

COUNTY OF SAN MATEO

INTER-DEPARTMENTAL CORRESPONDENCE

Date: July 17, 2001

Hearing Date: July 24, 2001

Revised

To: Honorable Board of Supervisors

From: Luther Perry, Director, Information Services *Luther Perry*
Pony ISD-120

Subject: Authorization for Waiving the Requirement for a Request for Proposals, Approval of Agreement with Cisco Systems, Inc. and Authorization for the Purchasing Agent to issue Purchase Orders for Cisco Maintenance.

Recommendation

Adopt a resolution waiving the requirement of a request for proposals, approving the agreement with Cisco Systems, Inc. and authorizing the Purchasing Agent to execute Purchase Orders to Cisco Systems, Inc. for maintenance of Cisco Routers and related equipment for the period from July 27, 2001 through July 26, 2004.

Background and Discussion

The County has standardized on Cisco brand routers and data switches due to their consistently high reliability, excellent integration between products, orderly upgrades to newer models, and strong on-site maintenance support. Cisco equipment is also the standard for the State of California and most other county governments within the state.

Currently, maintenance services are ordered at the time of purchase of equipment with annual renewals done through purchase orders directly to Cisco. We are recommending ongoing manufacturer maintenance service for the critical network routers and switches. Cisco Systems has demonstrated the necessary skills and responsiveness to provide ongoing maintenance for the County's 24/7 critical support schedule for our Enterprise System. Therefore, we feel it is in the County's best interest to waive the requirement of a request for a proposal.

Cisco Systems offers equal benefits as defined by Chapter 2.93 to its employees with spouses and its employees with domestic partners and has signed our compliance declaration. Due to Cisco's worldwide affiliation, the non-discrimination clause has been modified. Cisco will be required to notify the County if the Equal Employment Opportunity Commission, and/or the Fair Employment and Housing Commission has found Cisco to be in violation of the non-discrimination requirements of this provision in the State of California.

Fiscal Impact

The maximum cost of this maintenance agreement will be \$950,000. This amount will allow for moderate network growth and technology changes and take into account the Health Network Upgrade and E-government that will occur within the next three years. This action does not exclude the County from purchasing maintenance from other vendors when it is deemed to be to our advantage. Funding for the first year's maintenance is included in Information Services FY 2001/02 Tentatively Adopted Budget. Funding for subsequent years maintenance will be requested annually.

County Counsel has reviewed and approved this agreement.

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH CISCO SYSTEMS TO PURCHASE MAINTENANCE FOR CISCO ROUTERS AND RELATED EQUIPMENT, WAIVING THE REQUIREMENT OF A REQUEST FOR PROPOSALS AND AUTHORIZING THE PURCHASING AGENT TO ISSUE PURCHASE ORDERS FOR CISCO MAINTENANCE.

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance an Agreement between the County and Cisco Systems for the term July 27, 2001 to July 26, 2004, and for an amount not to exceed \$950,000;

WHEREAS, this Board has been presented with a form of such Agreement and said Board has examined and approved same as to both form and content and desires to enter into same; and

WHEREAS, this Board has determined that it is in the best interest of the County to waive the Request for Proposal process; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of this Board of Supervisors be, and is hereby, authorized and directed to execute said Agreement as is approved by the County Manager and the County Counsel for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest the President's signature thereto; and that the Requirement of a Request for Proposal is waived.

* * * * *



Services Agreement for SMARTnet Services

This Services Agreement for SMARTnet Services (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 County of San Mateo ("Customer"), a public entity having its principal place of business at 455 County Center, Redwood City, California 94063 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. Services Agreement Terms and Conditions
- 2. EXHIBIT A: Global Solution Services 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.

County of San Mateo

Cisco Systems, Inc.

Authorized Signature

Authorized Signature

Name

Name

Date

Date

County of San Mateo
455 County Center
Redwood City, CA 95063

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

**SERVICES AGREEMENT FOR SMARTNET SERVICES
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 **"Equipment List"** means the list of Hardware and/or Software for which Cisco provides Services pursuant to Exhibit A and/or Exhibit B under this Agreement.
- 1.5 **"Hardware"** means tangible Cisco equipment and/or components made available to Customer.
- 1.6 **"Maintenance Release"** means an incremental release of Cisco 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)].
- 1.7 **"Major Release"** means a release of Cisco 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].
- 1.8 **"Minor Release"** means an incremental release of Cisco 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].
- 1.9 **"Product"** means both Hardware and/or Software.
- 1.10 **"Purchase Order"** means a written or electronic order from Customer to Cisco for the Services to be provided by Cisco under this Agreement.
- 1.11 **"Services"** means the services provided by Cisco to Customer under this Agreement.
- 1.12 **"Software"** means the machine-readable object code software programs licensed to Customer by Cisco.
- 1.13 **"Standard Business Hours"** means 9:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding Cisco-observed holidays.
- 1.14 **"TAC"** means Cisco's Technical Assistance Center.
- 1.15 **"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.

4.0 PRICING.

- 4.1 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. 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.
- 4.2 This Agreement shall cover Customer's purchase of Services for a total Not To Exceed amount of \$950,000 during the term of the Agreement. This amount may be increased through a written amendment signed by both parties.

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. 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 shall continue for a period of three (3) years thereafter. The term of an Equipment List hereunder shall commence on the date set forth on such Equipment List by Cisco, which may be sixty (60) days (or less) following the date of order receipt, unless otherwise agreed by Cisco. The term shall continue for a period of one (1) year and shall be renewed automatically for successive one (1) year terms for each Equipment List under the terms of this Agreement, unless at least sixty (60) days prior to the date of any such renewal (each an "Anniversary Date") either party provides notice to the other party of its intention not to renew (i) a portion of the Product listed on a particular Equipment List(s); (ii) a particular Equipment List(s); or (iii) this Agreement together with all Equipment Lists.

The termination date with respect to any notice given pursuant to the preceding sentence shall be the applicable Anniversary Date. 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/or 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/or 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 and/or Equipment List 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 and/or Equipment List, 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 and/or any Equipment List, 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.

7.6 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 Definition.

8.1.1 Customer "Confidential Information" includes information regarding Customer's network operations, technical plans and marketing and financial data.

8.1.2 Cisco "Confidential Information" includes information regarding Cisco's hardware, software and service products, technical, financial and marketing data, and information posted on CCO.

8.1.2 Information (other than that on CCO) disclosed by the disclosing party in written or other tangible form will be considered Confidential Information only if it is clearly marked "Confidential," "Proprietary" or with a similar legend.

8.1.4 Information disclosed orally shall only be considered Confidential Information if: (i) identified as confidential, proprietary or the like at the time of disclosure, and (ii) confirmed in writing within thirty (30) days of disclosure.

8.1.5 Confidential Information disclosed to the receiving party by any Affiliate or agent of the disclosing party is subject to this Agreement.

8.2 The receiving party may use the Confidential Information *solely* in furtherance of the objectives of this Agreement.

8.3 Except as set forth in 8.4 below, neither party shall disclose the Confidential Information to any third party.

8.4 The receiving party may disclose Confidential Information to its employees, subcontractors or Affiliates' employees and subcontractors *only*: (a) on a "need to know" basis, (b) consistent with the objectives of this Agreement, and (c) pursuant to separate written non-disclosure terms that contractually obligate such employees and subcontractors to maintain the confidentiality of the Confidential Information.

8.5 The receiving party shall have no obligation with respect to information which:

- 8.5.1 was rightfully in possession of or known to the receiving party without any obligation of confidentiality prior to receiving it from the disclosing party;
- 8.5.2 is, or subsequently becomes, legally and publicly available without breach of this Agreement;
- 8.5.3 is rightfully obtained by the receiving party from a source other than the Disclosing Party without any obligation of confidentiality;
- 8.5.4 is developed by or for the receiving party without use of the Confidential Information and such independent development can be shown by documentary evidence;
- 8.5.5 is disclosed by the receiving party pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (1) prior written notice to the disclosing party of such obligation and (2) the opportunity to oppose such disclosure.

- 8.6 Upon written notification by the disclosing party, the receiving party shall cease using the Confidential Information, and shall: (a) return or destroy it, along with all copies, notes or extracts thereof to the disclosing party within fifteen (15) days of receipt of notice and (b) certify that all Confidential Information has been either returned to the disclosing party or destroyed.

- 8.7 Each party shall retain all right, title and interest to its own Confidential Information. By conveying Confidential Information, the disclosing party does not grant any license under any trademark, patent or copyright, or application for same, which is now or thereafter may be obtained by such party.

- 8.8 The receiving party shall not reverse-engineer, decompile, or disassemble any software or remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information disclosed to it.

- 8.9 WITHOUT PREJUDICE TO THE 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.

- 8.10 Neither party shall disclose, advertise, or publish this Agreement (or any portion thereof) without the prior written consent of the other party. Any press release or publication regarding this Agreement is subject to both parties' prior review and written approval.

- 8.11 Notwithstanding termination of this Agreement as described in Section 7.0, the obligations of the receiving party with respect to Confidential Information received prior to termination shall continue for three (3) years from the date the Confidential Information was received.

- 8.12 In the event of any threatened or actual breach of any of the obligations hereunder, a disclosing party may seek injunctive relief, in addition to any other available legal or equitable remedies.

9.0 EXPORT, RE-EXPORT, AND TRANSFER CONTROLS.

Customer hereby acknowledges that the Products and technology or direct products thereof ("Products and Technology"), supplied by Cisco under this Agreement are subject to export controls under the laws and regulations of the United States. 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 such information and assistance as may reasonably be required by the other in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents. Customer agrees to maintain a record of exports, re-exports, and transfers of the Products and Technology according to U.S. and local laws. Customer acknowledges that detailed 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.

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, RE-PERFORMANCE OF THE SERVICES; OR TERMINATION OF THE APPLICABLE EQUIPMENT LIST AND RETURN OF THE PORTION OF THE FEES PAID TO CISCO BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES. 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. THE LIABILITY OF CISCO AND ITS SUPPLIERS UNDER EACH EXHIBIT SHALL BE CUMULATIVE AND NOT PER INCIDENT.

13.0 CONSEQUENTIAL DAMAGES WAIVER.

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 OTHER 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, 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 without Customer's approval. Subject to Section 7.3, this Agreement, including any related Equipment Lists, 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, each party shall be responsible for its own costs and attorneys' fees. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any 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.

15.11 General Indemnity.
15.11.1 Each party shall defend, indemnify and hold harmless the other, its corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), including without limitation, those based on contract or tort, arising out of or in connection with a claim, suit or proceeding brought by a third party or any person furnished by Cisco or Customer based upon bodily injury (including death) or damage to tangible personal property (not including lost data) arising from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them. In the event that the indemnified party's negligent or intentional acts or omissions contributed to cause the injury or damage for which a claim of indemnity is being asserted against the indemnifying party hereunder, the damages shall be allocated between the indemnified party and the indemnifying party in such proportion as appropriately reflects the relative fault of the two parties, or their subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them, and the liability of the indemnifying party shall be proportionately reduced.

15.11.2 The foregoing indemnification obligations are conditioned upon the indemnified party promptly notifying the indemnifying party in writing of the claim, suit or proceeding for which the indemnifying party is obligated under this Section, cooperating with, assisting and providing information to, the indemnifying party as

reasonably required, and granting the indemnifying party the exclusive right to defend or settle such claim, suit or proceeding.

15.12 Non-Discrimination.

15.12.1 No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

15.12.2 Violation of the non-discrimination provisions of this Agreement in the County of San Mateo, shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as provided for under the laws of the County of San Mateo and as determined by the County Manager.

15.12.3 To effectuate the provisions of this paragraph, the County Manager shall have the authority to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

15.12.4 Contractor shall report to the County Manager if the Equal Employment Opportunity Commission and/or the Fair Employment and Housing Commission has found Cisco to be in violation of the non-discrimination requirements of this provision in the State of California.


Exhibit A: Global Solution Services SMARTnet Exhibit

This Global Solution Services SMARTnet Exhibit is an Exhibit to the Services Agreement for SmartNet Services entered into by Cisco and Customer (the "Agreement") and is incorporated into the Agreement by this reference. All capitalized terms not defined below have the meaning ascribed thereto in the Agreement. In the event of a conflict between the terms of this Exhibit and the 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 "Local Support" means support services are delivered by a Cisco-approved Global Solution Services Partner as further defined in Section 2 below.
- 1.6 "Single Point of Contact Support" means support services are delivered directly by Cisco.
- 1.7 "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, either directly or locally through a Cisco-approved Global Solution Services Partner ("Cisco GSS Partner"), 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 Under Single Point of Contact Support, provide 24 hours per day, 7 days per week access to TAC. Cisco will respond to the Customer within one (1) hour. Under Local Support, provide access to the Cisco GSS Partner's support organization during local business hours, and outside local business hours provide access to the Cisco GSS Partner's support organization, where available, or to Cisco's TAC. During local business hours, the Cisco GSS Partner will respond within one (1) hour. Outside local business hours, the Cisco GSS Partner or Cisco will respond to Priority 1 and 2 calls within one (1) hour and Priority 3 and 4 calls 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 or the Cisco GSS Partner 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 or Cisco GSS Partner 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 or Cisco's GSS Partner'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.

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, Cisco or the Cisco's GSS Partner 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.

2.2.5 SMARTnet Same Day Ship:

2.2.5.1. An Advance Replacement will ship the same day provided both the call and Cisco's or Cisco's GSS Partner'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.

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

Advance Replacement(s) will be either new or equivalent to new at Cisco's discretion.

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. Hardware received after Cisco has issued an invoice is accepted at ten percent (10%) of the invoice amount only.
- 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 Internet Communications Software Group ("ICSG") and includes but is not limited to the Software in the following product lines: Cisco ICM software, Cisco Customer Interaction Suite software, Cisco uOne software and other Software which Cisco designates as ICSG Software.
 - 4.3 Any expenses incurred to visit Customer's location, except as required during escalation of problems by Cisco or the Cisco GSS Partner.
 - 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 or the Cisco GSS Partner'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.

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 ATG Software:

- North America/South America: +1-800-553-2447 (within the United States)
- +1-408-526-7209
- Europe, Middle East, Africa: +32-2-704-5555
- Asia Pacific: +61-2-9935-4107
- +1-800-805-227 (within Australia)
- For ATG Software: +1-888-847-8162 (within the United States)
- +1-978-458-4362

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Cisco Systems, Inc.
Contact Person: Teri Schwimmer
Address: 170 W. Tasman St S/B
San Jose, CA 95134
Phone Number: 408-853-3452 Fax Number: 408-527-6080

II Employees

Does the Contractor have any employees? Yes No
Does the Contractor provide benefits to spouses of employees? Yes No

if the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
No, the Contractor does not comply.
The Contractor is under a collective bargaining agreement which began on (date) and expires on (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this 28 day of June 2001 at San Jose CA (City) (State)

Teri Schwimmer Signature
U.S. Benefits Manager Title

Teri Schwimmer Name (Please Print)
77-0059951 Contractor Tax Identification Number

This certificate is furnished to you as a matter of information only. This is not an insurance policy, and the issuance of this certificate does not amend or alter this coverage afforded by the policies listed on the certificate.

Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate is issued, the insurance afforded by the policies listed on this certificate is subject to all terms of such policies.

This certificate cancels and supersedes any and all prior certificates issued on behalf of the named insured to the certificate holder designated below.

CERTIFICATE HOLDER AND ADDRESS	Evidence of Insurance	ISSUING COMPANY ADDRESS LOCATION OF RISK:	Cisco Systems, Inc. 170 West Tasman Drive San Jose, CA 95134 Attn: Jackie Hair
COVERAGE	COMPANY AND POLICY NUMBER	EFFECTIVE AND EXPIRATION DATE	LIMIT OF LIABILITY
I. WORKERS' COMPENSATION/EMPLOYERS' LIABILITY incl.: All States Coverage (except WY, WV, WA, OH, ND)	Zurich American Ins. WC8298045-01 WC8298046-01	8/01/00 to 8/01/01	Statutory Employers Liability \$1,000,000 each accident \$1,000,000 disease - ca empl. \$1,000,000 disease - policy limit
II. COMMERCIAL GENERAL LIABILITY, incl. PERSONAL INJURY & PROPERTY DAMAGE	Chubb/Federal Ins. Co. 35291934	4/01/01 to 4/01/02	Bodily Injury/Property Damage \$2,000,000 General Aggregate \$1,000,000 Per Occurrence
III. AUTOMOBILE COVERAGE	Zurich American Ins. Co. BAP8298460-00	4/01/01 to 4/01/02	Bodily Injury/Property Damage Combined Single Limit \$1,000,000 Per Accident

Notes: Evidence of insurance.

This certificate cancels and supercedes any and all prior certificates issued on behalf of the named insured to the certificate holder designated above.

NOTE: In the event of cancellation of the above described policy, the issuing company will endeavor to give 30 days prior written notice to the certificate holder.

NAMED AND INSURED ADDRESS:

CISCO SYSTEMS



EMPOWERING THE
INTERNET GENERATION™

170 WEST TASMAN DRIVE
SAN JOSE, CA 95134

Chris D'Ambrano

AUTHORIZED REPRESENTATIVE

MARSH
An AIG Company

DATE ISSUED