYABLE BY CUSTOMER TO CISCO FOR THE SERVICES DURING THE SIX (6) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY OR (II) ONE HUNDRED THOUSAND (100,000) US DOLLARS.

IN THE CASE OF TRANSACTIONAL ADVANCED SERVICES PERFORMED UNDER A SOW, THE LIABILITY OF EITHER PARTY SHALL BE LIMITED TO THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO CISCO PURSUANT TO THE RELEVANT SOW DURING THE SIX (6) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY.

THE LIABILITY OF CISCO SHALL BE CUMULATIVE AND NOT PER INCIDENT.

SUBJECT TO THE EXCEPTIONS SET OUT IN THE FIRST PARAGRAPH OF THIS SECTION 10, IN NO EVENT SHALL EITHER PARTY OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST OR DAMAGED DATA, OR ANY INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF SUCH LOSSES OR DAMAGES WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE.

BY ENTERING INTO THIS AGREEMENT THE CUSTOMER DOES NOT (A) CONSENT TO SUIT, OR (B) WAIVE ITS GOVERNMENTAL IMMUNITY OR THE LIMITATIONS AS TO DAMAGES.

11. **License:**

Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business use (i) Software provided as a result of Services (ii) the Deliverables specified in each SOW (in object code form if software) and (iii) Data Collection Tools. This license grant does not include the right to sublicense and is nontransferable.

This license shall be governed by (i) the terms and conditions attached to the Software or in the absence of such terms by the license posted at http://www.cisco.com/en/US/products/prod_warranties_item09186a008025c927.html and (ii) the Agreement.

Customer agrees that it is licensed to use Software: (1) only on Hardware covered under this Agreement; or (2) in the case of Application Software, on third party hardware, (except as otherwise authorized in the Software documentation); or (3) in the case of Data Collection Tools, in object code form only, on the Data Collection Tool on which such Software is provided.

The license is perpetual, provided Customer is not otherwise in breach of this license. Notwithstanding the above, for Data Collection Tools the license is valid until the earlier of: (i) the expiration or termination of the Service under which the Data Collection Tool was provided; or (ii) Cisco's request to Customer that the Data Collection Tool(s) be returned to Cisco

Except as expressly authorized, Customer shall not (and shall not knowingly permit a third party to): download more than one copy of the Software, copy, in whole or in part, any Software, (except as required to provide a single copy for backup and security purposes) Deliverable or Data Collection Tool, make error corrections or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Software, Deliverable or Data Collection Tool which is software to human-readable form; or transfer, sublicense, rent, lease, distribute, sell, or create derivative works of any Deliverables.

Cisco shall make available any interface information to which the Customer is entitled under applicable law, upon written notice request and payment of Cisco's applicable fee.

When Customer updates or upgrades a copy of Software to a new release, Customer shall not use (except for a limited period of parallel testing) the new Software release and the corresponding copy of the previous Software release concurrently. Under no circumstances shall the previous release be re-used or transferred to any other device(s).

12. Force Majeure

Except for the obligation to pay monies due and owing, neither party 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 shall be extended for a period equal to the period during which such event prevented such party's performance.

13. **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 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 and

Federal Courts of Texas shall have exclusive jurisdiction over any claim arising under this Agreement. Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.

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 Cisco 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.

15. **Assignment:** Neither party may assign or delegate its rights or obligations under this Agreement (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 this Agreement) 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.

16. **Inventory Review.** From time-to-time but not more than once every year, Cisco may perform an inventory review of Customer's installed base and review serial numbers and other records (upon reasonable advance written notice and a mutually agreed time during normal business hours at Customer's business) to validate entitlement. Cisco will charge a Service fee if it finds that unauthorized Services are being provided. This Service fee includes amounts which should have been paid and interest not to exceed the legal rate authorized in Texas. . Cisco requires that Customer take all reasonable action (for example, disabling passwords) to ensure that any former employees and/or contractors do not access or use the Service.

17. **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 cover sheet 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.

18. **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.

19. **Survival.** Sections 5 (Payment and payment term), 6 (Term and Termination), 7 (Confidential Information), 8 (Warranty), 9 (Limitation of Liability and Consequential Damages Waiver), 10 (License), 11 (Force Majeure), 12 (Applicable Law and Jurisdiction), 13 Export Control, 15 (Inventory Review), and 16 (Notices) shall survive the termination of this Agreement.



Description of SMARTnet and SMARTNET on-site

Cisco's SMARTnet and SMARTnet Onsite Services contain a range of remote and onsite technical support options. This document sets out the SMARTnet and SMARTnet Onsite Service options that are available to you for purchase. Your Purchase Order must itemize the options that you wish to purchase. Please read this document carefully as it contains important information regarding the Services that you have purchased from us. It is incorporated by reference to the Master Services Agreement between Cisco and you.

Capitalized terms are defined in the [Glossary of Terms](#).

SMARTnet

Cisco Responsibilities:

- Cisco Technical Assistance Center (TAC) access 24 hours per day, 7 days per week to assist with Product use, configuration and trouble shooting issues and access to Cisco.com.
- Work-around solutions or patches to reported Software problems using reasonable commercial efforts. Cisco will either make available a Software patch from the Cisco.com Software Center (www.cisco.com/software) or ship a Maintenance Release to you for the Product experiencing the problem.
- Updates where available and where you request these for supported Software.
- If a Feature Set Upgrade is licensed, you will be entitled to Updates (subject to anything to the contrary contained in this document or the Agreement) at the upgraded level for the licensed Hardware.
- Software releases and any supporting documentation will be made available from the Cisco.com Software Center (www.cisco.com/software) or on physical media such as CDROM. Applicable supporting documentation, if available, is limited to one copy per Software release. You can, however, purchase additional copies from Cisco.
- Access to Cisco.com. This system provides you with helpful technical and general information on Cisco Products as well as access to Cisco's on-line Software Center library. Please note that access restrictions identified by Cisco from time to time may apply.

Advance Replacement and On-Site Service

Cisco Responsibilities:

Cisco shall use commercially reasonable efforts to provide you with the Advance Replacement Services and/or On-site Services that you have selected and detailed in Parts I and II below and where available.

Advanced Replacement and On-Site Services are subject to geographic and weight restrictions depending upon your location. You may check availability by accessing Cisco's Service Availability Matrix at: http://www.cisco.com/cgi-bin/front.x/agents/SAM/cca_sam_landing.cgi. Please note that destination country importation, compliance with US export controls and customs processes may condition actual delivery times. FRUs will be shipped Advance Replacements will be shipped DDU (Incoterms 2000), except for shipment to and from the European Union where they will be shipped DDP Incoterms 2000, using Cisco's preferred carrier, freight prepaid by Cisco, excluding import duties, taxes and fees, where applicable. Requests for alternate carriers will be at your expense. Chassis and line card Advance Replacement Service must be at the same level of coverage. Cisco will provide you with Advance Replacement(s) that are either new or equivalent to new.

Part I - Advance Replacement Services

- SMARTnet 8x5xNext Business Day: An Advance Replacement will ship to arrive the next Business Day provided that Cisco's determination of Hardware failure has been made before 3:00 p.m., Depot Time. If you make a request after 3:00 p.m., depot Time, Cisco will ship the Advance Replacement the next Business Day.
- SMARTnet 8x5x4: Advance Replacement on a Four-Hour Response basis between 9:00am and 5:00pm Depot Time the same Business Day, provided that Cisco's determination of Hardware failure has been made before 1:00 p.m., Depot Time. If you make a request after 1:00 p.m. Depot, Cisco will deliver the Advance Replacement the morning of the next Business Day.
- SMARTnet 24x7x4: Advance Replacement parts on a Four-Hour Response basis twenty-four (24) hours per day, seven (7) days per week, including Cisco-observed holidays.

- SMARTnet 24x7x2: Advance Replacement on a Two-Hour Response basis twenty-four (24) hours per day, seven (7) days per week, including Cisco-observed holidays.

Part II - SMARTnet On-Site Support Services

- SMARTnet On-Site 8x5xNext Business Day: Next-business-day Remedial Hardware Maintenance, together with parts, labor and materials, by 5:00 p.m. Depot Time provided Cisco's determination that on-site Service is required has been made before 3:00 p.m. Depot Time the prior day (otherwise, second Business Day will be provided for calls placed after 3:00 p.m. Depot Time).
- SMARTnet On-Site 8x5x4: Four Hour Response for Remedial Hardware Maintenance service between 9.00am and 5.00pm Depot Time the same Business Day, together with parts, labor and materials, provided Cisco's determination that on-site service is required has been made before 1:00pm Depot Time.
- SMARTnet On-Site 24x7x4: Four Hour Response for Remedial Hardware Maintenance twenty four (24) hours per day, seven (7) days per week including Cisco observed holidays.
- SMARTnet On-Site 24x7x2: Two Hour Response for Remedial Hardware Maintenance twenty four (24) hours per day, seven (7) days per week including Cisco observed holidays.

Customer Responsibilities:

To enable Cisco to provide you with the Service that you have selected, Cisco needs you to do the following:

- Provide a priority level as described in the [Cisco Severity and Escalation Guideline](#) for all the calls you place.
- Provide, at your expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between you and the Cisco TAC engineer and systems passwords so that problems may be diagnosed and, where possible, corrected remotely.
- Use the latest release of Software, where Cisco advises you that this will correct a reported Software problem.
- Provide thirty (30) days Notice to Cisco of any requested addition(s) to your Equipment List.
- Notify Cisco, using Cisco.com, of Product on the Equipment List which you have moved to a new location within thirty (30) days of such relocation. Please be aware that the Services will be provided to you beginning thirty (30) days after receipt of your notification. Cisco will also need you to notify Cisco of

any modification to the Product and configuration including upgrades or changes to FRUs not in the original configuration within five (5) days of such modification.

- Provide current shipment contact information as follows: contact name, title, address, telephone number, e-mail address, and fax number.

Where you have purchased the Services detailed under Advance Replacement and On-site Service Part I:

- return to Cisco any defective or returned Product in accordance with Cisco's RMA procedure. Cisco will need you to provide a new Purchase Order number to Cisco's asset recovery team to facilitate the billing of Product not returned. You agree to assist Cisco in troubleshooting failed Hardware down to the FRU level prior to initiating the RMA procedure.

- you are responsible for the following when returning Product to Cisco: (a) proper packaging, including description of failure and written specifications of any other changes or alterations; (b) returns must be received within thirty (30) days; otherwise, the replacement Product will be charged at the current Price List. Packages for replacement shall be shipped DDU (Incoterms 2000) or FCA (Incoterms 2000) as applicable.

- Where you have purchased the Services detailed under Advance Replacement and On-Site Service Part II:

- Provide an appropriate work environment and reasonable access, working space including heat, light, ventilation, electric current and outlets, and local telephone extension (or toll free domestic and international access to Cisco) for the use of Cisco's service personnel in the Product's physical location.

- Back-up Software images and configurations on a regularly scheduled basis and provide those images and configurations to Cisco's on-site personnel in connection with Remedial Hardware Maintenance

- Ensure all Products are installed below ten (10) feet. For Products installed above four (4) feet, provide ladders that reach the height of the Product.

- Provide Cisco with the name of a point of contact prior to delivery to equipment by Cisco's personnel.

- Provide TFTP (Telnet File Transfer Protocol) capabilities or internet access for the purpose of downloading software images by Cisco's on-site personnel

- Provide safety and security protection of Cisco's personnel or its subcontractors for your unmanned sites.
- Provide valid and applicable serial numbers for all Product problems and issues reported to Cisco or where you are seeking information from Cisco in connection with Product use. Cisco may also require you to provide additional information in the form of location of the Product, city location details and zip code information.
- When requested, provide Cisco with a list of all personnel that you have authorized to contact Cisco or access Cisco.com for Services and to download Software from Cisco.com or Cisco's PUT. You are responsible for reviewing the list on an annual basis and adding or removing personnel as necessary.



Description of Software Application Services

Software Application Support and Software Application Support Plus Upgrades

This document describes the Software Application Support (**SAS**) and Software Application Support plus Upgrades (**SASU**) service options available to support your Application Software. The Service option that you want to purchase should be included in your Purchase Order. SAS and SASU service levels may not be available for every Cisco application software Product. For new software purchases, SAS or SASU begins on the date of shipment of the Application Software *plus* one day. It is incorporated by reference to the Master Services Agreement between Cisco and you.

Capitalized terms are defined in the [Glossary of Terms](#).

SAS

Cisco Responsibilities:

- Cisco TAC access 24 hours per day, 7 days per week to assist by telephone, fax, electronic mail or the internet with Application Software use, configuration, and troubleshooting issues.
- Workaround solutions or patches to reported Application Software problems using reasonable commercial efforts. For an Application Software patch, a Maintenance Release for the Application Software experiencing the problem will be provided as follows: (a) download from Cisco.com (as available), or (b) shipment of Application Software on media such as CDROM using a nominated carrier. Requests for alternative carriers will be at customer's expense.
- Minor and Maintenance Releases The Application Software releases and supporting documentation are available on the Cisco.com Software Center (www.cisco.com/software) or on media such as CDROM, through the Cisco Product Upgrade Tool (PUT) (www.cisco.com/upgrade). Applicable supporting documentation, if available, is on Cisco.com and is limited to one copy per release. Additional copies may be purchased.
- Access to Cisco.com for online technical and general information about Cisco Application Software and to the Software Center (subject to access restrictions).
- Manage the problem according to the [Cisco Severity and Escalation Guideline](#).

SASU

Cisco Responsibilities:

- Cisco-provided deliverables, as specified above in SAS plus
- Cisco-provided, on request, Major Application Software Releases. Such Updates are limited to Application Software releases that have been validly licensed and paid for and that are covered under a current SASU contract. The Application Software releases and supporting documentation will be made available on the Cisco.com Software Center (www.cisco.com/software) or on media such as CDROM, through the Cisco PUT (www.cisco.com/upgrade). Applicable supporting documentation, if available, is available on Cisco.com and is limited to one copy per licensed software. Additional copies may be purchased.

Customer Responsibilities:

The provision of the service options assumes that you will:

- Provide a severity level as described in the Cisco Severity and Escalation Guideline for all support calls you place to Cisco TAC.
- Provide current shipment contact information as follows: contact name, title, address, telephone number, e-mail address, and fax number.
- Verify any in-transit damage of the media for the SAS or SASU Application Software Updates.
- Provide, at your expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between you and the Cisco TAC engineer and systems passwords so that problems may be diagnosed and, where possible, corrected remotely.
- Update to the latest Application Software release and latest third-party software release, if required by Cisco to correct a reported Application Software problem.
- Pay all engineering time, travel, and out-of-pocket expenses if you request performance of onsite Services or Services outside the scope of Service options described in this document.

- Provide any Hardware required to perform fault isolation.
- Receive Services on Cisco Application Software for which Customer has:
 - Purchased a valid and current license for the latest Major and Minor release or is renewing support for a valid supported license revision.
- Make all reasonable efforts to isolate the Application Software problem prior to requesting support from Cisco.
- Acquire, install, configure and provide technical support for all:
 - Third-party products, including upgrades required by Cisco or related services; and
- Network infrastructure, including, but not limited to, local and wide-area data networks and equipment required by Cisco for operation of Application Software.
- Upon request, provide a list of all personnel you authorize to contact Cisco or access Cisco.com for Services and who you authorize to download Software from Cisco.com or order through Cisco PUT. You are solely responsible for annually reviewing the list to add or remove personnel as necessary.
- Maintain your entire Application Software implementation currently in use under the same Service option for Cisco to provide Services for any portion of your Application Software implementation.



Cisco Severity and Escalation Guideline

You must assign a severity to all problems submitted to Cisco. Capitalized terms are defined in the [Glossary of Terms](#).

If you do not believe that adequate progress is being made or that the quality of Cisco service is unsatisfactory, 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	Customer Engineering Manager			
4 hours	Technical Support Director	Customer Engineering Manager		
24 hours	Vice President, Customer Advocacy	Technical Support Director		
48 hours	President/CEO	Vice President, Customer Advocacy		
72 hours			Customer Engineering Manager	
96 hours		President/CEO	Technical Support Director	Customer Engineering 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.

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Services Not Covered

Services that are not expressly set forth in the applicable services description document are not covered under such services description including, without limitation, the following:

- Services are only provided for generally available Products and Software releases/versions, unless agreed otherwise
- Any customization of, or labor to install, Software and Hardware (including installation of Updates).
- Furnishing of supplies, accessories or the replacement of expendable parts (e.g., cables, blower assemblies, power cords, and rack mounting kits).
- Electrical or site work external to the Products.
- Any actual and reasonable expenses incurred to visit Customer's location, except as required during escalation of problems by Cisco.
- Service for Hardware that is installed outdoors or that is installed indoors but requires special equipment to perform such Service
- Hardware replacement in quantities greater than three (3) FRUs, including those replacements due to pervasive issues documented in an engineering change notice or field alert unless Customer has troubleshoot failed Hardware down to the FRU level
- Services performed at domestic residences.
- Support or replacement of Product that is altered, modified, mishandled, destroyed or damaged by one or more of the following: (i) natural causes; (ii) environmental failures; (iii) your failure to take any required actions; (iv) a negligent or willful act or omission by you or use by you other than as specified in the applicable Cisco-supplied documentation; or (v) an act or omission of a third party.
- Services or software to resolve Software or Hardware problems resulting from third party product or causes beyond Cisco's control or failure to perform your responsibilities set out in this document.
- Services for non-Cisco Software installed on any Cisco Product.
- Any Hardware or third party product upgrade required to run new or updated Software.
- Additional Services are provided at the then-current time and materials rates.
- Except as otherwise agreed, Software entitlement, including media, documentation, binary code, source code or access in electronic or other form is not provided. In addition, except as otherwise provided, no right, use or license to our Software is granted and you acknowledge and agree that you obtain no such rights.
- The non entitlement policies posted at http://www.cisco.com/en/US/products/prod_warranties_listing.html are incorporated into this Agreement.

Capitalized terms are defined in the [Glossary of Terms](#).



Glossary of Terms

Services means installation of new Hardware, system additions, Hardware upgrades, dispatch of a field engineer, or non-mandatory engineering changes.

Advance Replacement means shipment of replacement field-replaceable unit (FRU) before receiving failed or defective FRU.

Advanced Services means proactive Services including but not limited to Focused Technical Support, Network Optimization Support, Technology Application Support.

Advanced Services Engineer means the Cisco engineer appointed to be the main point of contact for Customer' purchasing Advanced Services

Application Software means nonresident or standard alone 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.

Authorized Channel means a system integrator, distributor or reseller authorized by Cisco to sell Services/

Business Days means local business days excluding local holidays as observed by Cisco.

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 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.

Customer means the entity purchasing Services for its own internal use either directly or through an Authorized Channel.

Data Collection Tools means hardware or software tools that support Cisco's ability to provide troubleshooting on critical cases, data analysis, and report generation capabilities.

Direct Purchases means purchases of Services by Customer directly from Cisco

"Depot Time" means Central European Time for parts shipping into Europe, Australia's Eastern Standard Time for parts shipping into Australia, Japan's Japan Standard Time for parts shipping into Japan and Pacific Standard Time for parts shipping into all other locations. Delivery time may vary from Cisco theatre to Cisco theatre.

Device Type means a Cisco supported hardware product (for example, Cisco Catalyst® 6509 Switch, GSR 12000 and Cisco 7200 Series Router).

Documentation is 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.

Equipment List means the list of Hardware /or Software for which Cisco provides services.

Event means notification by Customer of its performance of a planned network hardware, software, or configuration change

Feature Category means a Cisco supported and configured category of technical functionality on a specific device type (for example, Open Shortest Path First routing protocol, Novell routed protocol or Fast Ethernet interface type).

Feature Set Upgrade means a separately licensed and priced software release that contains an enhanced configuration or feature set.

Field-replaceable Unit (FRU) means any component or subassembly of an item or unit of hardware that reasonably can be replaced at Customer's location. FRUs also may be subject to size and weight limitations.

Four-hour Response means:

- For Advance Replacement Service, the four-hour time period commences upon the Cisco problem diagnosis and determination that a FRU is required and ends when the FRU is delivered onsite
- For onsite service, the four-hour time period commences upon the Cisco problem diagnosis and determination that remedial onsite service is required and ends when Cisco personnel arrive onsite

Hardware means tangible Cisco equipment, devices, or components made available to customers.

Indirect Purchases means purchases of Services by Customer through an Authorized Channel

Level 1 means support that is defined as having the necessary technical staff (Cisco or Cisco-authorized Reseller) with appropriate skill, perform installations, remedial hardware maintenance, and basic hardware and software configuration on Cisco Products.

Level 2 means support that is defined as having the necessary technical staff with the appropriate skills to perform isolation, replication and diagnosis of internet-based problems on Cisco Product(s). Customer shall not report Software bugs to Cisco prior to attempting to identify the source of such bugs and testing in Customer's Network where appropriate. If the Customer cannot duplicate the bug in Customer's Network, Customer and Cisco shall cooperate in attempting to replicate and resolve related Software bugs in either Customer's or Cisco's test facility as mutually agreed. In all cases Customer will address Software bugs on a best effort basis to replicate same in Customer's Network and document activity to Cisco before seeking further resolution with Cisco's participation.

Local Time means local time Monday through Friday (excluding Cisco observed holidays).

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)].

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].

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].

Network means a set of interconnected and interworking Cisco supported hardware and software that is implemented, operated, and supported by Customer from a single network operations center (NOC).

Network Infrastructure means your core transport and aggregation network technology (for example, metro optical, ATM/Frame Relay, IP core and Cisco security devices including, but not limited to, Firewall, IDS and VPN3000).

Network Infrastructure Size means the total value of products in Customer's network based on the global list price of the products that Customer has purchased.

Purchase Order or P.O. means a written or electronic order from Customer to Cisco for the Services to be provided by Cisco under this Agreement.

Out of Scope Services means services which are not included in the applicable Services description and which the Customer wishes to purchase.

Product means both Cisco Hardware and/or Software which are generally available.

Remedial Hardware Maintenance means diagnosis and onsite replacement of hardware components with FRUs.

RMA means Return Material Authorization

Services means one or more of the services options selected by the Customer in its Purchase Order and described at: <http://wwwin-tools.cisco.com/sales/go/wwwbusinessoperations/eacceptance>

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

Severity 2 means operation of an existing Network is severely degraded or significant aspects of Customer's business operation are negatively impacted by unacceptable Network performance. Customer and Cisco both will commit full-time resources during Local Time to resolve the situation.

Severity 3 means operational performance of the Network is impaired, although most business operations remain functional. Customer and Cisco both are willing to commit resources during Local Time to restore service to satisfactory levels.

Severity 4 means information is required on Cisco's Application Software capabilities, installation, or configuration. There is little or no impact to your business operation. Customer and Cisco both

are willing to provide resources during Local Time to provide information or assistance as requested.

Software means the software programs licensed to Customer by Cisco along with copies, Updates, or Upgrades to those software programs.

Software Track means a unique set of Hardware feature combinations (e.g., unique device function, Network layer, geography, Hardware platform, features, module requirements, stability requirements, risk) that could potentially be addressed by a single Software release.

"Standard Business Hours" means (i) 8:00 AM to 5:00 PM, Depot time, Monday through Friday, excluding local Cisco-observed holidays for NBD shipments and (ii) 8:00 AM to 5:00 PM, local time at location of the respective Cisco TAC, Monday through Friday, excluding local Cisco-observed holidays for case handling of TAC calls..

Statement of Work (SOW) means the documents agreed upon by the parties that define services and deliverables to be provided.

TAC means the Cisco Technical Assistance Center.

Technical Support Services means services that provide both essential proactive and reactive operation and maintenance support services including but not limited to SMB Support Assistant, SAS/SASU, Smartnet

Technology Application means specific technologies including, but not limited to, content networking, broadband, and IP telephony that do not operate at the network infrastructure level.

Third-party Products means third-party hardware and/or software, and all upgrades thereto, that are designated by Cisco as required for:

- The operation of application software in conformance with Cisco applicable application software documentation
- Cisco support of the application software

Two-hour Response means:

- For advance replacement, the two-hour time period commencing with Cisco's problem diagnosis and determination that a FRU is required and ending when the FRU is delivered onsite
- For onsite service, the two-hour time period commencing with our problem diagnosis and determination that remedial onsite service is required and ending when Cisco personnel arrive onsite

"Transactional Advanced Services" means the project related or consultancy Services sold under a Statement of Work.

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 Feature Set Upgrades.