

# ORIGINAL

## AGREEMENT FOR SERVICES #102-S0711 AMENDMENT I

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This Amendment I to that Agreement for Services #102-S0711, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and AT&T Datacomm, a Delaware Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 2700 Watt Avenue, #3349, Sacramento, CA 95821; (hereinafter referred to as "Contractor");

### WITNESSETH

**WHEREAS**, Contractor has been engaged by County to provide Cisco hardware, upgrades and "Smartnet" maintenance and support for the Information Technologies Department in accordance with Agreement for Services #102-S0711, dated October 2, 2006, incorporated herein and made by reference a part hereof; and

**WHEREAS**, the parties hereto have mutually agreed to increase the compensation of said Agreement \$60,000.00, hereby amending **ARTICLE III - Compensation for Services**.

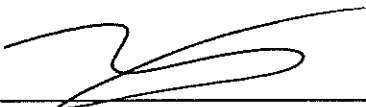
**NOW THEREFORE**, the parties do hereby agree that Agreement for Services #102-S0711 shall be amended a first time as follows:

#### **ARTICLE III**

**Compensation for Services:** For services provided herein, County agrees to pay Contractor within thirty (30) days following the delivery of product and County's receipt and approval of itemized invoice(s) identifying services rendered, with a prompt payment discount of 3% if balance is paid within twenty (20) days. For the purposes hereof, the billing rates shall be in accordance with Exhibit "A", marked "Quotation Schedule", incorporated herein and made by reference a part hereof. The total amount of this Agreement, as amended, shall not exceed \$160,000.00.

Except as herein amended, all other parts and sections of that Agreement #102-S0711 shall remain unchanged and in full force and effect.

**Requesting Contract Administrator Concurrence:**

By:  Dated: 1/29/07  
Tom Straling  
Information Technologies

**Requesting Department Head Concurrence:**

By:  Dated: 1/29/07  
Jacqueline Nilus, Director  
Information Technologies

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to that Agreement for Services #102-S0711 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

--- COUNTY OF EL DORADO ---

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Chair  
Board of Supervisors  
"County"

ATTEST:  
Cindy Keck, Clerk  
of the Board of Supervisors

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Deputy Clerk

-- CONTRACTOR --

Dated: 3-18-07

AT&T DATACOMM  
A DELAWARE CORPORATION

By: Karow J. Verdolow  
Regional Vice-President  
"Contractor"

By: Marilyn L. O'Brien  
Corporate Secretary

Dated: 3-13-07

COPY



AGREEMENT FOR SERVICES #102-S0711

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**THIS AGREEMENT** made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and AT&T DataComm, duly qualified to conduct business in the State of California, whose principal place of business is 2700 Watt Avenue, #3349, Sacramento, CA 95821; (hereinafter referred to as "Contractor");

**WITNESSETH**

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to provide Cisco hardware, upgrades and "Smartnet" maintenance and support for the Information Technologies Department; and

**WHEREAS**, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**NOW, THEREFORE**, County and Contractor mutually agree as follows:

**ARTICLE I**

**Scope of Services:** Contractor agrees to furnish on an "as needed" basis Cisco hardware, upgrades and "Smartnet" maintenance and support for the Information Technologies Department. Cisco products must be new equipment only, refurbished equipment will not be accepted. Alternate brands and models will not be accepted.

Products shall be delivered F.O.B. destination, freight prepaid, on ground or inside delivery, to the following location: El Dorado County, Information Technologies, 360 Fair Lane, Placerville, CA 95667.

"Smartnet" maintenance and support services shall be in accordance with Exhibit "B", marked "Agreement #034-S0411", any amendments related thereto, and the Short Form Resale Master Services Agreement, incorporated herein and made by reference a part hereof.

## **ARTICLE II**

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall expire one (1) year from date thereof. This Agreement may be extended for one (1) additional one-year period if mutually agreed in writing between the parties hereto and not less than sixty (60) days prior to the expiration date of this Agreement.

## **ARTICLE III**

**Compensation for Services:** For services provided herein, County agrees to pay Contractor within thirty (30) days following the delivery of product and County's receipt and approval of itemized invoice(s) identifying services rendered, with a prompt payment discount of 3% if balance is paid within twenty (20) days. For the purposes hereof, the billing rates shall be in accordance with Exhibit "A", marked "Quotation Schedule", incorporated herein and made by reference a part hereof. The total amount of this Agreement shall not exceed \$100,000.00.

## **ARTICLE IV**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

## **ARTICLE V**

**Contractor to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

## **ARTICLE VI**

**Assignment and Delegation:** Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

## ARTICLE VII

**Independent Contractor/Liability:** Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

## ARTICLE VIII

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## ARTICLE IX

### **Default, Termination, and Cancellation:**

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. . In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise

## ARTICLE X

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be addressed as follows:

COUNTY OF EL DORADO  
INFORMATION TECHNOLOGIES  
360 FAIR LANE  
PLACERVILLE, CA 95667  
ATTN: JACQUELINE NILIUS, DIRECTOR

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

AT&T DATACOMM  
2700 WATT AVENUE, #3349  
SACRAMENTO, CA 95821

or to such other location as the Contractor directs.

## ARTICLE XI

**Indemnity:** The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

## ARTICLE XII

**Insurance:** Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability is not required.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Contractor agrees that no work or services



shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for the protection of the County.

### **ARTICLE XIII**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this

Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XIV**

**Interest of Contractor:** Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

#### **ARTICLE XV**

**California Residency (Form 590):** All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

#### **ARTICLE XVI**

**Taxpayer Identification Number (Form W-9):** All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

#### **ARTICLE XVII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Tom Straling, Information Technologies Department, or successor.

#### **ARTICLE XVIII**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

#### **ARTICLE XIX**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

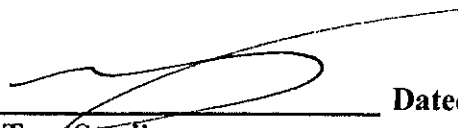
**ARTICLE XX**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

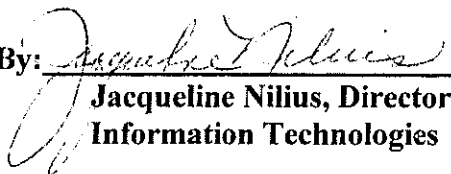
**ARTICLE XXI**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:**

By:  Dated: 8/30/06  
Tom Straling  
Information Technologies

**REQUESTING DEPARTMENT HEAD CONCURRENCE:**

By:  Dated: 8/29/06  
Jacqueline Nilus, Director  
Information Technologies

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: 10/2/06

By: Bonnie H. Rich  
Bonnie H. Rich, Purchasing Agent  
Chief Administrative Office

-- CONTRACTOR --

Dated: 9-27-06

AT&T DATACOMM

By: Virginia Oel Prew  
Vice-President  
"Contractor"

By: Meredith L. O'Brien  
Corporate Secretary

Dated: 9/27-06

# EXHIBIT "A"

## Quotation Schedule

### Category I: Hardware

Product	Percentage Off List Price
Cisco Switches, Routers & Blades & Related Items	38 %

### Category II: Upgrades

Product	Percentage Off List Price
Cisco Memory & Processor Upgrades & Related Items	38 %

### Category III: Maintenance & Support

Product	Percentage Off List Price
Cisco SmartNet	15 %

# EXHIBIT "B"



# ORIGINAL

Cisco Systems, Inc.  
7301 N. State Hwy 161, Suite 200  
Irving, TX 75039  
Phone 469-420-4700  
Fax 469-420-4799  
http://www.cisco.com

## AMENDMENT 1 TO MASTER SERVICES AGREEMENT BETWEEN CISCO SYSTEMS, INC. EL DORADO COUNTY EFFECTIVE OCTOBER 15, 2003

This Amendment Number 1 to the Master Services Agreement (the "Amendment"), dated as of October 15, 2002 (the "Amendment Number 1 Effective Date") is by and between Cisco Systems, Inc. ("Cisco") and El Dorado County ("Customer").

WHEREAS, Customer and Cisco have entered into a Master Services Agreement dated October 15, 2002 (the "Agreement");

WHEREAS, Customer and Cisco agree to modify the Agreement in certain respects;

NOW, THEREFORE, Customer and Cisco hereby agree as follows:

1. The term of this Agreement shall be extended for an additional one (1) year term and may be extended for four (4) additional one-year terms if mutually agreed by the parties. Any notice of non-renewal of this Agreement by either Customer or Cisco shall be sent within sixty (60) days of the date of each renewal anniversary.
2. Capitalized terms used in this Amendment, to the extent not otherwise defined in this Amendment, shall have the same meanings as in the Agreement.
3. Notwithstanding anything to the contrary set forth in the Agreement in the event of a conflict between the terms of the Agreement and the terms of this Amendment, this Amendment shall control. Except as amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Cisco and Customer have caused this Amendment to be signed and delivered by their duly authorized officers, all as of the Amendment Number 1 Effective Date.

CISCO SYSTEMS, INC.

By *John Christy*  
 Name *John Christy*  
 Title *Area Controller*  
 Date *9-10-03*

EL DORADO COUNTY

By *Helen Baumann*  
 Name *Helen Baumann*  
 Title *Chair, Board of Supervisors*  
 Date *October 7, 2003*

ATTEST: DIXIE L. FOOTE, Clerk  
of the Board of Supervisors

By *Margaret E. Moody*

ORIGINAL



#034-S0311

**Master Services Agreement**

This Master Services Agreement (the "Agreement") by and between Cisco Systems, Inc., ("Cisco") a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134, and El Dorado County ("Customer"), a political subdivision of the State having its principal place of business at 360 Fair Lane, Placerville, CA 95667 is entered into as of the date last written below (the "Effective Date").

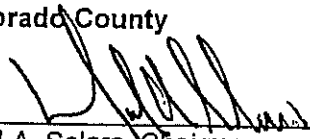
This Agreement consists of this signature page and the following attachments which are incorporated in this Agreement by this reference:

1. Master Services Agreement Terms and Conditions
2. EXHIBIT A: SMARTnet Exhibit

This Agreement is the complete agreement between the parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the parties. In the event of conflict between the terms of this Agreement and the terms of an Exhibit, the terms of the Exhibit shall govern. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. This Agreement may only be modified by a written document executed by the parties hereto.

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.

El Dorado County

  
\_\_\_\_\_  
David A. Solaro, Chairman,  
El Dorado County Board of Supervisors

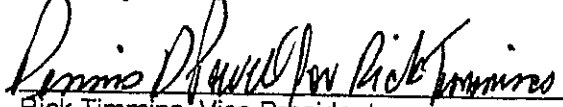
October 15, 2002  
Date

ATTEST:  
Dixie L. Foote,  
Clerk of the Board of Supervisors

By: Margaret E. Moody Dated: 10-15-02  
Deputy Clerk

El Dorado County  
360 Fair Lane  
Placerville, CA 95667

Cisco Systems, Inc.

  
\_\_\_\_\_  
Rick Timmins, Vice President,  
World Wide Sales Finance

JAN 08 2002  
Date

ATTEST:

By: Leah Cart Dated: JAN 08 2003  
Corporate Secretary

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

**MASTER SERVICES AGREEMENT  
GENERAL TERMS AND CONDITIONS**

- 1.0 **DEFINITIONS.**
- 1.1 **"AVVID"** means Architecture for Voice, Video and Integrated Data.
- 1.2 **"CCO"** means Cisco Connection Online, Cisco's suite of on-line services and information at <http://www.cisco.com>.
- 1.3 **"Customer"** means the entity specified above who is the final end user, purchaser or licensee and has acquired Product(s) for their own internal use and not for resale, remarketing, or redistribution.
- 1.4 **"Deliverable"** means, with respect to each SOW, the items specified as deliverables in the SOW.
- 1.5 **"Equipment List"** means the list of Hardware and/or Software for which Cisco provides Services pursuant to Exhibit A, Exhibit B, Exhibit C and/or Exhibit D under this Agreement.
- 1.6 **"Hardware"** means tangible Cisco equipment and/or components made available to Customer.
- 1.7 **"Maintenance Release"** means an incremental release of Software that provides maintenance fixes and may provide additional Software features. Maintenance Releases are designated by Cisco as a change in the digit(s) to the right of the tenths digit of the Software version number [x.x.(x)] or to the right of the hundredths digit of the Software version number [x.x.x.(x)].
- 1.8 **"Major Release"** means a release of Software that provides additional Software features and/or functions. Major Releases are designated by Cisco as a change in the ones digit of the Software version number [(x).x.x].
- 1.9 **"Minor Release"** means an incremental release of Software that provides maintenance fixes and additional Software features. Minor releases are designated by Cisco as a change in the tenths digit(s) of the Software version number [x.(x).x].
- 1.10 **"Product"** means both Hardware and/or Software.
- 1.11 **"Professional Services"** are the Services provided under Exhibit E to this Agreement.
- 1.12 **"Purchase Order"** means a written or electronic order from Customer to Cisco for the Services to be provided by Cisco under this Agreement.
- 1.13 **"Services"** means the services provided by Cisco to Customer under this Agreement.
- 1.14 **"Software"** means the machine-readable object code software programs licensed to Customer by Cisco.
- 1.15 **"Standard Business Hours"** means 9:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding Cisco-observed holidays.
- 1.16 **"Statement of Work" ("SOW")** means the document(s) agreed upon by Cisco and Customer which defines the Services to be performed under Exhibit E, and the



Deliverables to be provided pursuant to such document(s), in the form of an attachment(s) to Exhibit E.

1.17 "TAC" means Cisco's Technical Assistance Center.

1.18 "Update" means Maintenance Releases, Minor Releases and/or Major Releases, which contain the same configuration as originally acquired.

## 2.0 SCOPE.

This Agreement and the attached Exhibits set forth the terms and conditions for Customer's purchase of and entitlement to the Services during the term of this Agreement.

## 3.0 ORDERS.

Customer shall purchase Services by issuing a Purchase Order which is either (i) manually signed by an authorized representative or (ii) issued pursuant to an electronic data interchange agreement entered into by the parties, indicating specific Services, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and any other special instructions. Any contingencies or additional terms contained on such Purchase Order are not binding upon Cisco. The terms and conditions of this Agreement prevail regardless of any conflicting or additional terms on the Purchase Order or other correspondence. All Purchase Orders are subject to approval and acceptance by the Cisco customer service order administration office of the Cisco entity which shall supply the Services, and no other office is authorized to accept orders on behalf of Cisco. Cisco will confirm acceptance of a Purchase Order for Services by issuing an Equipment List for such support. In the case of Professional Services, the Purchase Orders shall not be deemed accepted by Cisco until the parties shall have entered into a Statement of Work for such Professional Services.

## 4.0 PRICING.

Pricing for Services provided under this Agreement shall be at Cisco's then current list price at the time of acceptance of the Purchase Order by Cisco, except that in the case of Professional Services provided under this Agreement the pricing of such Professional Services shall be at Cisco's then current list price at the time the Statement of Work is executed by both Cisco and the Customer, or as specified in the Statement of Work. All stated prices are exclusive of any taxes, fees and duties or other amounts, however designated, and including without limitation value added and withholding taxes which are levied or based upon such charges, or upon this Agreement (other than taxes based on the net income of Cisco). Any taxes related to Services purchased or licensed 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.

## 5.0 PAYMENT.

5.1 Upon and subject to credit approval by Cisco, payment terms shall be net thirty (30) days from invoice date. Unless otherwise specified, all Services shall be invoiced annually in advance. Professional Services shall be invoiced as set forth in the Statement of Work. All payments shall be made in U.S. currency. Any sum not paid by Customer when due shall bear interest until paid at a rate of 1.5% per month (18% per annum) or the maximum rate permitted by law, whichever is less.

5.2 Notwithstanding the above, Customer may elect to have Cisco Services for AVVID Products invoiced quarterly on a per port or per device basis. Customer must identify on its Purchase Order the payment term method elected. In the event Customer does not identify the payment term for such Services, Cisco will default to its standard terms specified above.

## 6.0 SOFTWARE LICENSE.

- 6.1 Customer acknowledges that it may receive Software as a result of Services provided under this Agreement. Customer agrees that it is licensed to use such Software only on Hardware covered under this Agreement (except as otherwise authorized in the Software documentation) and subject to the terms and conditions of the Software license contained in the agreement pursuant to which the Software, or the Hardware to which such Software relates, was provided to Customer. Customer shall not: (i) copy, in whole or in part, Software or documentation; (ii) modify the Software, reverse compile or reverse assemble all or any portion of the Software; or (iii) rent, lease, distribute, sell, or create derivative works of the Software. Software will be delivered electronically via a download from Cisco's CCO website unless otherwise specified by Cisco.
- 6.2 When Customer upgrades Software to a new release, it shall not be permitted to continue to use a previous release and the new release concurrently, e.g., only one licensed copy of the Software may be used at a time, except for a limited amount of time for parallel testing, but under no circumstances may more than one release be in production at any one time.

## 7.0 TERM AND TERMINATION.

- 7.1 The term of this Agreement shall commence on the Effective Date and continue unless terminated in accordance with this section for a period of one (1) year.

Notwithstanding anything to the contrary, each Equipment List hereunder shall terminate immediately upon termination of this Agreement, unless otherwise agreed by Cisco. Any such termination shall be entirely without liability to either party except as set forth below.

- 7.2 This Agreement and any Equipment List may be terminated by Cisco and/or Cisco may suspend its performance immediately upon written notice to Customer if Customer fails to pay for the Services when due and fails to make such payment within fifteen (15) days after written notice from Cisco of such past due payment.
- 7.3 This Agreement and any Equipment List hereunder may be terminated immediately upon written notice by either party under any of the following conditions:
- 7.3.1 If the other party has failed to cure a breach of any material term or condition under the Agreement or any Equipment List hereunder within thirty (30) days after receipt of notice from the other party including a detailed description of such breach.
- 7.3.2 Either party ceases to carry on business as a going concern, either party becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets.
- 7.3.3 Either party assigns (by operation of law or otherwise, and including merger) or transfers any of the rights or responsibilities granted under this Agreement or any Equipment List hereunder without the prior written consent of the other party, except as permitted under this Agreement 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.

- 7.4 Notwithstanding anything else to the contrary, Cisco may terminate this Agreement immediately, upon written notice to Customer for breach of Section 6 ("Software

License"), Section 8 ("Confidential Information"), or Section 9 ("Export, Re-Export and Transfer Controls") of this Agreement.

- 7.5 Upon termination of this Agreement or any Equipment List hereunder, Customer shall pay Cisco for all work performed under the affected Equipment Lists up to the effective date of termination at the agreed upon prices and fees, and reimburse Cisco for all expenses as described in this Agreement.
- 7.6 In addition Customer agrees to deliver to Cisco at Cisco's discretion, within ten (10) days after termination either: (i) the original and all copies of the Deliverables and related materials received by Customer in connection with the terminated work for which Cisco has not been paid in the course of performance or under Section 7.5 above; or (ii) a certificate certifying that Customer has destroyed the original and all copies of such Deliverables and related materials.
- 7.7 In the event this Agreement is terminated by either party, neither shall have any further obligations under this Agreement, except as provided herein. Termination of this Agreement shall not constitute a waiver for any amounts due.

## 8.0 CONFIDENTIAL INFORMATION.

- 8.1 "Confidential Information" to be disclosed by Customer under this Agreement is information regarding Customer's network operations and technical plans and marketing and financial data, and "Confidential Information" to be disclosed by Cisco under this Agreement is information regarding Cisco's hardware, software and service products, and technical, financial and marketing data, and information posted on CCO. The Receiving Party may use the Confidential Information solely for the purpose of furtherance of the business relationship between the parties, as provided in this Agreement and shall not disclose the Confidential Information to any third party other than: (a) employees of the Receiving Party who have a need to have access to and knowledge of the Confidential Information; and (b) where Cisco is the Receiving Party, subcontractors of Cisco who have a need to have access to and knowledge of the Confidential Information, solely for the purpose authorized above. Each party shall take appropriate measures by instruction and agreement prior to disclosure to such employees and or subcontractors to assure against unauthorized use or disclosure.
- 8.2 The Receiving Party shall have no obligation with respect to information which (i) was rightfully in possession of or known to the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (iv) (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; (v) becomes available to the Receiving Party by wholly lawful inspection or analysis of products offered for sale; (vi) is transmitted by a party after receiving written notification from the other party that it does not desire to receive any further Confidential Information; (vii) is disclosed by the Receiving Party pursuant to 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. Upon written demand by the Disclosing Party, the Receiving Party shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

- 8.3 The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's Confidential Information. The Disclosing Party acknowledges that the Receiving Party may currently, or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development. Further, either party shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein, provided such Confidential Information is not expressly incorporated in a tangible form provided by the Disclosing Party. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals.
- 8.4 Each party shall retain all right, title and interest to such party's Confidential Information. No license under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by such party is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not reverse-engineer, decompile, or disassemble any software disclosed to it and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party. WITHOUT PREJUDICE TO ANY EXPRESS WARRANTIES PROVIDED ELSEWHERE IN THIS AGREEMENT, CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" WITH ALL FAULTS. IN NO EVENT, SHALL THE DISCLOSING PARTY BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION. None of the Confidential Information disclosed by the parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the infringement of trademarks, patents, copyrights, any right of privacy, or any rights of third persons.
- 8.5 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.
- 9.0 **EXPORT, RE-EXPORT, AND TRANSFER CONTROLS.**  
The Products and Technology or direct products thereof (hereafter referred to as "Products and Technology"), supplied by Cisco under this Agreement are subject to export controls under the laws and regulations of the United States ("U.S."). 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. Cisco and Customer each agree to provide the other information, support documents, and assistance, as may reasonably be required by the other, in connection with securing such authorizations or licenses. Customer's obligations under this clause shall survive the expiration or termination of the Agreement. Detailed information regarding compliance with U.S. use, export, re-export, and transfer laws may be located at the following URL: [http://www.cisco.com/wwl/export/compliance\\_provision.html](http://www.cisco.com/wwl/export/compliance_provision.html).

**10.0 WARRANTY.**

NOTHING IN THIS AGREEMENT SHALL AFFECT THE WARRANTIES PROVIDED WITH ANY HARDWARE PURCHASED OR SOFTWARE LICENSED BY CUSTOMER. ANY AND ALL SERVICES AND DELIVERABLES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AGAINST INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. CUSTOMER MUST NOTIFY CISCO PROMPTLY OF ANY CLAIMED BREACH OF ANY WARRANTIES. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT CISCO'S OPTION, REPERFORMANCE OF THE SERVICES; OR TERMINATION OF THE APPLICABLE EQUIPMENT LIST OR SOW AND RETURN OF THE PORTION OF THE FEES PAID TO CISCO BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES OR DELIVERABLES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. THE WARRANTY PROVIDED IS SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN SECTION 12 HEREOF.

**11.0 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, shortages of supplies, actions of governmental entities, riots, war, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.

**12.0 LIMITATION OF LIABILITY.**

NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF CISCO, ITS SUPPLIERS AND ITS SUBCONTRACTORS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER TO CISCO UNDER THE EXHIBIT GIVING RISE TO SUCH LIABILITY FOR THE SERVICES THAT WERE PROVIDED DURING THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY OR, IN THE CASE OF PROFESSIONAL SERVICES, SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO CISCO UNDER THE SOW GIVING RISE TO SUCH LIABILITY DURING THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THE LIABILITY OF CISCO AND ITS SUPPLIERS UNDER EACH EXHIBIT AND EACH SOW SHALL BE CUMULATIVE AND NOT PER INCIDENT.

**13.0 WAIVER OF CONSEQUENTIAL AND OTHER DAMAGES.**

IN NO EVENT SHALL CISCO, ITS SUPPLIERS OR ITS SUBCONTRACTORS BE LIABLE FOR (A) 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 OR (B) ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE EQUIPMENT OR SERVICES IN EACH CASE, EVEN IF CISCO OR ITS SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF.

**14.0 NOTICES.**

All notices required or permitted under this Agreement will be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile (followed the same day by the actual document in air mail/air courier); (c) three (3) days after having been

sent by registered or certified mail, return receipt requested, postage prepaid (or six (6) days for international mail); or (d) 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 to such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph.

## 15.0 GENERAL PROVISIONS.

- 15.1 Choice of Law. 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 laws. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.
- 15.2 No Waiver. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of this or any other right under this Agreement.
- 15.3 Assignment. Neither this Agreement nor any rights or obligations under this Agreement or under any Equipment List or SOW, other than monies due or to become due, shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of Cisco. Cisco shall have the right to assign all or part of this Agreement or any Equipment List or SOW without Customer's approval. Subject to Section 7.3, this Agreement, including any related Equipment Lists and SOWs, shall bind and inure to the benefit of the successors and permitted assigns of the parties.
- 15.4 Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) 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 becomes applicable 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 notice to the other.
- 15.5 Independent Contractor Relationship. Cisco and Customer understand, acknowledge and agree that Cisco's relationship with Customer will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- 15.6 Attorneys' Fees. In any suit or proceeding between the parties relating to this Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.
- 15.7 No Agency. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
- 15.8 Security. Cisco agrees to comply with all Customer's reasonable internal security rules and procedures; however, Cisco's personnel or agents shall not be required to sign individual agreements with Customer or waive any personal rights.

15.9 Headings. Headings of sections have been added only for convenience and shall not be deemed a part of this Agreement.

15.10 Survival. Sections 5.1 (Payment), 6 (Software License), 7 (Term and Termination), 8 (Confidential Information), 9 (Export, Re-Export and Transfer Controls), 10 (Warranty), 12 (Limitation of Liability), 13 (Consequential Damages Waiver), 14 (Notices) and 15 (General) of this Agreement, and Section 3 (License) of the Professional Services Exhibit shall survive termination of this Agreement or any Exhibit hereto.

15.11 Administration. The County Officer or employee with responsibility for administering this Agreement is Tom Straling, Principal IT Analyst, or successor.

## 16.0 INSURANCE

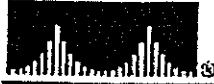
**16.1 General Liability Insurance**. Cisco shall maintain Commercial General Liability insurance with bodily injury and property damage limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall (a) provide for contractual liability coverage, (b) provide for cross liability coverage, and (c) name El Dorado County, as well as its directors, officers, and employees, as additional insureds, but only to the extent of their vicarious liability for services performed by Cisco under this Agreement.

**16.2 Workers' Compensation and Employer's Liability Insurance**. Cisco shall maintain Workers' Compensation insurance as required by any applicable law or regulation and in accordance with the laws of the nation, state, territory or province having jurisdiction over Cisco's employees. Cisco shall maintain Employer's Liability insurance with limits of \$1,000,000.

**16.3 Business Automobile Liability**. Cisco shall maintain Business Automobile Liability insurance covering all owned, rented and non-owned vehicles used in the course of this Agreement with limits of \$1,000,000 each accident for bodily injury and property damage.

**16.4 Errors and Omissions Insurance**. Cisco shall maintain Electronics Errors and Omissions insurance with respect to its products and services with limits of \$1,000,000 per claim.

**16.5** The provisions in this section apply with respect to all insurance that is maintained by Cisco pursuant to the terms of this Agreement. Such insurance shall be maintained with insurance companies with an A.M. Best's Insurance Rating of A-:VIII or better. Cisco shall endeavor to give El Dorado County thirty (30) days prior written notice of cancellation, nonrenewal or adverse material change in such insurance if it no longer complies with any of the requirements set forth in this Agreement. If any policy of insurance is canceled or nonrenewed, Cisco shall promptly replace the policy with a substantially similar policy from an insurer with an A.M. Best's Insurance Rating of A-:VIII or better, provided that there is nothing herein which shall be deemed to prohibit Cisco from providing any such coverage on a self-insured basis. If requested in writing, Cisco shall supply current certificates of insurance evidencing the above coverages, or a notice of self-insurance, if applicable.



**Exhibit A: SMARTnet Exhibit**

This SMARTnet Exhibit is an Exhibit to the Master Services Agreement entered into by Cisco and Customer and is incorporated into the Master Services Agreement by this reference. All capitalized terms not defined below have the meaning ascribed thereto in the Master Services Agreement. In the event of a conflict between the terms of this Exhibit and the Master Services Agreement, the terms of this Exhibit shall govern.

**1.0 DEFINITIONS.**

- 1.1 **"Additional Services"** means installation of new Hardware, system additions, Hardware upgrades, or non-mandatory engineering changes.
- 1.2 **"Advance Replacement"** means shipment of replacement FRU(s) in advance of receipt of failed/defective FRU(s).
- 1.3 **"Field Replacement Unit (FRU)"** means any component or sub assembly of an item or unit of Hardware, subject to size and weight limitations, which can reasonably be replaced at a Customer location.
- 1.4 **"Four-Hour Response"** means the four (4) hour time period commencing upon Cisco's problem diagnosis and determination that a FRU is required and ending when the FRU is delivered on-site.
- 1.5 **"Two-Hour Response"** means the two (2) hour time period commencing upon Cisco's problem diagnosis and determination that a FRU is required and ending when the FRU is delivered on-site.

**2.0 SERVICE RESPONSIBILITIES OF CISCO.**

According to the support selected and in consideration of the fee paid by Customer, Cisco shall provide the following Services where available and in accordance with the provisions of this Exhibit:

**2.1 Services.**

- 2.1.1 Assist the Customer by telephone, facsimile, or electronic mail (for information related to Product use, configuration and troubleshooting).
- 2.1.2 Provide 24 hours per day, 7 days per week access to Cisco's TAC. Cisco will respond to the Customer within one (1) hour for all calls received during Standard Business Hours and for Priority 1 and 2 calls received outside Standard Business Hours. For Priority 3 and 4 calls received outside Standard Business Hours, Cisco will respond no later than the next business day.
- 2.1.3 Manage the Problem Prioritization and Escalation Guideline described in Appendix A.
- 2.1.4 Generate work-around solutions to reported Software problems using reasonable commercial efforts or implement a patch to the Software. For a Software patch, Cisco will ship a Maintenance Release to the Customer for the Product experiencing the problem or provide a Software image, as agreed by the Customer.



- 2.1.5 Support any release of Software for a period of thirty-six (36) months from the date of first commercial shipment of that release, meaning that for that time period, errors in that release will be corrected either by means of a patch or correction to that release, or in a subsequent release.
- 2.1.6 Provide Major Release(s), Minor Release(s), and Maintenance Release(s), upon Customer request, for Software supported under this Exhibit.
- 2.1.7 Provide access to Cisco Connection Online ("CCO"). This system provides the Customer with technical and general information on Cisco Products and access to Cisco's on-line Software library.
- 2.1.8 Arrange all remedial support shipments to Customer via express transportation as specified in Section 2.2. Request for alternate carriers will be at Customer's expense.
- 2.1.9 Provide, upon request, supporting documentation as follows: (a) on CD ROM; or (b) one paper copy for each Software release for Product supported hereunder. Supporting documentation may also be made available via CCO. Additional copies of supporting documentation may be purchased.

2.2 Advance Replacement Services. Cisco will offer the following levels of Advance Replacement subject to geographic availability. Destination country importation, Customer compliance with U.S. export controls and customs processes may condition delivery times.

2.2.1 *SMARTnet 8x5xNext Business Day.*

2.2.1.1. An Advance Replacement will ship the same day to arrive the next business day provided both the call and Cisco's diagnosis and determination of the failed Hardware has been made before 3:00 p.m., local time, Monday through Friday (excluding Cisco-observed holidays). For requests after 3:00 p.m., local time, the Advance Replacement will ship the next business day.

2.2.1.2. Advance Replacements will be shipped using Cisco's preferred carrier, freight prepaid by Cisco, excluding import duties, taxes and fees, where applicable.

Where available, the following services may be selected. Availability for SMARTnet 8x5x4 and SMARTnet 24x7x4 is restricted to within one hundred (100) miles of a rapid response depot (in the U.S.) and seventy-five (75) kilometers (outside the U.S.) of a rapid response depot. Availability for two (2) hour response service levels is restricted to within twenty-five (25) miles of a rapid response depot (in the U.S.) and thirty (30) kilometers (outside the U.S.) of a rapid response depot. Advance Replacement 8x5x4, 24x7x4 and 24x7x2 Services may not be available for Hardware cabinetry or chassis over 50 lbs (23kg) or 2 meters (6ft.). Advanced Replacement is not available for Software, or consumables (cables, blower assemblies, power cords, mounting hardware, etc).

2.2.2 *SMARTnet 8x5x4:*

2.2.2.1. Advance Replacement parts delivered on-site from 9:00 a.m. to 5:00 p.m., local time, Monday through Friday (excluding Cisco-observed holidays).

2.2.2.2. Commercially reasonable efforts to provide Four-Hour Response the same business day, provided both the call and Cisco's diagnosis and

determination of the failed Hardware has been made before 1:00 p.m., local time. For calls placed after 1:00 p.m. local time, will deliver the Advance Replacement the morning of the next business day.

2.2.3 *SMARTnet 24x7x4:*

2.2.3.1. Advance Replacement parts delivered on-site twenty-four (24) hours per day, seven (7) days per week, including Cisco-observed holidays.

2.2.3.2. Commercially reasonable efforts to provide Four-Hour Response for on-site delivery of the replacement part.

2.2.4 *SMARTnet 24x7x2:*

2.2.4.1. Advance Replacement parts delivered on-site twenty-four (24) hours per day, seven (7) days per week, including Cisco-observed holidays.

2.2.4.2. Commercially reasonable efforts to provide Two-Hour Response for on-site delivery of the replacement part.

2.3 Third Party Providers. Cisco reserves the right to subcontract Services to a third party organization to provide Services to Customer.

**3.0 SERVICE RESPONSIBILITIES OF CUSTOMER.**

- 3.1 Customer will provide a priority level as described in Appendix A for all calls placed.
- 3.2 Customer shall provide reasonable access to the Product through the Internet or via modem such that problems may be diagnosed and corrected remotely.
- 3.3 Customer agrees to use the latest release of Software if required to correct a reported Software problem.
- 3.4 Customer will provide sixty (60) days Notice to Cisco of any requested addition(s) to the Equipment List.
- 3.5 Customer agrees to pay all travel expenses if Cisco is requested by Customer to perform on-site services. Engineering time will be billed at the then-current applicable time and materials rates.
- 3.6 Customer agrees to notify Cisco, using CCO, of Product on the Equipment List, which Customer has moved to a new location. Customer agrees to make such notification within thirty (30) days of Product relocation.
- 3.7 Customer is responsible for returning to Cisco all defective or returned Product in accordance with Cisco's Return Material Authorization ("RMA") procedure and will provide a new Purchase Order number to Cisco's Asset Recovery team to facilitate the billing of Product not returned. Cisco's RMA procedure is available on CCO.
- 3.8 Customer is responsible for the following when receiving Advance Replacements and returning replaced Product under SMARTnet service (Section 2.2 above).
  - 3.8.1 Proper packing, including description of failure and written specification of any other changes or alterations.

- 3.8.2 Insurance of all packages for replacement cost to be shipped FOB Cisco's designated repair center.
- 3.8.3 Returns must be received within thirty (30) days; otherwise, the list price of the Hardware will be charged.
- 3.9 Customer acknowledges that it is only entitled to receive Services on the Product for which it has paid a separate fee. Cisco reserves the right, upon reasonable advance notice, to perform an audit of Customer's Products and records to validate such entitlement and to charge for support if Cisco determines that unauthorized support is being provided, as well as interest penalties at the highest rate permitted by law, and applicable fees including, without limitation, attorneys' fees and audit fees.

**4.0 SERVICES NOT COVERED UNDER THIS EXHIBIT.**

- 4.1 Any customization of, or labor to install, Software.
- 4.2 Provision of Software Application Services. For purposes of this Exhibit, "Software Application Services" means non-resident/stand alone Software products which include Cisco's network management Software, security Software and internet appliance Software and Software made available by Cisco's Voice Technology Group ("VTG") and includes but is not limited to the Software in the following product lines: Cisco ICM software, Cisco Customer Interaction Suite software and other Software which Cisco designates as VTG Software.
- 4.3 Any expenses incurred to visit Customer's location, except as required during escalation of problems by Cisco.
- 4.4 Furnishing of supplies, accessories or the replacement of expendable parts (e.g., cables, blower assemblies, power cords, and rack mounting kits).
- 4.5 Electrical or site work external to the Products.
- 4.6 Support or replacement of Product that is altered, modified, mishandled, destroyed or damaged by natural causes or damaged due to a negligent or willful act or omission by Customer or use by Customer other than as specified in the applicable Cisco-supplied documentation.
- 4.7 Services to resolve software or hardware problems resulting from third party products or causes beyond Cisco's control.
- 4.8 Services for non-Cisco software installed on any Cisco Product.
- 4.9 Any Hardware upgrade required to run new or updated Software.
- 4.10 Additional Services are provided at the then-current time and materials rates.
- 4.11 Major, minor, and maintenance releases of Microsoft® software platforms. Customers should contact their Microsoft® software vendor directly to obtain information on acquiring releases and/or bug fixes related to Microsoft® software platforms.

**5.0 EQUIPMENT LIST.**

- 5.1 Product covered under this Exhibit is listed in the Equipment List(s), which may be revised by Customer's Purchase Order requesting such revisions and Cisco's acceptance thereof.



**APPENDIX A**

**CISCO PROBLEM PRIORITIZATION AND ESCALATION GUIDELINE**

To ensure that all problems are reported in a standard format, Cisco has established the following problem priority definitions. These definitions will assist Cisco in allocating the appropriate resources to resolve problems. Customer must assign a priority to all problems submitted to Cisco. With respect to VTG Software under the Software Application Services Exhibit, references to "network" in the problem priority definitions below shall be replaced with "VTG Software implementation" and shall not refer to a network or in any other way imply that Cisco's obligations under the Software Application Services Exhibit extend beyond the boundaries of the VTG Software.

**PROBLEM PRIORITY DEFINITIONS:**

- Priority 1: An existing network is down or there is a critical impact to the Customer's business operation. Cisco and Customer will commit full-time resources to resolve the situation.
- Priority 2: Operation of an existing network is severely degraded, or significant aspects of the Customer's business operation are being negatively impacted by unacceptable network performance. Cisco and Customer will commit full-time resources during Standard Business Hours to resolve the situation.
- Priority 3: Operational performance of the network is impaired while most business operations remain functional. Cisco and Customer are willing to commit resources during Standard Business Hours to restore service to satisfactory levels.
- Priority 4: Information is required on Cisco Software capabilities, installation, or configuration. There is clearly little or no impact to the Customer's business operation. Cisco and Customer are willing to provide resources during Standard Business Hours to provide information or assistance as requested.

Cisco encourages Customer to reference this guide when Customer-initiated escalation is required. If Customer does not feel that adequate forward progress, or the quality of Cisco service is not satisfactory, Cisco encourages Customer to escalate the problem ownership to the appropriate level of Cisco management by asking for the TAC Duty Manager.

**CISCO ESCALATION GUIDELINE:**

Elapsed Time	Priority 1	Priority 2	Priority 3	Priority 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

Note: Priority 1 problem escalation times are measured in calendar hours 24 hours per day, 7 days per week. Priority 2, 3, and 4 escalation times correspond with Standard Business Hours.

The Cisco Manager to which the problem is escalated will take ownership of the problem and provide the Customer with updates. Cisco recommends that Customer-initiated escalation begin at the Technical Manager level and proceed upward using the escalation guideline shown above for reference. This will allow those most closely associated with the support resources to correct any service problems quickly.

ACCESSING TAC:

For all Products except VTG Software:

North America/South America:  
(within the United States)

+1-800-553-2447

Europe, Middle East, Africa:  
Asia Pacific:

+1-408-526-7209

+32-2-704-5555

+61-2-9935-4107

+1-800-805-227

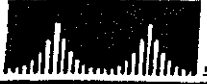
(within Australia)

For VTG Software:

(within the United States)

+1-888-847-8162

+1-978-458

**Short Form Resale Master Services Agreement**

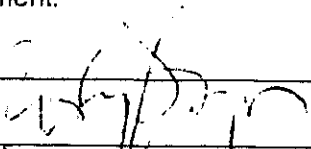
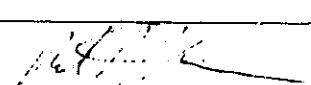
This Short Form Resale Master Services Agreement ("Agreement") by and between Cisco Systems, Inc., ("Cisco") a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134, and El Dorado County ("Customer"), a political subdivision of the State of California having its principal place of business at 360 Fair Lane, Placerville, CA 95667 is entered into as of the date last written below (the "Effective Date"). All capitalized terms not defined below have the same meaning as set forth in the Master Services Agreement.

Cisco and Customer entered into a Master Services Agreement dated the third day of January, 2003 (the "Master Agreement"). Cisco and Customer desire to enter into this Agreement to cover any instances whereby Customer purchases Services from an authorized Cisco reseller. Accordingly, Cisco and Customer agrees as follows:

- 1) Except as provided below, all of the terms and conditions of the Master Agreement and Amendment 1 to the Master Agreement are incorporated herein and made a part hereof; provided, however, that this Agreement shall be construed as a separate agreement and survive the termination, cancellation or expiration of the Master Agreement, unless otherwise agreed by the parties in writing.
- 2) Delete Section 2 ("Scope") of the Master Agreement and insert the following: "This Agreement sets forth the terms and conditions for Customer's purchase of and entitlement to the Services according to the support selected and in consideration of the fees paid by Customer to an authorized Cisco reseller during the term of this Agreement."
- 3) Delete Section 3 ("Orders"), Section 4 ("Pricing") and Section 5 ("Payment") in their entirety as they are not applicable to Customer's purchase of the Services from an authorized Cisco reseller.
- 4) Delete Section 7.2 of the Master Agreement in its entirety and insert the following: "This Agreement and/or any Exhibit may be terminated by Cisco and/or Cisco may suspend its performance immediately upon written notice to Customer if Customer fails to pay amounts past due."
- 5) Delete Section 7.5 of the Master Agreement in its entirety and insert the following: "Upon termination of the Agreement, any Exhibit, and/or Equipment List, Customer shall pay reseller for all work performed under the affected Equipment List up to the effective date of termination at the agreed upon prices, fees, and expense reimburse rates."
- 6) Delete the fifth sentence of Section 10.0 ("Warranty") of the Master Agreement and insert the following: "CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT CISCO'S OPTION, RE-PERFORMANCE OF THE SERVICES, OR TERMINATION OF THE APPLICABLE EQUIPMENT LIST OR EXHIBIT AND RETURN OF THE PORTION OF THE FEES PAID BY CUSTOMER TO THE CISCO-AUTHORIZED RESELLER FOR SUCH NON-CONFORMING SERVICES."
- 7) Delete Section 12.0 ("Limitation of Liability") of the Master Agreement in its entirety and insert the following: "LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF CISCO, ITS SUPPLIERS AND ITS SUBCONTRACTORS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER TO CISCO-AUTHORIZED RESELLER UNDER THE EXHIBIT GIVING RISE TO SUCH LIABILITY FOR THE SERVICES THAT WERE PROVIDED DURING THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THE LIABILITY OF CISCO AND ITS SUPPLIERS UNDER EACH EXHIBIT SHALL BE CUMULATIVE AND NOT PER INCIDENT."
- 8) Any terms defining or related to Professional Services in the Master Agreement, including, without limitation, any Exhibits related to Professional Services, and any references to Statements of Work ("SOW"), shall not apply to this Agreement.
- 9) This Agreement, which incorporates all of the terms and conditions of the Master Agreement except as

provided herein, is the complete agreement between the parties concerning the matter set forth herein and replaces any prior or contemporaneous oral or written communications between the parties regarding such subject. In the event of conflict between the terms of this Agreement and the terms of the Master Agreement, the terms of this Agreement shall govern.

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

Authorized Signature: 	Authorized Signature: 
Print Name: <b>RUSTY DUPRAY</b>	Print Name: Mark Paterson, Chairman
Title: <i>Chairman</i>	Title: Charles McKinnon, Controller
Date: <i>11-2-2004</i>	Date: <i>11/2/04</i>
El Dorado County	Cisco Systems, Inc.
360 Fair Lane, Placerville, CA 95667	170 West Tasman Drive, San Jose, CA 95134-1706

ATTEST: CINDY KECK, Clerk  
of the Board of Supervisors

By   
DEPUTY *11-2-04*