

## ADVANCED SERVICES AGREEMENT

YOU MUST CAREFULLY READ AND ACCEPT THIS ADVANCED SERVICES AGREEMENT ("AGREEMENT") BEFORE CISCO WILL ACCEPT YOUR PURCHASE ORDER FOR ADVANCED SERVICES. **IF YOU DO NOT AGREE TO THIS AGREEMENT, CLICK THE "DECLINE" BUTTON AT THE END OF THIS AGREEMENT.** IF YOU AGREE TO THIS AGREEMENT, CLICK THE "ACCEPT" BUTTON AT THE END OF THIS AGREEMENT, WHICH SHALL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT.

This Agreement is entered into by and between the Cisco entity that you have placed your Purchase Order with and you ("Customer"). The Cisco entity that you have placed your Purchase Order with shall be as stated in a Purchase Order and be: Cisco Systems, Inc. (for U.S. and Latin America); Cisco Systems Canada Co. (for Canada); Cisco Systems International B.V. (for Europe, Middle East, Africa and Asia Pacific (other than the countries specifically listed below)); Cisco Systems Services B.V. (for India); Cisco Systems G.K. (for Japan); Cisco Systems Australia Pty Ltd ABN 52 050 332 940 (for Australia); LLC Cisco Systems (for Russia); or Cisco Systems (China) Information Technology Services Limited (for China) (respectively "Cisco").

1. **Definitions** are those in Appendix A (Glossary of Terms) at the end of this Agreement.
2. **Scope.** This Agreement is for the purchase of Advanced Services directly from Cisco.
3. **Orders.** Customer shall, upon and subject to approval by Cisco, purchase Advanced Services by issuing a Purchase Order. Each Purchase Order must be signed/sealed, as applicable, if requested by Cisco, or (in the case of electronic transmission) sent, by an authorized representative, indicating the SOW project identification number (if applicable), specific Advanced Services, quantity, price, total purchase price, bill-to and ship-to addresses, tax exempt certifications, if applicable, reference to this Agreement, and any other special instructions. No contingency contained on any Purchase Order shall be binding upon Cisco. The terms of this Agreement shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms are deemed rejected by Cisco.
  - (ii) An estimated performance schedule, including Milestones, when applicable;
  - (iii) Completion criteria that Cisco will meet to fulfill its obligations under the SOW; and
  - (iv) Identification of primary contacts for Cisco and Customer.
4. **Advanced Services – AS Service Descriptions and Statements of Work.**
  - a. The Advanced Services will be provided by Cisco pursuant to the terms and conditions of this Agreement. Cisco may use subcontractors (under separate contract to Cisco) to perform the Advanced Services, or portion(s) thereof.
  - b. Cisco will not proceed with performing SOW-based Advanced Services until both Customer and Cisco have signed the applicable SOW. Each SOW, once signed by both parties, will become a part of this Agreement. Each SOW will minimally include:
    - (i) A description of each party's obligations;
    - (ii) An estimated performance schedule, including Milestones, when applicable;
    - (iii) Completion criteria that Cisco will meet to fulfill its obligations under the SOW; and
    - (iv) Identification of primary contacts for Cisco and Customer.
5. **Pricing.**
  - a. Prices for Advanced Services will be specified in one of the following, as applicable to the Advanced Services to be provided:
    - (i) those specified in Cisco's then-current Price List, less any applicable discount at the time of Cisco's acceptance of Customer's Purchase Order;
    - (ii) those specified in a written price quotation submitted by Cisco; or
    - (iii) those specified in the SOW.
  - b. All prices are exclusive of any taxes, fees, duties or other applicable amounts. Customer shall pay the taxes related to Advanced Services purchased

pursuant to this Agreement, or Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes, if any, will be billed as a separate item on the invoice. Cisco reserves the right to increase the Advanced Service fee in the event Customer determines any withholding tax obligation prevents Cisco from receiving the specified prices for such Advanced Services pursuant to Section 5(a) above.

## 6. Payment and Invoicing.

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

- b. **Invoicing.** As set forth below, Cisco will invoice Customer depending on the type of Advanced Services:

- (i) **AS Service Description-based Advanced Services Invoicing.** Unless otherwise agreed by the parties, Cisco will invoice Advanced Services performed under an AS Service Description in advance of performance of such Advanced Services.

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

- b. The term of each non-SOW based Advance Service will commence on the date specified in the associated Purchase Order and continue: (i) until completion of the specified Advanced Service in the event a MCC is not required; or (ii) until the MCC has been signed off by Customer in the event a MCC is required.

- c. The term of each SOW will commence on last date of signature of the SOW and continue until last Milestone completion, unless otherwise specified in the SOW.

- d. Cisco shall have a lead-time of up to forty-five (45) days from acceptance of Purchase Order for scheduling of Advanced Services.

- e. This Agreement, and any Advanced Services being performed hereunder, may be terminated immediately by either party upon written Notice:

- (i) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written Notice to the breaching party if the breaching party fails to cure such breach within such period;

- (ii) if the other party: (w) ceases, or threatens to cease to carry on business as a going concern; or (x) becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or (y) a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets; or (z) an event similar to any of the foregoing occurs under applicable law; or

- (iii) if, except as provided in Section 16 below, either party assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under this Agreement, any AS Service Description or any SOW, without the prior written consent of the other party, or in the event of a sale of all or substantially all of such party's assets, or transfer of a controlling interest in such party to an unaffiliated third party. Notwithstanding the foregoing: (y) Cisco reserves the right to subcontract Advanced Services to any Affiliate or third party organization to provide Advanced Services to Customer, and (z) Cisco may assign this Agreement or all or any portion of its rights and obligations hereunder, to any Affiliate of Cisco.

- f. If Advanced Services fees are not paid when due and payment has not been received within thirty (30) days after Notice from Cisco of such past due

## 7. Term and Termination.

- a. The term of this Agreement will commence on the date upon which this Agreement is Accepted (the "Effective Date") and will continue indefinitely, until either party gives Notice to the other of its intent to terminate this Agreement as provided herein.

payment, Cisco may withhold the provision of Advanced Services until all amounts past due are paid in full, and/or immediately terminate this Agreement or any Advanced Services provided hereunder.

- g. Cisco reserves the right to change the scope and content of any of the Advanced Services upon ninety (90) days prior Notice. Such changes will become effective upon Customer's renewal of the applicable Advanced Services.
- h. If, following termination of this Agreement, Customer places Purchase Orders and Cisco accepts such Purchase Orders, then any such Purchase Orders will be governed by the terms and conditions of this Agreement notwithstanding the earlier termination of this Agreement; provided, however, that acceptance by Cisco of any such Purchase Order will not be considered a renewal of this Agreement.
- i. Each Advanced Service provided hereunder will terminate immediately upon termination of this Agreement, unless otherwise agreed by the parties. Notwithstanding the foregoing, the parties' ongoing obligations under any non-terminated SOWs will continue through the end of their defined term, unless otherwise agreed by the parties in writing.
- j. Upon termination of this Agreement or any Advanced Services, Customer shall pay Cisco for all work Cisco has performed up to the effective date of termination at the agreed upon prices, fees and expense reimbursement rates.

## 8. Confidentiality.

- a. Customer and Cisco agree that in connection with this Agreement and their relationship, they may obtain Confidential Information. The receiving party shall at all times keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, Cisco shall be authorized to disclose Customer's Confidential Information to subcontractors, contractors or employees of a Cisco entity who have a legitimate business need to have access to such information. The receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination at any time and for any reason of this Agreement. The obligations of confidentiality do not apply to

information which: (i) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (ii) prior to disclosure hereunder was already rightfully in the receiving party's possession; or (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court, government agency or relevant regulatory authority (including a stock exchange), provided that the receiving party provides where practicable: (i) prior written Notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure.

- b. Neither party may 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. Warranty.

- a. ALL ADVANCED SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, CISCO HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION: (I) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT OR ACCURACY, OR (II) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY.
- b. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT CISCO'S OPTION, RE-PERFORMANCE OF THE ADVANCED SERVICES; OR TERMINATION OF THIS AGREEMENT OR THE APPLICABLE ADVANCED SERVICES AND RETURN OF THE PORTION OF THE ADVANCED SERVICE FEES PAID TO CISCO BY CUSTOMER FOR SUCH NON-CONFORMING ADVANCED SERVICES.

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

- a. TO THE EXTENT REQUIRED UNDER LOCAL LAW, NOTHING IN THIS AGREEMENT SHALL LIMIT: (I) CISCO'S, ITS AFFILIATES', OFFICERS', DIRECTORS', EMPLOYEES', AGENTS' AND SUPPLIERS' COLLECTIVE LIABILITY TO CUSTOMER FOR BODILY INJURY OR DEATH CAUSED BY THEIR NEGLIGENCE, OR (II) CISCO'S LIABILITY FOR FRAUDULENT MISREPRESENTATION OR IN THE TORT OF DECEIT.
- b. ALL LIABILITY OF CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER ARISING SHALL BE LIMITED TO THE GREATER OF: (I) THE MONEY PAID TO CISCO FOR ADVANCED SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY OR (II) ONE HUNDRED THOUSAND US DOLLARS (\$100,000.00). THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).
- c. IN THE CASE OF TRANSACTIONAL ADVANCED SERVICES PERFORMED UNDER A SOW, THE LIABILITY OF CISCO SHALL BE LIMITED TO THE MONEY PAID TO CISCO UNDER THE RELEVANT SOW DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY.
- d. SUBJECT TO THE EXCEPTIONS SET OUT IN SECTION 10(a), OR CUSTOMER'S BREACH OF SECTION 11, IN NO EVENT SHALL EITHER PARTY, ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOST REVENUE, LOST PROFITS, LOST BUSINESS OPPORTUNITY, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.
- e. TO THE EXTENT ALLOWED UNDER LOCAL LAW, CISCO AND CUSTOMER AGREE THAT THE FOREGOING SECTIONS 9 AND 10 FAIRLY ALLOCATE THE RISKS IN THIS AGREEMENT BETWEEN THE PARTIES. CISCO AND CUSTOMER FURTHER AGREE THAT THIS

ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT THE LIMITATIONS SPECIFIED IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

## 11. License.

- a. Cisco grants to Customer a non-exclusive and non-transferable license to use for Customer's internal business use only: (i) Software provided as a result of the Advanced Services, if any, solely in object code form; (ii) other Deliverables specified in an applicable AS Service Description or SOW, if any, and (iii) Data Collection Tools, if any (collectively and individually, the "Licensed Materials"). In addition, Cisco grants to Customer a right to modify and create derivative works of any Scripts provided by Cisco to Customer pursuant to this Agreement, solely for Customer's internal business use. These license grants do not include the right to sublicense. Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials solely on Customer's behalf for Customer's direct benefit, provided that any such use is subject to license restrictions and confidentiality obligations at least as protective of Cisco's rights in such Licensed Materials as are specified in this Agreement.
- b. Nothing in this Agreement, any AS Service Description or any SOW alters or affects the Intellectual Property rights and/or licenses provided with any Cisco Products. The terms and conditions provided with the Software, or in the absence of such terms the license posted at [http://www.cisco.com/en/US/products/prod\\_warran\\_ties\\_item09186a008025c927.html](http://www.cisco.com/en/US/products/prod_warran_ties_item09186a008025c927.html) ("End User License Agreement"), are hereby incorporated into this Agreement by this reference. To the extent there is a conflict between the terms of the End User License Agreement and this Agreement, the terms of the End User License Agreement will apply, unless explicitly stated otherwise in this Agreement. The provisions in this Section apply only to those Advanced Services, Deliverables and other Intellectual Property provided by Cisco to Customer pursuant to this Agreement.
- c. Except as otherwise provided herein, Customer will use Software solely on Cisco Hardware. Customer may also use Application Software on third party hardware and as expressly authorized in the Software Documentation. In the case of Data Collection Tools that include Hardware, Customer may only use the Software included with such Data Collection Tools solely on the Hardware

provided with such Data Collection Tools. In the case of Data Collection Tools that consist of Software only, Customer may use such Data Collection Tools on Hardware or third party hardware, unless otherwise set forth in an applicable AS Service Description or SOW.

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

communications regarding improvements or changes to any Advanced Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology that Customer provides to Cisco.

## 12. Ownership.

- a. Each party will retain the exclusive ownership of all of its pre-existing Intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to commencement of any Advanced Services hereunder, or that are otherwise developed by or for such party outside the scope of this Agreement ("Pre-Existing Technology").
- b. Except as otherwise expressly set forth in this Agreement or an applicable SOW, Cisco owns and will continue to own all right, title, and interest in and to the Advanced Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by Cisco (or a third party acting on Cisco's behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing (collectively "Cisco Intellectual Property").
- c. As between Customer and Cisco, Customer at all times retains all right, title and interest in and to all of Customer's Pre-Existing Technology and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter, other than Cisco Intellectual Property. Third Party Products will at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

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

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

language to be used in the arbitral proceedings shall be English; or

#### 14. Applicable Law and Jurisdiction.

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

- (i) the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the State and Federal courts of California shall have exclusive jurisdiction over any claim arising under this Agreement, if your Purchase Order is placed with Cisco Systems, Inc.;
- (ii) the Province of Ontario and the federal laws of Canada applicable therein, as if performed wholly within the province and without giving effect to the principles of conflicts of law, and the courts of the Province of Ontario shall have exclusive jurisdiction over any claim arising under this Agreement, if your Purchase Order is placed with Cisco Systems Canada Co.;
- (iii) England and the English Courts shall have exclusive jurisdiction over any claim arising under this Agreement if your Purchase Order is placed with Cisco Systems International B.V. or Cisco Systems Services B.V.;
- (iv) Japan and the Tokyo District Court shall have exclusive jurisdiction over any claim arising under this Agreement if your Purchase Order is placed with Cisco Systems G.K.;
- (v) the State of New South Wales, Australia, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the State and Federal Courts of New South Wales shall have exclusive jurisdiction over any claim arising under this Agreement, if your Purchase Order is placed with Cisco Systems Australia Pty Ltd;
- (vi) the Russian Federation, if your Purchase Order is placed with LLC Cisco Systems. All disputes arising out of or in connection with this Agreement, including any questions regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (LCIA), which Rules are deemed to be incorporated by reference into this Section. The place of arbitration shall be London, England, the number of arbitrators shall be three and the

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

b. Notwithstanding the foregoing, either party shall at all times have the right to commence proceedings in any other court of its choice for interim injunctive



relief in the event of threatened or actual breach of Intellectual Property rights or provisions regarding protection and non-disclosure of Confidential Information.

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

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

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

**17. Notices.** All notices required or permitted under this Agreement ("Notices") will be in writing and will be deemed given one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications with Cisco will be sent to the Cisco entity with which you have placed your Purchase Order, specifying Attention: Legal Department, and all communications with Customer will be sent to the address and name that Accepted this Agreement on behalf of Customer. The parties may send communications to such other address as may be designated by a party by giving written Notice to the other party pursuant to this paragraph. Notwithstanding the above, Notices regarding general changes in pricing, policies or programs may also be by posting on Cisco.com or by e-mail or fax.

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

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

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

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

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

**23. Survival.** Sections 6 (Payment and Invoicing), 7 (Term and Termination), 8 (Confidentiality), 9 (Warranty), 10 (Limitation of Liability and Consequential Damages Waiver), 11 (License), 12 (Ownership), 13 (Force Majeure), 14 (Applicable Law and Jurisdiction), 15 (Export Control), 17 (Notices), 18 (Entire Agreement), 19 (No Waiver), 20 (Severability), 21 (Attorneys' Fees), 22 (Third Party Rights) 23 (Survival) and the Glossary of Terms shall survive the termination of this Agreement.

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

## APPENDIX A GLOSSARY OF TERMS

**Accepted** means the Customer's binding acceptance of this Agreement via Cisco's click-accept web interface application.

**Advanced Services** means the services set forth in the AS Service Description(s) found at <http://www.cisco.com/go/servicedescriptions> and/or SOW(s) selected by the Customer. Advanced Services does not include Cisco's core maintenance services, such as Smartnet or Software Application Services, nor does it apply to the purchase, support or maintenance of any Products.

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

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

**AS Service Descriptions** mean the description of the Advanced Services available from Cisco, which are available at <http://www.cisco.com/go/servicedescriptions> and which are incorporated in this Agreement by reference.

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

**Confidential Information** means proprietary and confidential information received by Cisco or Customer in connection with this Agreement and their relationship. Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party, as well as, in the case of Cisco, any information posted on Cisco.com.

**Customer** means the entity purchasing Advanced Services for its own internal use.

**Data Collection Tools** means Hardware and/or Software tools that support Cisco's ability to provide troubleshooting on cases, data analysis, and report generation capabilities as part of the Advanced Services.

**Deliverable(s)** means, with respect to each AS Service Description and/or SOW, the items to be delivered by Cisco to Customer as set forth in an applicable AS Service Description and/or SOW, including without limitation any Software, Reports, Data Collection Tools, and/or Scripts.

**Documentation** means user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials and other information relating to Products or Advanced Services offered by Cisco, whether distributed in print, electronic, CD-ROM or video format.

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

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

**Intellectual Property** means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

**Maintenance Release** means an incremental Software release that provides maintenance fixes and may provide additional Software functions. Cisco designates Maintenance Releases as a change in the digits to the right of the tenths digit or of the hundredths digit of the Software version number [x.x.(x) or x.x.x.(x)].

**Major Release** means a release of Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Software version number [(x).x.x.].

**Milestone** means a specific goal, objective or event pertaining to Advanced Services described under the



terms of the SOW or AS Service Description, as applicable.

**Milestone Certification of Completion (MCC)** means the document provided by Cisco to obtain Customer acceptance of Advanced Services performed. MCCs are required for all SOW-based Advanced Services.

**Minor Release** means an incremental release of Software that provides maintenance fixes and additional Software functions. Cisco designates Minor releases as a change in the tenths digit of the Software version number [x.(x).x].

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

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

**Product** means Cisco Hardware and Software products that are made generally available.

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

**Reports** means reports, recommendations, network configuration diagrams, and related non-Software Deliverables provided by Cisco to Customer pursuant to this Agreement.

**Scripts** means software scripts, macros and batch files provided by Cisco to Customer pursuant to this Agreement.

**Statement of Work or SOW** means the documents agreed upon by the parties that define the Advanced Services and Deliverables, if any, to be provided by Cisco to Customer.

**Software** means the software programs provided to Customer by Cisco, including any copies, Updates, upgrades, modifications, enhancements, and any derivative works thereof.

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

- (i) The operation of Application Software in conformance with Cisco applicable Application Software Documentation; and
- (ii) Cisco support of the Application Software.

**Update** means Cisco Software Maintenance Releases, Minor Releases and Major Releases containing the same configuration or feature set as originally acquired, unless the Customer has upgraded the applicable Hardware or Software to a configuration or feature set other than what was originally acquired, and the applicable license fee for that upgrade has been paid. Updates do not include Feature Set Upgrades.