



**STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT**

AMENDMENT # **4**  
 CONTRACT # **AR233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)  
 CISCO NETWORKING COMMUNICATIONS & MAINTENANCE  
 MASTER AGREEMENT ("Contract")**  
 Original Starting Date: **10/01/07**  
 Amended Expiration Date : **05/31/2012**  
 TO BE ATTACHED AND MADE PART OF the specified Contract by and between the State of Utah Division of Purchasing and  
**CISCO SYSTEMS INC**  
 (Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Effective Date of Amendment: **Date of last signature**

The contract is amended to:

Incorporate Cisco IronPort Systems Products and Services offerings, the sale of which is solely governed by the terms set forth in this Amendment # 4, attached hereto and incorporated by reference.

Please provide the following contact information.

	Name	Phone Number	Email Address
General Contact	Mimi Nguyen	1 408 527 2627	mimnguye@cisco.com
Sales Contact	Greg Semler	1.408.894.7116	gsemler@cisco.com
Quarterly Report Contact	Angeline Feril (Gigi)	1.408.424.0712	aferil@cisco.com

All other terms and conditions in the original contract remain the same.  
 IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

**STATE OF UTAH**

*Mark Coyle* 6/24/10 *Kent Beers* 7/6/10  
 Contractor's Signature Date Date  
 Kent Beers, Director  
 State of Utah Division of Purchasing

*Mark Coyle*  
 Contractor's Name (Print)  
*VPGlobal Fin Ops*  
 Title (Print)

Purchasing Agent	Phone #	e-mail	Fax #
Debbie Gundersen	(801) 538-3150	dgundersen@utah.gov	(801) 538-3882

## AMENDMENT #4

TO

**AR-233 - WESTERN STATES CONTRACTING ALLIANCE (WSCA)  
CISCO NETWORKING COMMUNICATIONS & MAINTENANCE  
MASTER AGREEMENT ("AR-233" or "Prime Contract")**

**IronPort Products and Services Add**

This Amendment #4 ("Amendment") is entered into between Cisco Systems, Inc. with its principal place of business at 170 Tasman Drive, San Jose, CA 95134 ("Cisco" or "Contractor") and the Division of Purchasing and General Services, an agency of the State of Utah ("State"), acting for itself and as the lead state on behalf of the *Western States Contracting Alliance* ("WSCA"), with its principal place of business at 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 (collectively, the "Parties") and is effective as of the date of last signature below ("Effective Date").

**1. Scope**

The Parties hereby modify the scope and permitted offerings under the Prime Contract referenced above to incorporate Cisco IronPort Systems LLC. ("IP") U.S. Product and Services Offerings as listed in the Cisco IronPort *North American Price Book* ("IP Pricebook", and collectively "IP Products"). The sale of IP Products by Authorized Purchasers under AR-233 is governed solely by this Amendment.

**2. Prime Contract Incorporation**

The WSCA Prime Contract governs sales under this Amendment and supersedes any conflicting terms in the Exhibits, subject to the following additions, modifications and exclusions:

- a. All stated references in the Prime Contract scope of permissible product and services offerings is amended to add IP Products offered under the then-current IP Pricebook during the Prime Contract term. For Orders under this Amendment, all Prime Contract references to the "Cisco Global Price List" shall be deemed to refer solely to the IP Pricebook.
- b. Orders for IP Products may only be accepted by "Fulfillment Partners" who hold a specific manufacturer's authorization for resale of IP Products. For purposes of Orders placed under this Amendment, Prime Contract references to "Fulfillment Partners", shall be deemed to refer to only those resellers holding a specific manufacturer's authorization to resell IP Products.
- c. Attachment A, Section E, Paragraph 1 (a) (Discounts off Manufacturer's Price List): Price list and discounts are to be applied against the then-current IP Pricebook as further detailed in this Amendment, Exhibit #6.
- d. Attachment A, Section E, Paragraph 2 (Resolution of Customer Problems): Escalation contacts for IP Orders will be posted on the Cisco WSCA homepage.
- e. Attachment A, Section E, Paragraph 4 (Technical Services): The URL listed in this paragraph 4 applies only to Cisco Products.
- f. Attachment B, Section 15 (Conflict of Terms) is not applicable to IP Orders placed under this Amendment. In the event of any conflict, the order of precedence for IP Orders placed under this Amendment shall be resolved as follows:

1. WCSA Participating Addendum (for the State in which the Order is placed)
2. Amendment #4 (Main body text of this document, and Exhibit #6)
3. WCSA Prime Contract
4. Amendment #4 (Exhibits)

- g. Attachment B, Section 20 (Shipping and Delivery - Products): Governs IP Orders under this Amendment, including Section 20.4 (shipping FOB destination).
- h. Attachment B, Section 21 (Limited Warranty – Hardware - Software): Governs IP Orders under this Amendment, except that the longer 1 year warranty period stated in Exhibit #1 supersedes the 90 day warranty set forth in the Prime Contract.
- i. Attachment C, Section 1 (Demonstration and Evaluation Equipment) is not applicable to IP Orders placed under this Amendment.
- j. Attachment C, Section 3.5 (Services): For Orders placed under this Amendment, Prime Contract references to service descriptions or offerings shall be deemed to solely refer to the IP terms of service offerings as set forth on [www.ironport.com/products](http://www.ironport.com/products).
- k. Attachment C, Section 4 (Software License) is applicable to IP Orders placed under this Amendment. Additionally, each of IronPort's licensors shall be entitled to enforce the rights of IronPort under this Agreement and those rights under this Agreement that are for the benefit of such licensor as if such licensor was a party to this Agreement.
- l. Attachment C, Exhibit A (WCSA Master Agreement List & Discount) is not applicable to IP Orders placed under this Amendment.
- m. Attachment C, Exhibit B (Demo Depot and Try and Buy Terms) is not applicable to IP Orders placed under this Amendment.
- n. Attachment D (Cisco Master Services Agreement and Advanced Services Agreement) is not applicable to IP Orders placed under this Amendment.
- o. Attachment E (Cisco Redacted Bid Proposal) is not applicable to IP Orders placed under this Amendment.

### 3. IP Exhibits ("IP Agreements")

This Amendment expressly incorporates the following IronPort Exhibits and documentation ("IP Agreements") and govern Orders of IP Product under this Amendment:

Exhibit #1	<b>Product &amp; Services Sales Agreement (PSSA)</b>
Exhibit #2	<b>Hosted Email Master Services Agreement</b>
Exhibit #3	<b>Hybrid Email Master Services Agreement</b>
Exhibit #4	<b>Evaluation Agreement</b>
Exhibit #5	<b>User License Agreement (EULA)</b>
Exhibit #6	<b>Product/Services Offering and Price Schedule</b>

References in the Exhibit to "Cisco IronPort LLC" or "IronPort" shall be deemed to refer to Contractor.

#### Order of Precedence with Prime Contract

Purchasers may be separately required to indicate their acceptance of applicable IP Agreements in substantially the form set forth in the Exhibits as a condition of access, e.g., via "click through accept" as part of key access code log-in activations, or via other electronic "click accept" tools. All Orders under this Amendment are subject to and governed by Purchaser's acceptance of the End User

License Agreement (EULA) set forth in Exhibit #5. Notwithstanding anything to the contrary in the Exhibits, the IP Agreements are subject to the order of precedence set forth in this Amendment, Section 2 (f), above.

(\*All Section references, below, refer to the original Section number as shown on the marked-up document.)

**Exhibit #1**

\*Sections 2- 6, 10, 11 (b), 12-16, 18 and 19 are expressly superseded and deleted in their entirety pursuant to the order of precedence stated in Section 2 (f), above.\*

\*Section 9 (Support and Maintenance Term): The reference to "Effective Date" shall be deemed to refer to the effective date of an individual Customer Order, and the reference to "current unit list price" shall be deemed to refer to the net discounted price payable after application of the IP U.S. List Price discount set forth in this Amendment.

**Exhibit #2**

\*Sections 3, 4, 6 (a) and (d), 7, 8, 14- 24 are expressly superseded and deleted in their entirety pursuant to the order of precedence stated in Section 2 (f), above.\*

**Exhibit #3**

\*Section Numbers: 3-5, 7 (a), (d) and (g), 8, 12-16, 18-23 are expressly superseded and deleted in their entirety pursuant to the order of precedence stated in this main document, Section 2 (f), above.\*

**Exhibit #5**

\*Section Number 8 is deleted in its entirety is expressly superseded and deleted in its entirety pursuant to the order of precedence stated in Section 2 (f), above.\* (\*The preceding section references are to the original Section numbers that are shown as redline deletions in the attached Exhibit.)

**4. Separation of Orders**

IP Product Orders under this Amendment will be kept separate from Orders otherwise placed under the Prime Contract and separately submitted through IP authorized Resellers to Cisco IP Sales Operations in San Bruno, California. Rights and obligations under IP Orders shall not have any co-dependencies or contingencies, e.g., in acceptance, technical performance, payment or refund terms, for obligations otherwise under Cisco Systems, Inc. Product Orders under the Prime Contract.

**5. Term**

This Amendment term begins on the Effective date and ends co-terminously with the Prime Contract.

**6. Definitions**

Capitalized terms used in this Amendment not otherwise defined herein are defined in the Prime Contract.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

This Amendment represents the entire understanding of the parties and supersedes any prior oral, electronic or other written communications or understandings with respect to the subject matter herein. This Amendment #4 may only be modified by a written document executed by both parties. Each party warrants and represents that its respective signatory whose signature appears below is, as of the date of signature, duly authorized to execute this Amendment #4 on behalf of and with the intent to legally bind their respective principal first identified above.

CISCO SYSTEMS, INC.

STATE OF UTAH ON ITS OWN BEHALF, AND AS  
THE LEAD STATE ON BEHALF OF THE WESTERN  
STATES CONTRACTING ALLIANCE

Signature: [Handwritten Signature]  
Print Name: Mark Coyle  
Title: VP Global Fin Ops  
Date: 6/24/10

Name: Kent D Beers State Purchasing  
Signature: [Handwritten Signature]  
Print Name: Kent D Beers  
Title: Director State Purchasing  
Date: 7/6/10

**Exhibit #1**

**IronPort Product & Services Sales Agreement (PSSA)**

*[Faint, illegible text, likely a signature or stamp]*



**PRODUCT AND SERVICES SALES AGREEMENT**

This Product and Services Sales Agreement (this "Agreement") is entered into as the date of the last signature of the parties hereto set forth below (the "Effective Date") by and between Cisco IronPort Systems, LLC, a Delaware limited liability company with its principal place of business at 950 Elm Avenue, San Bruno, CA 94066 USA ("IronPort"), and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business at \_\_\_\_\_ ("Customer"). For good and valuable consideration, the parties hereby agree as follows:

**PRODUCTS, PRICING & QUOTATION INFORMATION**

Part Number	Quantity/ Seats	Description	Unit List Price	Discoun t	Total
Appliances					
Software Modules					
Spares & Accessories					
Support					
Professional Services					
Misc.					\$ -
IronPort Corporate Address Cisco IronPort Systems, LLC 950 Elm Ave. San Bruno, California 94066		IronPort Sales Representative Information Name: Phone: Fax: Email:		Subtotal: Freight:  Pre-Sales Tax Total: \$ -	
Customer Shipping Address		Customer Technical Contact Information Name: Phone: Fax: Email: customer@customer.com		Customer Accounts Payable Information Name: Phone: Fax: Email: customer@customer.com	

**Special Terms & Conditions**

(To be specified for the individual transaction on approval of Customer and Contractor.)  
Any provision set forth herein shall control in the event of a conflict with any term set forth in the General Terms & Conditions below.

## General Terms & Conditions

1. **General.** The terms and conditions of this Agreement apply to the purchase of the products (the "Products") and services set forth above by Customer from IronPort. Customer acknowledges that any Product(s) listed above that were previously delivered for evaluation purposes, or that are spare units or demonstration units may be used and/or refurbished units, provided that the warranties set forth herein apply fully to such used and/or refurbished units. No terms, provisions or conditions of any purchase order, invoice or other business form or written authorization used by either party will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of either party to object to such terms, provisions, or conditions. Notwithstanding anything to the contrary contained herein, Sections 3, 4, 5 and 9 of this Agreement shall not apply to any Products or services purchased by Customer directly from any party other than IronPort. The remaining sections of this Agreement shall apply to all Products and services purchased by Customer from authorized IronPort resellers.

2. **Embedded Software; Intellectual Property Rights.** IronPort hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use the software contained on the Products (the "Software") in object code format solely for the internal business purposes of Customer. Except as otherwise agreed by the parties hereto in writing, Customer will not use the Software as a service provider or as part of a product or service offering to third parties without IronPort's prior written consent. Customer will not (i) transfer, assign, copy, modify or distribute the Software or (ii) attempt to, or authorize any third party to, decompile, reverse engineer or otherwise attempt to gain access to the Software source code or unbundle any software embedded within or contained on the Products. Customer will not remove any copyright or trademark notices on the Software. Except as provided in Section 16 below, Customer will not sell or transfer the Products containing Software to any third party. Customer acknowledges that IronPort and its licensors retain, at all times, all right, title and interest in and to the Software, including any improvements or modifications thereof and all copyright, patent, trade secret, trademark and other intellectual property rights embodied in the Products, and the user manuals and other written materials for the Products (the "Documentation"). Each of IronPort's licensors shall be entitled to enforce the rights of IronPort under this Agreement and those rights under this Agreement that are for the benefit of such licensor as if such licensor was a party to this Agreement. Notwithstanding anything herein to the contrary, all references in this Agreement to the "purchase" or "sale" of Software will mean, with respect to all parts of such Software, the acquiring or granting, respectively, of a license to use such parts, and to exercise any other rights pertaining to such parts which are expressly set forth herein.

3. **Additional Orders.** Unless otherwise mutually agreed in writing, the terms of this Agreement shall govern the purchase by Customer of additional Products and services after the Effective Date. To order additional Products and services, Customer shall submit a purchase order to IronPort containing substantially the same information required by the Products, Pricing and Quotation Information table above.

4. **Payment.** Customer agrees to purchase the Products and, if applicable, the Support and Maintenance (as defined in Section 7) for the prices set forth above, and such price quote shall remain valid for

a period of thirty (30) days from the receipt by Customer of this Agreement. All payments will be made in U.S. Dollars net thirty (30) days from the date of invoice. If payment is more than thirty (30) days late, IronPort may, without limiting any remedies available to IronPort, terminate this Agreement or suspend performance until payment is made current. All prices are exclusive of all sales, use, excise, value added, withholding and other taxes, and all customs duties and tariffs now or hereafter claimed or imposed by any governmental authority upon the sale of the Product, which will be invoiced to and paid by the Customer. For any renewal term, the terms of this Agreement will govern and all fees shall be payable within thirty (30) days of the invoice date and payable in advance of the applicable term.

5. **Title and Risk of Loss.** All sales are made F.O.B. point of shipment at IronPort's designated manufacturing facility, and IronPort's title to the Products and the risk of loss of or damage to the Products ordered by the Customer will pass to Customer at time of IronPort's delivery of Products to the carrier. The carrier shall be deemed Customer's agent, and any claims for damages in shipment must be filed with the carrier. IronPort is authorized to designate a carrier pursuant to IronPort's standard shipping practices unless otherwise specified in writing by Customer.

6. **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, earthquakes, 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.

7.2. **Support and Maintenance.** So long as Customer has paid in full all associated fees for IronPort's Platinum and/or Platinum Plus support programs, IronPort shall provide support and maintenance for the Products (the "Support and Maintenance"), as more fully set forth in Sections 7-9 and the *Support & Maintenance Table* set forth below. Support and Maintenance shall include (i) telephone and email support services for diagnosis of problems or performance deficiencies of the Software, and (ii) the use of commercially reasonable efforts to cure reported and reproducible Errors in the Software. An "Error" in the Software means a failure of the Software to perform materially in accordance with the Documentation. So long as Customer has met all of its obligations hereunder and has paid in full all associated fees for IronPort's Platinum and/or Platinum Plus support programs, IronPort will provide Customer with such patches, updates, releases and new versions of the Software that are commercially released by IronPort at no additional charge to IronPort's other customers receiving Support and Maintenance. All patches, updates, release and new versions provided hereunder will be considered part of the Software and subject to this Agreement. Notwithstanding anything herein to the contrary, the Support and Maintenance set forth herein, including patches, bug fixes and corrections, will be provided only for (i) the most current release version of the Software currently shipping to new customers, and (ii) any other versions of the Software released in the last year. From time to time, IronPort may provide to certain of its customers free of charge modifications or enhancements that represent a new product as an accommodation. Any such



accommodations shall not waive, diminish or abrogate IronPort's right to determine in its sole discretion whether or not an enhancement constitutes an update or a new product. Customer acknowledges that all reported Errors may not be corrected. IronPort shall have no obligation to provide Support and Maintenance if: (A) the Product was not used in accordance with IronPort's then current published specifications and such use caused the Error in the reasonable opinion of IronPort; (B) the Product or Software was altered, modified or corrected by Customer without IronPort's prior written consent; (C) Customer's computer(s) malfunctioned and the malfunction caused a error or defect in the Software; or (D) any other cause within the control of Customer that caused an error or defect in the Product or Software.

**83. Customer Maintenance Obligations.** Customer agrees to: (i) use reasonable efforts to resolve internally any support questions prior to requesting Support and Maintenance services; (ii) report Errors promptly in writing in English; (iii) provide sufficient information to IronPort for IronPort to duplicate the circumstances indicating a reported Software defect or Error; (iv) promptly incorporate the bug fixes, patches, updates, upgrades, releases and new versions provided hereunder; and (v) provide all reasonable cooperation access and full information to IronPort with respect to IronPort's furnishing of Support and Maintenance hereunder. During the term of this Agreement, IronPort may obtain information regarding Customer's email communication and web traffic and Customer agrees that, as a condition to entering into this Agreement and IronPort's commitment to providing Support and Maintenance, IronPort may use statistical data generated regarding Customer's email and web traffic so long as neither the source nor content of the information underlying the data is being disclosed. IronPort hereby reserves the right to deny any emergency on-site service requests if, in IronPort's good faith discretion, such emergency on-site service is not required to resolve Customer's technical problem or if Customer has violated any of its obligations hereunder.

**94. Support and Maintenance Term.** The initial term for the Support and Maintenance set forth herein Order will commence on the Order Effective Date and remain in effect for the time period set forth in the Products, Pricing and Quotation Information Section above. Provided that the renewal date start occurs during the WSCA Master Agreement term and not on or after the termination/expiration date of the WSCA Master Agreement. Support and Maintenance will automatically renew for additional one (1) year periods on each anniversary of the Effective Date, unless either party provides written notice of termination within thirty (30) days prior to such anniversary date. For each renewal term, Customer shall pay the current unit list price set forth above for the applicable Support and Maintenance program. Fees are payable within thirty (30) days of the invoice date and are payable in advance of the applicable term. ~~In the event that Customer desires to reinstate Support and Maintenance after allowing its Support and Maintenance to lapse, Customer will be required to pay IronPort's then current standard fee for reinstating lapsed Support and Maintenance.~~ Support and Maintenance Fees are non-refundable unless IronPort has materially breached the maintenance terms and has failed to cure the breach after thirty (30) days written notice, in which case the prorated portion of any prepaid unused Support and Maintenance Fees are refundable.

#### **10. Indemnity.**

~~(a) IronPort will have the obligation and right to defend any claim, action, suit or proceeding ("IPR Claim") brought against Customer so far as it is based on a claim that any Product supplied under this Agreement infringes Third Party IPR (as defined below). IronPort will indemnify Customer against any final judgment entered in respect of such an IPR Claim by a court of competent jurisdiction and against any settlements arising out of such an IPR Claim. IronPort's obligations to defend the IPR Claim and indemnify Customer are conditional upon: (i) Customer notifying IronPort promptly in writing of the IPR Claim or threat thereof; (ii) Customer giving IronPort full~~

~~and exclusive authority for the conduct of the defense and settlement of the IPR Claim and any subsequent appeal; and (iii) Customer giving IronPort all information and assistance reasonably requested by IronPort in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.~~

~~(b) "Third Party IPR" means a United States copyright existing as at the Effective Date or a United States patent issued as at the Effective Date.~~

~~(c) If an IPR Claim has been made, or in IronPort's opinion is likely to be made, Customer agrees to permit IronPort, at IronPort's option and expense, either to: (i) procure for Customer the right to continue using the Product; (ii) replace or modify the Product so that there is no longer an infringement; or (iii) immediately terminate both parties' respective rights and obligations under this Agreement with regard to the Product, in which case Customer will promptly return the Product to IronPort and IronPort will refund to Customer the price originally paid by Customer to IronPort for the Product, as depreciated or amortized by an equal annual amount on a straight-line basis over three years from date of original shipment.~~

~~(d) Notwithstanding the foregoing, IronPort has no obligation or liability for, and Customer will defend and indemnify IronPort against, any IPR Claim arising from: (i) the combination, operation, or use of a Product supplied under this Agreement with any product, device, or software not supplied by IronPort; (ii) the amount or duration of use which Customer makes of the Product, revenue earned by Customer from services it provides that use the Product, or services offered by Customer to external or internal customers; (iii) the alteration or modification of any Product supplied under this Agreement; (iv) IronPort's compliance with Customer's designs, specifications, requests, or instructions; or (v) Customer's use of the Product after IronPort has recommended to Customer modifications or changes in or to the Product required to avoid such an IPR Claim.~~

~~(e) This Section 10 states the entire obligation of IronPort and its suppliers, and the exclusive remedy of Customer, in respect of any infringement or alleged infringement of any intellectual property rights or proprietary rights. This indemnity obligation and remedy are given to Customer solely for its benefit and in lieu of, and IronPort disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any Product.~~

#### **11. Warranty.**

~~(a) Warranty. IronPort warrants that, for a period of one (1) year from the date of shipment of the Products (the "Warranty Period"), the Products sold hereunder will materially conform to IronPort's published specifications in effect as of the date of manufacture.~~

~~(b) The foregoing warranty will not apply if the Product (a) has been altered, except by IronPort, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by IronPort, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is sold or, in the case of Software, licensed, for beta, evaluation, testing or demonstration purposes for which IronPort does not receive a payment of purchase price or license fee.~~

~~(c) If during the Warranty Period: (i) IronPort is notified promptly in writing upon discovery of any defect in the Product, including a detailed description of such alleged defect, (ii) such Product is returned, transportation charges prepaid, to IronPort's designated manufacturing facility in accordance with IronPort's then-current return procedures, as set forth by IronPort from time to time, and (iii) IronPort's inspections and tests determine that the Product is indeed defective and has not been subjected to any of the conditions set forth in Section 11(b) above WSCA Master Agreement, Attachment B Section 21.3, then, as Customer's sole remedy and IronPort's sole obligation under the foregoing warranty, IronPort will, at IronPort's option, repair or replace without charge the defective Product or~~

refund a pro-rata portion of the purchase price of the Product based on a three (3) year straight-line amortization. Any Product that has either been repaired or replaced under this warranty will have warranty coverage for the longer of ninety (90) days or the remaining warranty period. Replacement parts used in the repair of Product may be new or equivalent to new.

(dc) EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. ALL SUPPORT AND MAINTENANCE IS PROVIDED "AS IS."

12. ~~Limitation of Liability. IN NO EVENT SHALL IRONPORT OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF IRONPORT OR ITS SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF, NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF IRONPORT AND ITS SUPPLIERS FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID TO IRONPORT UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.~~

13. ~~Compliance with all Applicable Laws; Export Control. Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures including requirements applicable to the use of Products under the laws and regulations, of any government where the Products are to be used (collectively "Applicable Laws"). Customer will indemnify and hold harmless IronPort, for any violation or alleged violation of any Applicable Laws. Customer hereby acknowledges that the Products and technology or direct products thereof ("Products and Technology"), supplied by IronPort 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 IronPort Products and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. IronPort 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 full, true, and accurate records of exports, re-exports, and transfers of the Products and Technology, purchased and deployed or distributed, according to U.S. and local laws (minimum 5 years). 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>.~~

#### 14. ~~Confidentiality.~~

~~Each party agrees to refrain from using the other party's Confidential Information (as defined below) except as contemplated herein and preserve and protect the confidentiality of the other party's~~

~~Confidential Information using the same measures that such party uses to protect its own confidential information, which in no event will be less than commercially reasonable measures. Customer shall not disclose to any third party the results of any evaluation or testing of the Product by Customer. Neither party shall disclose any of the terms of this Agreement to any third party without the prior written consent of the other party, provided that either party may disclose Confidential Information, and the terms or conditions of this Agreement, to such party's agents, attorneys and other representatives or any court of competent jurisdiction. "Confidential Information" means all non-public information that is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential.~~

15. ~~Termination. If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party will have the right to terminate this Agreement, including all licenses granted to Customer hereunder, at any time. Customer's breach of a payment obligation constitutes a default the date the payment is due and IronPort will have the right to terminate this Agreement immediately. The provisions of Sections 12, 13, 14, 15 and 16, and all accrued payment obligations, shall survive the termination of this Agreement.~~

16. ~~Assignment; Entire Agreement; Modification. Neither party may assign or delegate its rights or obligations 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, (i) either party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to its parent or majority-owned subsidiary company of sufficient net worth to meet any potential liability under this Agreement, and (ii) IronPort may, without Customer's consent, assign the right to receive any amount due. This Agreement supersedes all prior communications, transactions, and understandings, whether oral or written, and, together with any applicable click-through agreements for third party software contained on the Products, constitutes the sole and entire agreement between the parties pertaining to the referenced quotation or purchase order. No modification, addition or deletion, or waiver of any of the terms and conditions of this Agreement will be binding on either party unless made in a non-preprinted agreement clearly understood by both parties to be a modification or waiver, and signed by a duly authorized representative of each party.~~

17. ~~U.S. Government Restricted Rights. The Software and Documentation are "commercial items", "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.~~

18. ~~Governing Law and Venue. This Agreement will be governed by the laws of the State of California, U.S.A., without regard to provisions on the conflicts of laws. The parties consent to the exclusive jurisdiction of, and venue in, the state and federal courts within Santa Clara County, California, U.S.A. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT.~~

19. ~~Severability. If any portion of this Agreement is held invalid, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement.~~

**SUPPORT & MAINTENANCE TABLE (refer to online service description for then-current terms at time of order)**

	<b>IronPort Platinum Support</b>	<b>IronPort Platinum Plus Support *</b>
<b>Support Requests</b>		
Phone, Email & Web	24/7	24/7
<b>Technical Support</b>		
Office hours (critical and non-critical issues)	M-F 6am-6pm PST (excluding US holidays)	M-F 6am-6pm PST (excluding US holidays)
Availability for critical issues	24/7	24/7
Response time	1 hr	Next Available Engineer / 1 hr
<b>Hardware &amp; Software Support</b>		
Upgrade notifications	Yes	Yes
Field upgrades	Yes	Yes
Remote diagnostics	Yes	Yes
Hardware support **	Yes	Yes
Emergency on-site support ***	Best efforts next business day based on necessity on Hardware issues only	Best efforts next business day based on necessity on Hardware and Software issues
<b>Online Resources</b>		
Documentation	Yes	Yes
FAQ	Yes	Yes

\* In addition, the following services are included in IronPort Platinum Plus Support: Two Designated Support Engineers; Major Software Release Reviews; and Periodic System Analysis and Appliance Monitoring.

\*\* Shipments delivered to Customer's site the next business day by 10:30 am local time (second business day if shipped on Sunday or US holiday). This may vary for international shipments.

\*\*\* Emergency on-site support may vary or be limited for non-US customers.

Wherefore, the parties have caused this Product and Services Sales Agreement to be executed effective as of the Effective Date.

<b>CISCO IRONPORT SYSTEMS, LLC</b>	<b>CUSTOMER</b>
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**Exhibit #2**  
**IronPort Hosted Email Master Services Agreement**

**MASTER SERVICES AGREEMENT  
Cisco IronPort Systems LLC**

~~This Agreement is entered into between Cisco IronPort Systems LLC ("IronPort"), a Delaware limited liability company, having its principal place of business at 950 Elm Ave., San Bruno, California, 94066 and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Customer") having its principal place of business at \_\_\_\_\_, United States, and is entered into as of the date of last signature below (the "Effective Date").~~

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

Customer may purchase the Services from an authorized IronPort Reseller. In the event that Customer purchases the Services from an authorized IronPort Reseller, Sections 2(a), 3, 4, 5, and 6 and 7(b) will not apply.

~~The parties have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below are on the date of signature authorized to execute this Agreement.~~

	Cisco IronPort Systems LLC
_____	_____
("Customer")	("IronPort")
_____	_____
Authorized Signature	Authorized Signature
_____	_____
Print Name	Print Name
_____	_____
Title	Title
_____	_____
Date	Date
_____	_____

## MASTER SERVICES AGREEMENT - TERMS AND CONDITIONS

1. **Definitions** are those set out in the Glossary of Terms at the end of the Agreement.

~~2.~~ **2. Scope.** This Agreement describes the terms and conditions for (a) Purchases from IronPort by Customer of Services, and (b) delivery by IronPort of the Services according to the options ordered by Customer or otherwise provided by IronPort to Customer. IronPort will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid (ii) a valid Software license has been granted and (iii) Customer provides information reasonably requested by IronPort including, but not limited to, site location(s), contract number, and Product/Service requested.

3. **Orders.** ~~Customer shall, upon and subject to credit approval by IronPort, purchase Services by issuing a Purchase Order. Each Purchase Order must be signed, if requested by IronPort, or (in the case of electronic transmission) sent, by an authorized representative, indicating the specific Services, quantity, price, total purchase price, bill to address, tax exempt certifications, if applicable, contract reference if any, and any other special instructions. No contingency contained on any Purchase Order shall be binding upon IronPort. 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 IronPort, and any such additional or conflicting terms are deemed rejected by IronPort.~~

4. **Payment.** ~~Upon and subject to credit approval by IronPort, payment terms shall be net thirty (30) days from the date of invoice. Unless otherwise agreed by IronPort, all payments shall be made in the currency used by the IronPort entity with which Customer has placed its Purchase Order. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (a) ten (10) per cent per annum, or (b) the maximum rate permitted by law, whichever is less.~~

5. **3. Invoicing.** Fees for Services, other than those for which a SOW is required, shall be invoiced in advance of delivery of Services. The timing of invoices for Services provided pursuant to a SOW shall be set forth in the respective SOW.

6. **4. Term and Termination.**

~~The term of this Agreement shall commence on the Effective Date and shall continue for a period of one year. Such term will be renewed automatically for successive one year terms unless either party notifies~~

~~the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one-year term.~~

(a) The term of the Services shall commence on the date set forth on the Purchase Order, which may be up to sixty (60) days following the date of Purchase Order acceptance by IronPort. Upon the expiration of the initial Services term, the Services shall be renewed automatically for successive one year terms provided that the starting date for the renewal term is on or before the termination or expiration of the WSCA Master Agreement, unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.

(b) The term of each SOW, if any, shall be stated in the SOW.

(d) ~~This Agreement and the Services or SOW may be terminated immediately by either party upon written notice:~~

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

(ii) ~~if: (a) the other party ceases to carry on business as a going concern; or (b) the other party becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation; or (c) a receiver or similar officer is appointed with respect to the whole or a substantial part of the other party's assets; or (d) an event similar to any of the foregoing occurs under applicable law with respect to the other party.~~

(iii) ~~if the other party assigns or transfers any of the rights or responsibilities granted under this Agreement or SOW in breach of Section~~

(ee) If Services undisputed fees are not paid when due and payment has not been received within thirty (30) days after notice from IronPort of such past due payment, IronPort may withhold the provision of Services until all amounts past due are paid in full, and/or terminate immediately this Agreement, the Services and SOW.

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(fd) IronPort reserves the right to make changes to the scope and content of the Services or part thereof, including terminating the availability of a given Service at any time upon ninety (90) days prior notice. Such changes will become effective upon renewal of the affected Services and SOWs. If Customer does not agree to a change of scope or content, Customer may terminate any Services or SOW by notifying IronPort at least sixty (60) days prior to the expiration of the then current one year term of the Services or SOW. In such case, IronPort shall continue to provide Services until the next expiration date (see Section 7(b), above) of the affected Services or SOW.

(e) (g) ~~In the event that, following termination or expiration of this Agreement, Customer places Purchase Orders and IronPort accepts such Purchase Orders, then any such Purchase Orders shall be governed by the terms and conditions of this Agreement notwithstanding the earlier expiration or termination of this Agreement; provided, however, that acceptance by IronPort of any such Purchase Order will not be considered to be an extension of the term of the Agreement nor a renewal thereof. The Services and any SOW hereunder shall terminate immediately upon termination of the Agreement to the extent they remain executory as of the date of termination, unless otherwise agreed by IronPort.~~

(hf) Upon termination of the Agreement, any Services or SOWs, Customer shall pay IronPort for all work performed under the affected Purchase Order or SOWs up to the effective date of termination at the agreed upon prices, fees and expense reimbursement rates.

7. ~~Confidentiality. Customer and IronPort 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, IronPort shall be authorized to disclose Customer's Confidential Information to contractors or employees of an IronPort entity or Affiliate 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 or expiration at any time and for any reason of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the~~

~~public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure. For the purposes of this Section 8, an "Affiliate" is an entity controlling, controlled by or under common control with IronPort.~~

8. ~~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.~~

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9.5. Warranty.

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

9.5.2 GENERAL DISCLAIMER FOR ALL SERVICES.

ANY WARRANTIES AND RELATED REMEDIES IN THIS SECTION 9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING

WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 9 SHALL APPLY EVEN IF THE EXPRESS WARRANTIES AND LIMITED REMEDIES SET FORTH IN THIS SECTION 9 FAIL OF THEIR ESSENTIAL PURPOSE. IN ANY EVENT, THE WARRANTIES PROVIDED UNDER THIS AGREEMENT ARE SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

95.3 BECAUSE OF THE CONTINUOUS EVOLUTION OF THE SOPHISTICATION OF NETWORK THREATS AND INFRASTRUCTURE TECHNOLOGIES, IRONPORT DOES NOT MAKE, AND IT IS ACKNOWLEDGED THAT IRONPORT CANNOT MAKE ANY WARRANTY OR REPRESENTATION THAT ANY SYSTEM ATTACK OR IMPACTING INCIDENT WILL BE DETECTED OR PREVENTED.

95.4 CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT DESIGNED OR INTENDED BY IRONPORT FOR USE OR RESALE IN, OR FOR INCORPORATION INTO PRODUCTS OR SERVICES USED IN HIGH RISK ACTIVITIES. IRONPORT SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND WITH RESPECT TO THE USE OF THE SERVICES IN CONNECTION WITH ANY HIGH RISK ACTIVITY.

40. 6. Limitation of Liability and Consequential Damages Waiver.

ALL LIABILITY OF IRONPORT, 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 IRONPORT FOR SERVICES UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY OR (II) THE AMOUNT OF FEES EQUAL TO THE UNEXPIRED REMAINDER OF THE PRE-PAID SERVICE TERM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

SUBJECT TO CUSTOMER'S BREACH OF SECTION (LICENSE), 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, 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.

41. 7. Licenses. Subject to Customer's compliance with the terms of this Agreement, any applicable AS Service Description or SOW, and the End User Agreement, IronPort grants to Customer a worldwide, non-exclusive and non-transferable license to use, for Customer's internal business use only: (i) the Services; (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, IronPort grants to Customer a right to modify and create derivative works of any Scripts provided by IronPort to Customer pursuant to this Agreement, solely for Customer's internal business use. These license grants do not include the right to sublicense; provided that Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials solely on Customer's behalf for Customer's benefit, provided that Customer ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of IronPort's rights in such Licensed Materials as are specified in this Agreement.

Nothing in this Agreement, any AS Service Description or any SOW shall alter or affect the Intellectual Property rights and/or licenses provided with any IronPort Products. The terms and conditions provided with the Services ("*End User Agreement*"), are hereby incorporated into this Agreement by this reference. To the extent there is a conflict between the terms of the attached End User Agreement and the remainder of this Agreement, the terms of the End User Agreement shall apply, unless explicitly stated otherwise in this Agreement. The provisions in this Section apply only to those Services and Deliverables and other Intellectual Property provided by IronPort to Customer.

Except as otherwise expressly set forth in this Agreement or an applicable SOW, Customer shall not (and shall not permit a third party to): make error corrections or derivative works of, or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Deliverable, Data Collection Tool or the Services to human-readable form; or transfer, sublicense, rent, lease, distribute, or sell, any Services, Deliverables or Data Collection Tools. Customer agrees that it receives no implied licenses under this Agreement,

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and all rights not expressly granted herein are reserved to IronPort.

Customer hereby grants to IronPort a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback (as defined below) to use and incorporate Customer Feedback into any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute and create derivative works of such Customer Feedback for any and all purposes whatsoever, and Customer acknowledges and agrees that it will obtain no rights in or to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology as a result of IronPort's use of any such Customer Feedback. For purposes of this Agreement, "Customer Feedback" means all oral or written communications regarding improvements or changes to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology that Customer provides to IronPort.

**12. 8. Customer Responsibilities.**

In performing the Services, IronPort may instruct the Customer to perform certain tasks or checks relating to Customer's Network. Customer shall, at its expense, perform all such checks and tests. Customer will also provide IronPort, or its authorized representative, reasonable and free access to Customer's networking equipment. Customer shall not be required to furnish specialized equipment or know-how. Customer agrees to pay IronPort, at IronPort's then-current discounted contract rates, plus any reasonable actual out-of-pocket expenses, for any rework or additional work resulting from modification of the Services requested by Customer (and accepted by IronPort) or any act or omission of Customer, including providing inaccurate information to IronPort. IronPort shall seek Customer's approval in advance of incurring such costs if it knows costs will be incurred as a result of such act or omission of Customer.

Customer is responsible for obtaining all approvals required by any third parties in order for IronPort to perform any Service under this Agreement. IronPort shall not be in default of this Agreement to the extent it cannot perform the Services either because such approvals have not been obtained or any third party otherwise prevents IronPort from performing such Services.

Customer agrees that it shall not resell the Product and/or Services or create or offer derivative versions of the Services either directly or through a third party.

CUSTOMER ASSUMES FULL RESPONSIBILITY FOR THE CONTROL AND USE OF THE DATA

CONTAINED IN ANY REPORTS PROVIDED BY IRONPORT HEREBUNDER. CUSTOMER ACKNOWLEDGES THE POTENTIAL PRIVACY AND OTHER ISSUES ASSOCIATED WITH THE COLLECTION AND USE OF THIS DATA.

CUSTOMER ASSUMES FULL RESPONSIBILITY TO BACK-UP AND/OR OTHERWISE PROTECT ALL DATA AGAINST LOSS, DAMAGE, OR DESTRUCTION. CUSTOMER ACKNOWLEDGES THAT IT HAS BEEN ADVISED TO BACK-UP AND/OR OTHERWISE PROTECT ALL DATA AGAINST LOSS, DAMAGE OR DESTRUCTION.

THE FAILURE OF CUSTOMER TO COMPLY WITH THIS SECTION 12.8 MAY BE DEEMED A MATERIAL BREACH OF THIS AGREEMENT.

**13. 9. Ownership.** Each party will retain the exclusive ownership of all its pre-existing Intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to commencement of any Services hereunder, or that are otherwise developed by or for such party outside the scope of this Agreement ("Pre-Existing Technology").

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Except as otherwise expressly set forth in this Agreement or an applicable SOW, IronPort owns and will continue to own all right, title and interest in and to the Hardware, 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 IronPort (or a third party acting on IronPort'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, "IronPort Intellectual Property").

As between Customer and IronPort, Customer shall at all times retain 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 IronPort Intellectual Property. Third Party Products shall at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

~~14. 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.~~

~~15. Applicable Law and Jurisdiction. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal Courts of California shall have exclusive jurisdiction over any claim arising under this Agreement. Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.~~

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

~~16. Export Control. Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of IronPort Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses.~~

~~17. Assignment. Neither party may assign or delegate its rights or obligations 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) either party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to its parent or majority owned subsidiary company of sufficient net worth to meet any potential liability under this Agreement, and (b) IronPort may, without Customer's consent, assign the right to receive any amount due.~~

~~18.2. IronPort reserves the right to subcontract Services to a third party organization to provide Services to Customer. Any such subcontract shall not relieve~~

~~IronPort of any of its obligations under this Agreement.~~

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~~10. Inventory Review. From time-to-time, IronPort may perform an inventory review of Customer's infrastructure. IronPort will charge a Service fee if it finds that unauthorized Services are being provided. This Service fee includes amounts which should have been paid, interest, attorneys' and audit fees. IronPort requires that Customer take all necessary action (for example, disabling passwords) to ensure that any former employees and contractors do not access or use the Service.~~

~~19. Timewill be in writing and will be deemed given one day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2 day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the cover sheet of this Agreement or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph. Notwithstanding the above, notices regarding general changes in pricing, policies or programs may also be by posting on IronPort.com or by e-mail or fax.~~

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~~20. 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.~~

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~~21. 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.~~

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~~22. 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.~~

~~23. Attorneys' Fees. 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 expiration or termination and shall not be merged into any such judgment.~~

~~24. **No Agency.** This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of this Agreement. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.~~

~~25. **11. Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "Counterpart Image") shall be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. In the event that a party delivers a Counterpart Image in place of an originally-executed counterpart, such party shall retain the originally-executed counterpart in its files for at least the duration of the Term hereof.~~

~~26. **12. Headings.** Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.~~

~~27. **13. Survival.** Sections ~~Terms set forth or incorporated in this Exhibit, including:~~ (Payment), (Term and Termination), (Confidentiality), (Warranty), (Limitation of Liability and Consequential Damages Waiver), (License), ~~13~~-(Ownership), ~~14~~-(Force Majeure), ~~15~~-(Applicable Law and Jurisdiction), ~~16~~-(Export Control), ~~19~~-(Inventory Review), ~~20~~-(Notices), ~~21~~-(Entire Agreement), ~~22~~-(No Waiver), ~~23~~-(Severability), ~~24~~ (Attorneys' Fees), ~~25~~-(No Agency), ~~28~~-(Survival), the Glossary of Terms and the Services-Not-Covered exhibits shall survive the termination or expiration of this Agreement.~~

## EXHIBIT A GLOSSARY OF TERMS

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

**Advanced Services** means the Services set forth in the AS Service Description(s) found at and/or SOW(s) selected by the Customer. Advanced Services does not include IronPort's core maintenance services, nor does it apply to the purchase, support or maintenance of any Products.

**Advanced Services Engineer** means the IronPort engineer appointed to be the main point of contact for a Customer purchasing Advanced Services.

**AS Service Descriptions** mean the description of the Advanced Services available from IronPort, which are attached hereto.

**Authorized Channel** means a system integrator, distributor or reseller authorized by IronPort to sell Services.

**Business Days** means the generally accepted days of operation per week within the relevant region where the Services shall be performed, excluding local holidays as observed by IronPort.

**IronPort.com ()** is the IronPort Website for its suite of online services and information.

**Confidential Information** means proprietary and confidential Information received by IronPort or Customer from the other party 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 IronPort, any information posted on IronPort.com.

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

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

**Depot Time** or **Local Time** means Central European Time for Services provided in Europe-Middle-East and Africa, Australia's Eastern Standard Time for Services provided in Australia, Japan's Standard Time for Services provided in Japan, and Pacific Standard Time for Services provided in all other locations.

**Deliverable(s)** means, with respect to each AS Service Description and/or SOW, the items to be delivered by IronPort 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.

**Direct Purchases** means purchases of Services by Customer directly from IronPort.

**Documentation** means user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials and other

information relating to Products or Services offered by IronPort, whether distributed in print, electronic, CD-ROM or video format.

**Event** means notification by Customer of its performance of a planned Network Hardware, Software, or configuration change.

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

**Four-hour Response** means:

- (i) For Advance Replacement Service, the four-hour time period commences upon the IronPort problem diagnosis and determination that a field replacement unit (FRU) is required and ends when the FRU is delivered onsite.
- (ii) For onsite service, the four-hour time period commences upon the IronPort problem diagnosis and determination that remedial onsite service is required and ends when IronPort personnel arrive onsite.

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

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

**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).

**Level 1** means support that is defined as having the necessary technical staff (IronPort or IronPort-authorized Reseller) with appropriate skill, perform installations, Remedial Hardware Maintenance, and basic Hardware and Software configuration on IronPort Products.

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

**Local Time** means local time on Business Days.

**Maintenance Release** means an incremental Software release that provides maintenance fixes and may provide additional Software functions. IronPort 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. IronPort designates Major Releases as a change in the ones digit of the Software version number [(x).x.x].

**Minor Release** means an incremental release of Software that provides maintenance fixes and additional Software functions. IronPort 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 IronPort supported Hardware and Software that is implemented, operated, and supported by Customer from a single security operations center (SOC).

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

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

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

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

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

**RMA** means Return Material Authorization.

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

**Services** means one or more of the services options selected by the Customer in its Purchase Order and described at:

**Services Descriptions** mean the detailed descriptions of the Services purchased by Customer which are incorporated in the MSA by reference.

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

**Standard Business Hours** means (i) 8:00 AM to 5:00 PM, Depot time, on Business Days for replacement of failed Products and (ii) 8:00 AM to 5:00 PM, Local Time at location, on Business Days for case handling of calls.

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

**Technical Support Services** means Services that provide both essential proactive and reactive operation and maintenance support Services identified as Technical Support Services at .

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

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

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

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

**Update** means IronPort 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.

**Exhibit #3**  
**IRONPORT HYBRID EMAIL MASTER SERVICES  
AGREEMENT**



**MASTER SERVICES AGREEMENT  
Cisco IronPort Systems LLC**

This Agreement is entered into between Cisco IronPort Systems LLC ("*IronPort*"), a Delaware limited liability company, having its principal place of business at 950 Elm Ave., San Bruno, California, 94066 and \_\_\_\_\_ a \_\_\_\_\_ corporation ("*Customer*") having its principal place of business at \_\_\_\_\_, United States, and is entered into as of the date of last signature below (the "*Effective Date*").

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

Customer may purchase the Services from an authorized IronPort Reseller. In the event that Customer purchases the Services from an authorized IronPort Reseller, Sections 2(a), 3, 4, 5-6 and 7(b) will not apply.

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

_____	Cisco IronPort Systems LLC
( <i>Customer</i> )	( <i>IronPort</i> )
_____	_____
Authorized Signature	Authorized Signature
_____	_____
Print Name	Print Name
_____	_____
Title	Title
_____	_____
Date	Date

## MASTER SERVICES AGREEMENT - TERMS AND CONDITIONS

1. **Definitions** are those set out in the Glossary of Terms at the end of the Agreement.

2. **Scope.** This Agreement describes the terms and conditions for (a) Purchases from IronPort by Customer of Services, and (b) delivery by IronPort of the Services according to the options ordered by Customer or otherwise provided by IronPort to Customer. IronPort will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid (ii) a valid Software license has been granted and (iii) Customer provides information reasonably requested by IronPort including, but not limited to, site location(s), contract number, and Product/Service requested.

3. **Orders.** Customer shall, upon and subject to credit approval by IronPort, purchase Services by issuing a Purchase Order. Each Purchase Order must be signed, if requested by IronPort, or (in the case of electronic transmission) sent, by an authorized representative, indicating the specific Services, quantity, price, total purchase price, bill to address, tax exempt certifications, if applicable, contract reference if any, and any other special instructions. No contingency contained on any Purchase Order shall be binding upon IronPort. 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 IronPort, and any such additional or conflicting terms are deemed rejected by IronPort.

4. **Pricing.** Prices for Services shall be (a) those specified in IronPort's then current Price List less any applicable then current discount at the time of acceptance of the Purchase Order by IronPort, or (b) those set forth in a written price quotation submitted by IronPort. All stated prices are exclusive of any taxes, fees and duties or other amounts. Any taxes related to Services purchased pursuant to this Agreement shall be paid by Customer or Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible. IronPort reserves the right to gross up any Service fee in the event a withholding prevents IronPort from receiving the amount of the Price List less the applicable discount.

5. **Payment.** Upon and subject to credit approval by IronPort, payment terms shall be net thirty (30) days from the date of invoice. Unless otherwise agreed by IronPort, all payments shall be made in the currency used by the IronPort entity with which Customer has placed its Purchase Order. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of

~~(a) ten (10) per cent per annum, or (b) the maximum rate permitted by law, whichever is less.~~

6. **3. Invoicing.** Fees for Services, other than those for which a SOW is required, shall be invoiced in advance of delivery of Services. The timing of invoices for Services provided pursuant to a SOW shall be set forth in the respective SOW.

7. **4. Term and Termination.**

~~(a) The term of this Agreement shall commence on the Effective Date and shall continue for a period of one year. Such term will be renewed automatically for successive one year terms unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.~~

(b) (a) The term of the Services shall commence on the date set forth on the Purchase Order, which may be up to sixty (60) days following the date of Purchase Order acceptance by IronPort. Upon the expiration of the initial Services term, the Services shall be renewed automatically for successive one year terms provided that the start date for the renewal term occurs prior to the termination or expiration of the WSCA Master Agreement, unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.

~~(c)~~(b) The term of each SOW, if any, shall be stated in the SOW.

~~(d) This Agreement and the Services or SOW may be terminated immediately by either party upon written notice:~~

- ~~(i) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching party if the breaching party fails to cure such breach within such period.~~
- ~~(ii) if (a) the other party ceases to carry on business as a going concern; or (b) the other party becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation; or (c) a receiver or similar officer is appointed with respect to the whole or a substantial part of the other party's assets; or (d) an event similar to any of the foregoing occurs under~~

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~~applicable law with respect to the other party.~~

~~(iii) if the other party assigns or transfers any of the rights or responsibilities granted under this Agreement or SOW in breach of Section~~

~~(ec) If Services undisputed fees are not paid when due and payment has not been received within thirty (30) days after notice from IronPort of such past due payment, IronPort may withhold the provision of Services until all amounts past due are paid in full, and/or terminate immediately this Agreement, the Services and SOW.~~

~~(fd) IronPort reserves the right to make changes to the scope and content of the Services or part thereof, including terminating the availability of a given Service at any time upon ninety (90) days prior notice. Such changes will become effective upon renewal of the affected Services and SOWs. If Customer does not agree to a change of scope or content, Customer may terminate any Services or SOW by notifying IronPort at least sixty (60) days prior to the expiration of the then current one year term of the Services or SOW. In such case, IronPort shall continue to provide Services until the next expiration date (see Section 7(b), above) of the affected Services or SOW.~~

~~(e) (g) In the event that, following termination or expiration of this Agreement, Customer places Purchase Orders and IronPort accepts such Purchase Orders, then any such Purchase Orders shall be governed by the terms and conditions of this Agreement notwithstanding the earlier expiration or termination of this Agreement; provided, however, that acceptance by IronPort of any such Purchase Order will not be considered to be an extension of the term of the Agreement nor a renewal thereof. The Services and any SOW hereunder, to the extent the work performed is executory on the date of termination, shall terminate immediately upon termination of the Agreement, unless otherwise agreed by IronPort.~~

~~(ef) Upon termination of the Agreement, any Services or SOWs, Customer shall pay IronPort for all work performed under the affected Purchase Order or SOWs up to the effective date of termination at the agreed upon prices, fees and expense reimbursement rates.~~

#### ~~8. Confidentiality- Customer~~

~~and IronPort 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, IronPort shall be authorized to disclose Customer's Confidential Information to contractors or employees of an IronPort entity or Affiliate 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 or expiration at any time and for any reason of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure. For the purposes of this Section 8, an "Affiliate" is an entity controlling, controlled by or under common control with IronPort.~~

~~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.~~

#### ~~95. Warranty.~~

~~95.1 ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, IRONPORT HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE~~

INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT IRONPORT'S OPTION, RE-PERFORMANCE OF THE SERVICES; OR TERMINATION OF THIS AGREEMENT OR SOW AND RETURN OF THE PORTION OF THE SERVICE FEES PAID TO IRONPORT BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES.

**9.2 GENERAL DISCLAIMER FOR ALL SERVICES.**

ANY WARRANTIES AND RELATED REMEDIES IN THIS SECTION 9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 9 SHALL APPLY EVEN IF THE EXPRESS WARRANTIES AND LIMITED REMEDIES SET FORTH IN THIS SECTION 9 FAIL OF THEIR ESSENTIAL PURPOSE. IN ANY EVENT, THE WARRANTIES PROVIDED UNDER THIS AGREEMENT ARE SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

**9.3** BECAUSE OF THE CONTINUOUS EVOLUTION OF THE SOPHISTICATION OF NETWORK THREATS AND INFRASTRUCTURE TECHNOLOGIES, IRONPORT DOES NOT MAKE, AND IT IS ACKNOWLEDGED THAT IRONPORT CANNOT MAKE ANY WARRANTY OR REPRESENTATION THAT ANY SYSTEM ATTACK OR IMPACTING INCIDENT WILL BE DETECTED OR PREVENTED.

**9.4** CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT DESIGNED OR INTENDED BY IRONPORT FOR USE OR RESALE IN, OR FOR INCORPORATION INTO PRODUCTS OR SERVICES USED IN HIGH RISK ACTIVITIES. IRONPORT SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND WITH RESPECT TO THE USE OF THE SERVICES IN CONNECTION WITH ANY HIGH RISK ACTIVITY.

**8. 6.Limitation of Liability and Consequential Damages Waiver.**

ALL LIABILITY OF IRONPORT, 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 IRONPORT FOR SERVICES UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY OR (II) THE AMOUNT OF FEES EQUAL TO THE UNEXPIRED REMAINDER OF THE PRE-PAID SERVICE TERM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

SUBJECT TO CUSTOMER'S BREACH OF SECTION (LICENSE), 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, 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.

**9. 7.Licenses.** Subject to Customer's compliance with the terms of this Agreement, any applicable AS Service Description or SOW, and the End User Agreement, attached to this Agreement, IronPort grants to Customer a worldwide, non-exclusive and non-transferable license to use, for Customer's internal business use only: (i) the Services; (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, IronPort grants to Customer a right to modify and create derivative works of any Scripts provided by IronPort to Customer pursuant to this Agreement, solely for Customer's internal business use. These license grants do not include the right to sublicense; provided that Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials solely on Customer's behalf for Customer's benefit, provided that Customer ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of IronPort's rights in such Licensed Materials as are specified in this Agreement.

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Nothing in this Agreement, any AS Service Description or any SOW shall alter or affect the Intellectual Property rights and/or licenses provided with any IronPort Products. The terms and conditions provided with the Services ("End User Agreement"), are hereby incorporated into this Agreement by this reference. To the extent there is a conflict between the terms of the End User Agreement attached to this Agreement and the remaining body of this Agreement, the terms of the End User Agreement shall apply, unless explicitly stated otherwise in the remaining

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body of this Agreement. The provisions in this Section apply only to those Services and Deliverables and other Intellectual Property provided by IronPort to Customer.

Except as otherwise expressly set forth in this Agreement or an applicable SOW, Customer shall not (and shall not permit a third party to): make error corrections or derivative works of, or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Deliverable, Data Collection Tool or the Services to human-readable form; or transfer, sublicense, rent, lease, distribute, or sell, any Services, Deliverables or Data Collection Tools. Customer agrees that it receives no implied licenses under this Agreement, and all rights not expressly granted herein are reserved to IronPort.

Customer hereby grants to IronPort a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback (as defined below) to use and incorporate Customer Feedback into any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute and create derivative works of such Customer Feedback for any and all purposes whatsoever, and Customer acknowledges and agrees that it will obtain no rights in or to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology as a result of IronPort's use of any such Customer Feedback. For purposes of this Agreement, "Customer Feedback" means all oral or written communications regarding improvements or changes to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or IronPort Pre-Existing Technology that Customer provides to IronPort.

#### 10. B. Customer Responsibilities.

In performing the Services, IronPort may instruct the Customer to perform certain tasks or checks relating to Customer's Network. Customer shall, at its expense, perform all such checks and tests. Customer will also provide IronPort, or its authorized representative, reasonable and free access to Customer's networking equipment. Customer shall not be required to furnish specialized equipment or know-how. Customer agrees to pay IronPort, at IronPort's then-current discounted contract rates, plus any reasonable actual out-of-pocket expenses, for any rework or additional work resulting from modification of the Services requested by Customer (and accepted by IronPort) or any act or omission of Customer, including providing inaccurate information to IronPort. IronPort shall seek Customer's approval in advance of incurring such costs if it knows costs will be incurred as a result of such act or omission of Customer.

Customer is responsible for obtaining all approvals required by any third parties in order for IronPort to

perform any Service under this Agreement. IronPort shall not be in default of this Agreement to the extent it cannot perform the Services either because such approvals have not been obtained or any third party otherwise prevents IronPort from performing such Services.

Customer agrees that it shall not resell the Product and/or Services or create or offer derivative versions of the Services either directly or through a third party.

CUSTOMER ASSUMES FULL RESPONSIBILITY FOR THE CONTROL AND USE OF THE DATA CONTAINED IN ANY REPORTS PROVIDED BY IRONPORT HEREUNDER. CUSTOMER ACKNOWLEDGES THE POTENTIAL PRIVACY AND OTHER ISSUES ASSOCIATED WITH THE COLLECTION AND USE OF THIS DATA.

CUSTOMER ASSUMES FULL RESPONSIBILITY TO BACK-UP AND/OR OTHERWISE PROTECT ALL DATA AGAINST LOSS, DAMAGE, OR DESTRUCTION. CUSTOMER ACKNOWLEDGES THAT IT HAS BEEN ADVISED TO BACK-UP AND/OR OTHERWISE PROTECT ALL DATA AGAINST LOSS, DAMAGE OR DESTRUCTION.

THE FAILURE OF CUSTOMER TO COMPLY WITH THIS SECTION 10-8 MAY BE DEEMED A MATERIAL BREACH OF THIS AGREEMENT.

11. 9. Ownership. Each party will retain the exclusive ownership of all its pre-existing Intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to commencement of any Services hereunder, or that are otherwise developed by or for such party outside the scope of this Agreement ("Pre-Existing Technology").

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Except as otherwise expressly set forth in this Agreement or an applicable SOW, IronPort owns and will continue to own all right, title and interest in and to the Hardware, 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 IronPort (or a third party acting on IronPort'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, "IronPort Intellectual Property").

As between Customer and IronPort, Customer shall at all times retain 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 IronPort Intellectual Property. Third Party Products shall at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

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

**13. Applicable Law and Jurisdiction.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal Courts of California shall have exclusive jurisdiction over any claim arising under this Agreement. Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.

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

**14. Export Control.** Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of IronPort Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses.

**15. Assignment.** Neither party may assign or delegate its rights or obligations 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) either party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to its parent or majority owned subsidiary company of sufficient net worth to meet any potential

liability under this Agreement, and (b) IronPort may, without Customer's consent, assign the right to receive any amount due.

**16. Subcontracting.** IronPort reserves the right to subcontract Services to a third party organization to provide Services to Customer. Any such subcontract shall not relieve IronPort of any of its obligations under this Agreement.

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**17. 10. Inventory Review.** From time-to-time, IronPort may perform an inventory review of Customer's infrastructure. IronPort will charge a Service fee if it finds that unauthorized Services are being provided. This Service fee includes amounts which should have been paid, interest, attorneys' and audit fees. IronPort requires that Customer take all necessary action (for example, disabling passwords) to ensure that any former employees and contractors do not access or use the Service.

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**18. Notices.** All notices required or permitted under this Agreement will be in writing and will be deemed given one day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2 day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the cover sheet of this Agreement or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph. Notwithstanding the above, notices regarding general changes in pricing, policies or programs may also be by posting on IronPort.com or by e-mail or fax.

**19. 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.

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**20. 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.

**21. 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.~~

~~22. **Attorneys' Fees.** 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 expiration or termination and shall not be merged into any such judgment.~~

~~23. **No Agency.** This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of this Agreement. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.~~

~~24. **11. Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "Counterpart Image") shall be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. In the event that a party delivers a Counterpart Image in place of an originally-executed counterpart, such party shall retain the originally-executed counterpart in its files for at least the duration of the Term hereof.~~

~~25. **12. Headings.** Headings of sections have been added solely for convenience of reference and shall not be deemed part of this Agreement.~~

~~26. **13. Survival.** Sections set forth directly herein or incorporated from the WSCA Master Agreement, including: (Payment), (Term and Termination), (Confidentiality), (Warranty), (Limitation of Liability and Consequential Damages Waiver), (License), 13 (Ownership), 14 (Force Majeure), 15 (Applicable Law and Jurisdiction), 16 (Export Control), 19 (Inventory Review), 20 (Notices), 21 (Entire Agreement), 22 (No Waiver), 23 (Severability), 24 (Attorneys' Fees), 25 (No Agency), 28 (Survival), the Glossary of Terms and the Services-Not-~~

Covered exhibits shall survive the termination or expiration of this Agreement.

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**EXHIBIT A**  
**GLOSSARY OF TERMS**



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

**Advanced Services** means the Services set forth in the AS Service Description(s) found at and/or SOW(s) selected by the Customer. Advanced Services does not include IronPort's core maintenance services, nor does it apply to the purchase, support or maintenance of any Products.

**Advanced Services Engineer** means the IronPort engineer appointed to be the main point of contact for a Customer purchasing Advanced Services.

**AS Service Descriptions** mean the description of the Advanced Services available from IronPort, which are attached hereto.

**Authorized Channel** means a system integrator, distributor or reseller authorized by IronPort to sell Services.

**Business Days** means the generally accepted days of operation per week within the relevant region where the Services shall be performed, excluding local holidays as observed by IronPort.

**IronPort.com** () is the IronPort Website for its suite of online services and information.

**Confidential Information** means proprietary and confidential Information received by IronPort or Customer from the other party 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 IronPort, any information posted on IronPort.com.

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

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

**Depot Time** or **Local Time** means Central European Time for Services provided in Europe-Middle-East and Africa, Australia's Eastern Standard Time for Services provided in Australia, Japan's Standard Time for Services provided in Japan, and Pacific Standard Time for Services provided in all other locations.

**Deliverable(s)** means, with respect to each AS Service Description and/or SOW, the items to be delivered by IronPort 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.

**Direct Purchases** means purchases of Services by Customer directly from IronPort.

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

**Event** means notification by Customer of its performance of a planned Network Hardware, Software, or configuration change.

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

**Four-hour Response** means:

- (i) For Advance Replacement Service, the four-hour time period commences upon the IronPort problem diagnosis and determination that a field replacement unit (FRU) is required and ends when the FRU is delivered onsite.

- (ii) For onsite service, the four-hour time period commences upon the IronPort problem diagnosis and determination that remedial onsite service is required and ends when IronPort personnel arrive onsite.

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

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

**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).

**Level 1** means support that is defined as having the necessary technical staff (IronPort or IronPort-authorized Reseller) with appropriate skill, perform installations, Remedial Hardware Maintenance, and basic Hardware and Software configuration on IronPort Products.

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

**Local Time** means local time on Business Days.

**Maintenance Release** means an incremental Software release that provides maintenance fixes and may provide additional Software functions. IronPort 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. IronPort designates Major Releases as a change in the ones digit of the Software version number [(x).x.x].

**Minor Release** means an incremental release of Software that provides maintenance fixes and additional Software functions. IronPort 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 IronPort supported Hardware and Software that is implemented, operated, and supported by Customer from a single security operations center (SOC).

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

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

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

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

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

**RMA** means Return Material Authorization.

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

**Services** means one or more of the services options selected by the Customer in its Purchase Order and described at:

**Services Descriptions** mean the detailed descriptions of the Services purchased by Customer which are incorporated in the MSA by reference.

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

**Standard Business Hours** means (i) 8:00 AM to 5:00 PM, Depot time, on Business Days for replacement of failed Products and (ii) 8:00 AM to 5:00 PM, Local Time at location, on Business Days for case handling of calls.

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

**Technical Support Services** means Services that provide both essential proactive and reactive operation and maintenance support Services identified as Technical Support Services at .

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

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

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

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

**Update** means IronPort 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.

**EXHIBIT B**

**CISCO IRONPORT SEVERITY AND ESCALATION GUIDELINES**

Customer shall assign a severity to all problems submitted to IronPort.

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

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

**Severity 3** means operational performance of the Network is impaired, although most business operations remain functional. Customer and IronPort both are willing to commit resources during Standard Business Hours to restore service to satisfactory levels.

**Severity 4** means information is required on Application Software capabilities, installation, or configuration. There is little or no impact to Customer's business operation. Customer and IronPort both are willing to provide resources during Standard Business Hours to provide information or assistance as requested.

If you do not believe that adequate progress is being made or that the quality of IronPort service is satisfactory, we encourage you to escalate the problem to the appropriate level of management by asking for the TAC duty manager.

**Cisco IronPort Escalation Guideline**

<b>Elapsed Time*</b>	<b>Severity 1</b>	<b>Severity 2</b>	<b>Severity 3</b>	<b>Severity 4</b>
1 hour	Customer Engineering Manager			
4 hours	Technical Support Director	Customer Engineering Manager		
24 hours	Vice President, Customer Advocacy	Technical Support Director		
48 hours	President/CEO	Vice President, Customer Advocacy		
72 hours			Customer Engineering Manager	
96 hours		President/CEO	Technical Support Director	Customer Engineering Manager

\* Severity 1 escalation times are measured in calendar hours—24 hours per day, 7 days per week. Severity 2, 3, and 4 escalation times correspond with Standard Business Hours.

**EXHIBIT C**  
**SERVICES NOT COVERED**

Services that are not expressly set forth in the applicable Service Description or Statement of Work document are not covered under such Service Description or Statement of Work, including, without limitation, the following:

1. Services are only provided for generally available Products and Software releases/versions, unless agreed otherwise.
2. Any customization of, or labor to install, Software and Hardware (including installation of Updates).
3. Furnishing of supplies, accessories or the replacement of expendable parts (e.g., cables, blower assemblies, power cords, and rack mounting kits).
4. Electrical or site work external to the Products.
5. Any expenses incurred to visit End User's location, except as required during escalation of problems by IronPort.
6. Services performed at domestic residences.
7. Support or replacement of Product that is altered, modified, mishandled, destroyed or damaged by one or more of the following: (a) natural causes; (b) environmental failures; (c) your failure to take any required actions; (d) a negligent or willful act or omission by you or use by you other than as specified in the applicable IronPort-supplied documentation; or (e) an act or omission of a third party.
8. Services or software to resolve Software or Hardware problems resulting from third party product or causes beyond IronPort's control or failure to perform your responsibilities set out in this document.
9. Services for non-IronPort Products used in connection with IronPort Products and/or Services.
10. Any Hardware or third party product upgrade required to run new or updated Software.
11. Erasure or other removal of any customer or third party data on Products (or parts thereof) returned, repaired or otherwise handled by IronPort.
12. Additional Services are provided at the then-current time and materials rates.
13. Except as otherwise agreed, Software entitlement, including media, documentation, binary code, source code or access in electronic or other form is not provided. In addition, except as otherwise provided, no right, use or license to our Software is granted and you acknowledge and agree that you obtain no such rights.

The non-entitlement policies posted at <http://www.IronPort.com/go/warranty> are hereby incorporated into this Agreement by this reference.

Comment [IT1]: OPEN: Get the content link here.

Capitalized terms are defined in the Glossary of Terms, or may be as set forth in the applicable Service Description or Statement of Work.

**Exhibit D**  
**Product Description**

Capitalized terms used in this Exhibit D, unless otherwise defined herein, have the meanings ascribed to them in the Agreement.

**Products Table**

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**Description of Product and Services**

Customer will receive the Cisco IronPort Hybrid Hosted Email Service for the number of users set forth on the Products Table set forth above.

Cisco IronPort Hybrid Hosted Email Security includes the following two components

- o Hosted Email Security - delivered through hardware and software deployed in Cisco data centers as set forth in Exhibit E
- o On-Premise Email Security – delivered through Cisco IronPort appliances and software deployed on-site at customer’s premises or in customer data center as set forth in Exhibit F

The Hosted Email Security component includes

1. Hardware infrastructure powered by Cisco IronPort technology
2. 24x7 Monitoring, Management and Support

The On-Premise Email Security component includes

1. Cisco IronPort email security appliances
2. 24x7 Support for the Cisco IronPort appliances and software

Customer may activate (provided applicable fees are paid) the Cisco IronPort software listed below:

1. IronPort Anti-Spam Software
2. IronPort Virus Outbreak Filters
3. Sophos Anti-Virus Software
4. McAfee Anti-Virus Software
5. IronPort PXE Encryption Software

**Order and Fulfillment**

Customer may purchase the Cisco IronPort Hybrid Hosted Email Service for its own internal use either directly or through an authorized reseller of Cisco IronPort products.

**Customer Responsibilities**

Customer:

1. is responsible for using reasonable efforts to resolve internally any support questions prior to contacting Cisco IronPort;
2. is responsible for reporting any and all Errors promptly in writing in English;
3. is responsible for providing sufficient information to Cisco IronPort to enable Cisco IronPort to duplicate the circumstances indicating a reported Software defect or Error;
4. is responsible for promptly incorporate the bug fixes, patches, updates, upgrades, releases and new versions provided hereunder (On-Premise Email Security component only);

5. is responsible for providing technical information as may be required by Cisco IronPort Systems Engineers or Cisco Security Analysts, including but not limited to IP addresses for Customer's existing solution;
6. is responsible for implementing and using strong passwords for accessing Cisco IronPort dedicated infrastructure and the Cisco IronPort Hybrid Hosted Email Security portal;

*The following are common guidelines for choosing strong passwords. These are designed to make passwords less easily discovered by intelligent guessing:*

- *Include numbers, symbols, upper and lowercase letters in passwords*
- *Password length should be around 12 to 14 characters*
- *Avoid any password based on repetition, dictionary words, letter or number sequences, usernames, relative or pet names, or biographical information (e.g., dates, ID numbers, ancestors names or dates...)*

7. is responsible for any catastrophic security events that result from any unauthorized configuration of the Cisco IronPort Hybrid Hosted Email Service components by the Customer's personnel. These include, but are not limited to, configuring the Hybrid Hosted Email Service components in a manner not prescribed in the Documentation, creating an open relay, changing the network configuration set by Cisco IronPort, shutting down the dedicated infrastructure, etc;

8. or Customer designated personnel must not change the password for Cisco IronPort support services or delete the Cisco support user ID;

9. must not use the Cisco IronPort Hybrid Hosted Email Service to send spam, viruses or mal-ware;

10. agrees and acknowledges that, during the term of this Agreement, Cisco IronPort may obtain information regarding Customer's email communication and Customer agrees that, as a condition to entering into this Agreement and Cisco IronPort's commitment to providing the Hybrid Hosted Email Service, Cisco IronPort may use statistical data generated regarding Customer's email, so long as the source or content of the emails are not being disclosed.

11. agrees and acknowledges that Cisco IronPort reserves the right to shut down the Cisco IronPort Hybrid Hosted Email Service in the event that the Customer materially breaches the Agreement or does not comply with Customer's obligations set forth in this section entitled, "Customer Obligations".

#### **Ownership**

Cisco IronPort and/or its parent company will retain ownership, as applicable, of the following hardware used as part of providing Cisco IronPort Hybrid Hosted Email Security service:

1. Hardware infrastructure used in the Cisco IronPort data center as part of the Hosted Email Security component of the Cisco IronPort Hybrid Hosted Email Security
2. Cisco IronPort appliances provided as part of the On-Premise Security component of the Cisco IronPort Hybrid Hosted Email Security
3. If Customer already possesses title to Cisco IronPort appliances, then it shall retain title to such existing Cisco IronPort appliances.

#### **Product Support and Maintenance**

As long as Customer is current on all applicable fees, Cisco IronPort will:

- (i) Provide the services set forth in the Service Description and the Support and Maintenance Description set forth in Exhibit E and Exhibit F, respectively.
- (ii) Provide all software patches, updates and releases commercially released by Cisco IronPort;
- (iii) Resolve technical problems identified within Cisco IronPort's products. Cisco IronPort does not provide technical support for any third-party hardware or software not purchased and/or authorized by Cisco IronPort;
- (iv) Provide remote diagnostics and analysis of your dedicated infrastructure;

- (v) Back-up the Customer's configuration. (Hosted Email Security Component Only) \*
- (vi) Provide 24 x 7 access to all of our Documentation and our Knowledge Base; and
- (vii) Provide 24 x 7 access to Cisco Remote Management Services for Cisco IronPort Hybrid Hosted Email Service.

\*Any passwords stored in the configuration will be stored in text format.

### **Capacity Assurance**

A. As long as Customer is current on all applicable fees, Cisco IronPort will, in its sole and reasonable discretion, provide additional capacity to handle an increase in spam volumes and inbound email for \_\_\_\_\_ number of users. The capacity assurance spans both the Hosted Email Security component and on-premise component of the Cisco IronPort Hybrid Hosted Email Security.

*a. Hosted Email Security component*

Capacity assurance for the hosted component will include capacity to handle an increase in spam volumes and inbound email.

*b. On-Premises component*

Capacity assurance for the on-premise component will include capacity required to handle an increase in user generated outbound mail volume as well as legitimate inbound email volumes.

B. Exceptions that apply to both the hosted and on-premise components include

- o Capacity requirements placed on the system due to misconfigured, ill-formed or performance intensive activities that include but are not limited to body-scanning, content dictionaries, high number of TLS connections, etc.
- o Capacity needs placed on the system due to new requirements placed on the system due to a changing regulatory scheme or business environment.
- o Capacity needs placed on the system from non-users. This includes but is not limited to marketing communications, customer's customers, email generating program or entity, etc.
- o An increase in email volume from marketing campaigns and other events that are not part of the Customer's day-to-day operations.

Cisco IronPort will use its commercially reasonable efforts to provide capacity for events that were unforeseen by the Customer.

### **Scheduled Maintenance (Hosted Email Security Component Only)**

From time-to-time, Cisco IronPort performs scheduled maintenance, to update the servers (Cisco IronPort and third-party servers at the datacenter(s)) and software that are part of the Cisco IronPort Hybrid Hosted Email Service. Cisco IronPort will make all reasonable attempts to: (i) notify Customer at least 48 hours in advance of any planned downtime or scheduled maintenance; and (ii) perform scheduled maintenance is performed 6:00 pm to 10:00 pm PST every Thursday. Notwithstanding the foregoing, Customer acknowledges that Cisco IronPort may, in certain situations, need to perform critical maintenance on less than 48 hour advance notice.



**Exhibit E**  
**Service Description**

The Service Description is available at the following link:  
[http://www.cisco.com/legal/Cisco\\_IronPort\\_Hosted\\_Email\\_Security.pdf](http://www.cisco.com/legal/Cisco_IronPort_Hosted_Email_Security.pdf)

**Exhibit F**  
**On-Premises Appliance Platinum Support Description**

Cisco IronPort Hybrid Hosted Email Security

## Platinum Support for On-Premise Appliances

### OVERVIEW

The Platinum Support Program for Cisco IronPort Hybrid Hosted Email Security offers a comprehensive array of support services to assist customers with the administration and maintenance of their on-premise Cisco IronPort appliances. This program includes 24 x 7 access to Customer Support Engineers through the Cisco Remote Operations Services (ROS) Service Desk and access to our online ROS Web Portal complete with its expansive knowledge base, the latest product documentation, release notes, and ticket management tools. The Platinum Support Program for Hybrid Hosted Email Security provides the benefit of a 1 hour response time and a 4 hour mean time to complete (MTTC) for Priority 1 support requests.

### HYBRID HOSTED ON-PREM SUPPORT FEATURES

SUPPORT REQUESTS	Phone	24 X 7
	US Toll Free	+1.800.234.9034
	ROS Web Portal	24 X 7
	URL	<a href="https://ros.cisco.com/portal">https://ros.cisco.com/portal</a>

### TECHNICAL SUPPORT FOR ON-PREMISE APPLIANCES

Response Times	1 Hour
Mean Time to Complete (MTTC)	Priority Level 1: <4 Hours
	Priority Level 2: 24 Hours
	Priority Level 3: 72 Hours

### ON-PREMISE HARDWARE AND SOFTWARE SUPPORT

**Software Upgrade Notifications** We will notify you of periodic system modifications and software upgrades that apply to your specific on-premise systems.

**Field Upgrades** You can upgrade your on-premise appliances to the most recent software release at your convenience, by following the easy-to-use instructions in our upgrade notifications.\*

**Remote Diagnostics** Upon your request your ticket could be escalated to a Cisco IronPort specialist who can perform remote diagnostics and analysis of your on-premise appliances.

**Hardware Support** In the unlikely event of an on-premise hardware malfunction, we will provide field hot-swappable replacement parts or units as well as installation instructions, as required by the nature of the issue.\*\*

*\*Some restrictions may apply.*

*\*\*Our shipments are scheduled to arrive at your site the next business day by 10:30 AM local time. Delivery schedule may vary for international shipments.*

### ONLINE RESOURCES

**Documentation** 24 X 7 access to documentation posted in our online ROS Web Portal allows you to become familiar with our products and support at your convenience. Documentation includes product information and manuals.

**Knowledge Base** 24 X 7 access to our knowledge base in our online ROS Web Portal allows you to research common technical issues at your convenience.

**Ticket Management 24 X 7** access to support in our online ROS Web Portal allows you to open new service request tickets as well as update and view recent tickets.

**DETAILS**

**GENERAL SUPPORT TERMS**

- As long as customer is current on all applicable fees, Cisco IronPort Hybrid Hosted Email Security provides a subscription to software patches, updates, releases and new versions commercially released by Cisco IronPort at no charge that correspond to the currently shipped version of the on-premise products purchased.
- Ticket categorization, priority assignment, and escalation and tracking will be handled as all tickets received from customers with active support agreements are handled, which is consistent with Cisco ROS standard categorization, priority assignment, escalation and tracking procedures.

**SCOPE OF SUPPORT**

The Platinum Support Program for Cisco IronPort Hybrid Hosted Email Security specifically supports resolution of technical problems identified within Cisco IronPort’s products at customer premises. This support program does not provide technical support for third-party hardware. This support program will, however, provide support for Sophos Anti-Virus software included with the Hybrid Hosted platform.

**ON-PREMISE SUPPORT TICKET PROCESSES**

Cisco IronPort is dedicated to providing a superior Customer Support experience. Our ticket and escalation processes enable us to deliver an unforgettable service experience to all of our customers through a systematic approach. We leverage ticket priority combined with Service Level Objectives (SLO) and escalation process to ensure effective problem resolution. These components are described below.

**Ticket Priority Level Definitions**

Ticket priority level definitions are used to assist in the prioritization of handling Customer Support tickets. Below is the guide on the various priority levels.

Priority Level	Application/ Application Status	Impact on Business Operations	Issue Description
Priority 1: Critical	Down	Severe	Operation Stopped
Priority 2: High	Up	Significant	Operation Restricted
Priority 3: Medium	Up	Minor	Workaround available

**Service Level Objectives**

Cisco IronPort Hybrid Hosted Email Security support team follows service level objectives according to the priority of your Service Request ticket for the appliances deployed on the customer premise. Our SLOs provide a basis for timely responses.

SLO Name	SLO Detail	SLO Targets
Response Time	Time to respond to customer*	Priority 1 <1 Hour Priority 2 <4 Hours Priority 3 <1 Day
Mean Time to Complete (MTTC)	Complete Customer-initiated Service Requests within X hours	Priority 1 <4 Hours Priority 2 <1 Day Priority 3 <3 Days

*\* Customer is contacted by e-mail, web, or phone to gather additional information about the ticket and determine the necessary steps to reproduce the issue.*

**Escalation Process**

Cisco IronPort in collaboration with the Cisco ROS' Service Desk has a structured escalation process that ensures the appropriate support engineers are assigned to respond to tickets efficiently and effectively. Escalations will be primarily driven by elapsed time against Service Level Objectives (SLOs) ensuring effective routing of tickets to appropriate Cisco Security Operations Center (SOC) technical resources. Tickets will be escalated as needed by the Cisco SOC to Cisco IronPort Customer Support Engineers to ensure SLOs are met.

**Exhibit G**  
**Service Level Agreements**



**Uptime Service Level Agreement**

As long as Customer has paid all applicable fees, Cisco IronPort will, in addition to the Service Level Objectives and Processes set forth in the Service Description, provide the following:

A. The Cisco IronPort Hosted Email Service will accept connections on Port 25 and process email at least 99.999% over a trailing one-year period. Uptime is determined by dividing the total number of minutes the Service was processing email divided by the number of minutes in a one year period or 525,600 minutes. Downtime must exceed 30 seconds per occurrence before it is an infraction. An infraction is limited to a single incident, whereby separate downtime occurrences cannot be aggregated. Uptime is determined and validated by an industry-recognized 3<sup>rd</sup> party monitoring service that performs service-level checks from various locations on the global internet.

B. Exceptions

- o Excludes downtime resulting from Planned Downtime activities which include
  1. Hardware upgrades
  2. Customer requested or Cisco/IronPort initiated software upgrades
  3. Any customer specific activity including moves, facility upgrades, etc.
    - **“Planned Downtime”** is defined as the downtime that results from a scheduled maintenance period that was announced in advance (for activities like upgrades, updates, etc.) Cisco IronPort will make all reasonable attempts to: (i) notify Customer at least 24 hours in advance of any Planned Downtime and (ii) perform scheduled maintenance is performed 6:00 pm to 10:00 pm PST every Thursday. Notwithstanding the foregoing, Customer acknowledges that Cisco IronPort may, in certain situations, need to perform critical maintenance on less than 24 hour advance notice.
- o Excludes downtime resulting from hardware, software or other data center equipment or services not in the control of Cisco IronPort or within the scope of the Cisco IronPort Hosted Email Service
- o Does not include uptime of other Services, including CASE updates, AV updates from IronPort partners and the SenderBase service
- o Excludes any downtime resulting from hardware or software configuration changes made by the Customer
- o Excludes downtime resulting from Denial of Service attacks on the installed appliances or ancillary services like SenderBase, etc.
- o Excludes downtime resulting from any event contemplated in Section 14 of the Agreement (Force Majeure Event)

C. Remedy

If Customer experiences a downtime infraction (subject to the provisions set forth in Section(B), and Customer has fulfilled all of its obligations under the Agreement (including the obligations set forth in this Exhibit), then the Customer will be entitled to the applicable rebate (as set forth in the table below) as its sole and exclusive remedy:

Mailbox Count:	1000+	2000+	5000+	10000+	20000+
Actual Uptime < 99.999%	\$125	\$200	\$300	\$500	\$1,000

Customer may only make a total of two (2) claims of a downtime occurrence within a rolling three hundred sixty-five (365) day period. If Customer experiences three (3) or more downtime occurrences within a rolling three hundred sixty-five (365) day period, Cisco IronPort and Customer will come to a written agreement, within thirty (30) days of Customer providing notice of such occurrence, on the next course of action. If Customer experiences a downtime infraction more than five (5) times a year for a service and IronPort fails to provide a reasonable written plan of

permanent corrective action to customer within a 30 day time frame after the fifth occurrence, then customer shall have the right to cancel service at no cost or obligation and financial responsibility for any future payments.

D. Customer Responsibilities

- o Customer must provide notice within thirty (30) days of the downtime occurrence
- o Customer must provide timeframe details of the downtime occurrence, any correlated Cisco ROS ticket numbers, and, if available, pings and trace routes showing that the device was not available on the network
- o Customer must provide confirmation, if possible, that there were:
  1. No network failures at the customer site either internal or external at the time of the occurrence
  2. No Customer implemented changes that adversely affected the system availability or made the system to cause delays (excepting any changes requested by Cisco IronPort)
  3. No material delay in responding to warnings raised by Cisco IronPort generally, or specifically related to the incidence of downtime

Failure to comply with this Section (D) will result in a forfeit of Customer's right to the remedy set forth in Section (C) above.



**Anti-Spam Service Level Agreement**

As long as Customer has paid all applicable fees, Cisco IronPort will, in addition to the Service Level Objectives and Processes set forth in the Service Description, provide the following:

A. The Cisco IronPort Hosted Email Service will detect and stop at least 99% of all inbound Spam that is routed through the Service. The "*Spam Catch Rate*" is determined by dividing Caught Spam by the sum of the Caught Spam and the number of Missed Spam, during a trailing thirty (30) day period.

B. Exceptions

- o Marketing emails with opt-out provisions will not be counted in the missed spam calculation.
- o Messages that include sexually explicit, pornographic or inappropriate content will not be counted in the missed spam calculation.

C. Remedy

If Customer experiences a Spam Catch Rate equal to less than the amount set forth in Section (A) and subject to Section (B), and Customer has fulfilled all of its obligations under the Agreement (including the obligations set forth in this Exhibit), then the Customer will be entitled to the applicable rebate (as set forth in the table below) as its sole and exclusive remedy:

Mailbox Count	1,000+	2,000+	5,000+	10,000+	20,000+
Anti-Spam	\$500	\$1,000	\$2,000	\$3,000	\$5,000

Within any given three hundred sixty-five (365) day period, Customer may only make a total of two (2) claims that the Anti-Spam Service Level Agreement is not being met. If Customer experiences three (3) or more occurrences within a rolling three hundred sixty-five (365) day period, that the Anti-Spam Service Level Agreement is not being met, Cisco IronPort and Customer will come to a written agreement, within thirty (30) days of Customer providing notice of such occurrence, on the next course of action.

D. Customer Responsibilities

- o Customer must provide notice within thirty (30) days of the date the claim arises.
- o Customer must have SenderBase reputation filters enabled at default levels (blocking from -10 to -3) or more aggressive.
- o Customer must have the reputation messages per connection multiplier set to the default value (3).
- o Customer must have IronPort Anti-Spam block settings at the default value (90) or more aggressive.
- o Customer must have IronPort Anti-Spam quarantine enabled with settings at default (50) or more aggressive.
- o Customer must have SenderBase Network Participation enabled.
- o Customer must be able to provide copies of missed spam to Cisco IronPort upon request.
- o Customer must provide the domains covered by the service, the number of mailboxes and the incoming mail report for the last 30 days.

Failure to comply with this Section (D) will result in a forfeit of Customer's right to the remedy set forth in Section (C) above.



E. Definitions

***“Spam”*** is unsolicited or unauthorized bulk email (SMTP only) as mutually agreed upon by Customer and Cisco, and excludes unwanted marketing messages that include opt-out provisions.

***“Caught Spam”*** is Spam either quarantined; or categorized as a “threat message” in the User Interface.

***“Missed Spam”*** is Spam delivered to an end user’s inbox.



**False Positive Rate Service Level Agreement**

A. The Cisco IronPort Hosted Email Service will not categorize legitimate inbound email as Spam more than one time per one million messages processed. The *“False Positive Rate”* is determined by counting the number of non-Spam messages misclassified as Spam relative to the total attempted messages processed over a trailing thirty (30) day period, as set forth in the User Interface.

B. Exceptions

- o Email messages from legitimate senders whose IP addresses may be compromised due to an unforeseen event will not be counted towards the false positive rate. Cisco IronPort will make a determination in good faith based on its system logs, monitoring reports and configuration records for such email senders.
- o Marketing emails with opt-out provisions will not be counted towards the false positive rate.
- o Messages that include sexually explicit, pornographic or inappropriate content will not be counted towards the false positive rate.

C. Remedy

If Customer experiences a False Positive Rate greater than the rate set forth in Section (A) above and subject to Section (B) above, and Customer has fulfilled all of its obligations under the Agreement (including the obligations set forth in this Exhibit), then the Customer will be entitled to the applicable rebate (as set forth in the table below) as its sole and exclusive remedy:

Mailbox Count	1,000+	2,000+	5,000+	10,000+	20,000+
Anti-Spam	\$500	\$1,000	\$2,000	\$3,000	\$5,000

Within any given three hundred sixty-five (365) day period, Customer may only make a total of two (2) claims that the False Positive Rate Service Level Agreement is not being met. If Customer experiences three (3) or more occurrences within a rolling three hundred sixty-five (365) day period, that the False Positive Rate Service Level Agreement is not being met, Cisco IronPort and Customer will come to a written agreement, within thirty (30) days of Customer providing notice of such occurrence, on the next course of action.

D. Customer Responsibilities

- o Customer must provide notice within thirty (30) days of the date the claim arises.
- o Customer must have SenderBase reputation filters enabled at default levels (blocking from -10 to -3) or more conservative.
- o Customer must have the reputation messages per connection multiplier set to the default value (3).
- o Customer must have IronPort Anti-Spam block settings at the default value (90) or more conservative.
- o Customer must have IronPort Anti-Spam quarantine enabled with settings at default (50) or more conservative. Non-Spam that is quarantined counts as a false positive
- o Customer must have SenderBase Network Participation enabled.
- o Customer must provide copies of false positive messages to Cisco IronPort.
- o Customer must provide the domains covered by the service, the number of mailboxes and the incoming mail report for the last 30 days. Hybrid hosted customers must enable IronPort Anti-Spam at a minimum in the hosted layer and not on premise.

- o Customers must only enable IronPort Anti-Spam for spam scanning to qualify.

#### E. Definitions

*“Spam”* is unsolicited or unauthorized bulk email (SMTP only) as mutually agreed upon by Customer and Cisco, and excludes unwanted marketing messages that include opt-out provisions.

*“Caught Spam”* is Spam either quarantined; or categorized as a “threat message” in the User Interface.

*“Missed Spam”* is Spam delivered to an end user’s inbox.



**Virus Catch Rate Service Level Agreement**

A. The Cisco IronPort Hosted Email Service will detect and stop 100% of all Known Viruses that are routed through the Service. A *“Known Virus”* is defined solely by the provider of anti-virus software that is used for a specific message. Known Viruses will be detected and stopped within 30 minutes of when the anti-virus provider releases a signature for the platform.

B. Exceptions

- o Messages that contain a URL to a website hosting malware are not included.

C. Remedy

If Customer experiences a Virus Catch Rate less than the rate set forth in Section (A) above and subject to Section (B) above, and Customer has fulfilled all of its obligations under the Agreement (including the obligations set forth in this Exhibit), then the Customer will be entitled to the applicable rebate (as set forth in the table below) as its sole and exclusive remedy:

Mailbox Count	1,000+	2,000+	5,000+	10,000+	20,000+
Anti-Virus	\$400	\$750	\$1,000	\$2,000	\$3,000

Within any given three hundred sixty-five (365) day period, Customer may only make a total of two (2) claims that this Virus Catch Rate Service Level Agreement is not being met. If Customer experiences three (3) or more occurrences within a rolling three hundred sixty-five (365) day period, that this Virus Catch Rate Service Level Agreement is not being met, Cisco IronPort and Customer will come to a written agreement, within thirty (30) days of Customer providing notice of such occurrence, on the next course of action.

D. Customer Responsibilities

- o Customer must provide notice within thirty (30) days of the date the claim arises.
- o Customer must have SenderBase reputation filters enabled at default levels (blocking from -10 to -3) or more aggressive.
- o Customer must have SenderBase Network Participation enabled.
- o Customer must provide copies of all missed Virus-positive messages to Cisco IronPort in a password-protected attachment.
- o Customer must ensure that the message was scanned by the anti-virus engine (e.g. message did not exceed the maximum scanning size limit).
- o Customer must provide the domains covered by the service, the number of mailboxes and the incoming mail report for the last 30 days.

E. Definitions

*“Virus”* is a binary or executable code whose purpose is to gather information from the infected host, change or destroy data on the infected host, use inordinate system resources in the form of memory,

disk space, CPU cycles or network bandwidth on the infected host, use the infected host to replicate itself to other hosts, or provide control or access to any of the infected host's system resources. A virus does not include: (1) text messages that use fraudulent claims to deceive the customer, and/or prompt the customer to action, (2) a binary or executable code installed or run by the end user that gathers information for sales or marketing purposes, (3) a virus that may be detected and cleaned by other virus scanning products, or (4) an ineffective or inactive virus fragment.

**Exhibit #4**  
**IronPort Evaluation Agreement**

## IRONPORT EVALUATION AGREEMENT

This IronPort Evaluation Agreement (this "Agreement") is entered into as of \_\_\_\_\_ (the "Effective Date") by and between Cisco IronPort Systems, LLC, a Delaware Limited Liability Company with its principal place of business at 950 Elm Avenue, San Bruno, CA 94066 ("IronPort") and \_\_\_\_\_, with its principal place of business at: \_\_\_\_\_ ("Customer").

### 1. Evaluation.

a. Customer may use the Product(s) for evaluation purposes for a period of thirty (30) days from the receipt of the Product(s) (the "Evaluation Period"). Customer and IronPort may, upon mutual written agreement (including via email), extend the Evaluation Period.

b. Software contained in any of the Product(s) or otherwise provided by IronPort hereunder (the "Software") is only licensed to Customer for the term of the Evaluation Period for use in conjunction with the hardware with which it is supplied for the purposes of Customer's testing and evaluation. All right, title, and interest in and to the Software, including ownership of all intellectual property rights therein and thereto, shall remain at all times in IronPort and its licensors. Customer shall not make any copies of the Software.

c. Customer shall not alter, modify, decompile or reverse engineer the Product(s) or the Software in any manner.

d. As used herein, "Product(s)" means the IronPort product(s) listed on Exhibit A attached hereto, which is supplied to Customer hereunder for the purposes set forth herein at the location identified in Exhibit A attached hereto. Customer acknowledges that Product(s) delivered for evaluation purposes may be used and/or refurbished units.

2. **Assistance.** IronPort shall provide reasonable assistance to Customer with respect to the installation and use of the Product(s) during the Evaluation Period.

3. **Ownership.** Unless purchased by Customer, the Product(s) shall remain the exclusive property of IronPort and its licensors. Under no circumstances shall Customer sell, license, sublicense, distribute, assign or otherwise transfer to a third party or encumber the Product(s) without IronPort's prior written consent. Customer shall be responsible for any damage to or loss of the Product(s), excluding ordinary wear and tear.

4. **Term and Termination.** This Agreement shall commence on the Effective Date and shall terminate at the end of the Evaluation Period, unless earlier terminated as set forth herein. IronPort may, at its option, terminate this Agreement immediately if Customer (i) fails to comply with any terms and conditions of this Agreement or (ii) uses the Product(s) other than as authorized herein. As soon as practicable following any termination or expiration of this Agreement (and in no event more than ten (10) business days thereafter), Customer agrees to return to IronPort the Product(s) and all related materials and documentation, including without limitation all Confidential Information of IronPort. Sections 1(b), 1(c) and 3-8 shall survive termination or expiration of this Agreement.

5. **No Warranty.** THE PRODUCT(S) ARE PROVIDED "AS IS", AND IRONPORT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. **Limitation of Liability.** IN NO EVENT SHALL IRONPORT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT SHALL IRONPORT'S TOTAL LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHER LEGAL THEORY, EXCEED THE GREATER OF THE AMOUNT PAID BY CUSTOMER HEREUNDER OR FIVE HUNDRED DOLLARS (\$500). THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF IRONPORT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7. **Confidential Information.** IronPort and Customer each agree to retain in confidence all information disclosed by a party to the other party pursuant to this Agreement which is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential (the "Confidential Information"). Customer acknowledges and agrees that the Product(s) and all information provided to Customer in

accordance with this Agreement shall be IronPort's Confidential Information without the need for any marking. Each party agrees to: (a) strictly preserve and protect the confidentiality of the other party's Confidential Information; and (b) refrain from using the other party's Confidential Information except as contemplated herein. The provisions of this Section 7 shall survive the termination or expiration of this Agreement for a period of two (2) years.

~~8. Miscellaneous. The parties are independent contractors, and nothing in this Agreement is intended to or shall create any agency, partnership or joint venture relationship between them. This Agreement shall be governed by the laws of the State of California without reference to conflicts of laws principles. Customer may not assign this Agreement, or any of its rights or obligations hereunder, by operation of law or otherwise, without IronPort's prior written consent. The failure of either party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver by either party of any breach of this Agreement shall not be deemed a waiver of any subsequent breach of, the same or any other term of this Agreement. This Agreement constitutes the entire Agreement between IronPort and Customer with respect to the subject matter hereof and supersedes any and all other written or oral agreements existing between the parties hereto regarding the subject matter of this Agreement. This Agreement may not be modified without the prior written consent of both parties.~~

Wherefore, the parties have caused this Product and Services Sales Agreement to be executed effective as of the Effective Date.

CISCO IRONPORT SYSTEMS, LLC	CUSTOMER
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____



**EXHIBIT A**

Type of Product: \_\_\_\_\_

Evaluation Unit Shipping Address:

Company Name:	_____
Care Of:	_____
Address 1:	_____
Address 2:	_____
City, State:	_____
Zip Code:	_____
Country:	_____
Fax:	_____

<b>Technical Contact (Required)</b>	
Evaluator Name:	_____
E-mail Address:	_____
Phone number:	_____

Rapid Rails: Yes / No (Circle One)

If Yes, please specify type of Rack:

- 4-Post Square Hole
- 4-Post Round Hole
- 2-Post Round Hole
- Versa Rails

If No, is a Shelf Unit Required:  Yes /  No

When complete, please fax to:  
Cisco IronPort Systems, LLC  
Sales Operations  
650-989-7112

**Exhibit #5**  
**IronPort End User License Agreement (EULA)**

## CISCO IRONPORT SYSTEMS, LLC SOFTWARE LICENSE AGREEMENT

NOTICE TO ALL USERS: CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT ("AGREEMENT") FOR THE LICENSE OF THE SOFTWARE (AS DEFINED BELOW). BY CLICKING THE ACCEPT BUTTON OR ENTERING "Y" WHEN PROMPTED, YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY, COLLECTIVELY, THE "COMPANY") CONSENT TO BE BOUND BY AND BECOME A PARTY TO THE FOLLOWING AGREEMENT BETWEEN CISCO IRONPORT SYSTEMS LLC, A DELAWARE LIMITED LIABILITY COMPANY ("IRONPORT") AND COMPANY (COLLECTIVELY, THE "PARTIES"). BY CLICKING THE ACCEPT BUTTON OR ENTERING "Y" WHEN PROMPTED, YOU REPRESENT THAT (A) YOU ARE DULY AUTHORIZED TO REPRESENT YOUR COMPANY AND (B) YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT ON BEHALF OF YOUR COMPANY, AND AS SUCH, AN AGREEMENT IS THEN FORMED. IF YOU OR THE COMPANY YOU REPRESENT DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK THE CANCEL BUTTON OR ENTER "N" WHEN PROMPTED AND PROMPTLY (BUT NO LATER THAN THIRTY (30) DAYS OF THE DELIVERY DATE, AS DEFINED BELOW) NOTIFY IRONPORT, OR THE RESELLER FROM WHOM YOU RECEIVED THE SOFTWARE, FOR A FULL REFUND OF THE PRICE PAID FOR THE SOFTWARE.

### 1. DEFINITIONS

1.1 "Company Service" means the Company's email or internet services provided to End Users for the purposes of conducting Company's internal business.

1.2 "Documentation" means IronPort's standard end user guide documentation for the IronPort hardware containing the Software.

1.3 "Delivery Date" means the date the IronPort hardware containing the Software is delivered to Company.

1.4 "End User" means the employee, contractor or other agent authorized by Company to access to the Internet or use email services via the Company Service.

1.5 "Ordering Document" means the purchase agreement, evaluation agreement, beta, pre-release agreement or similar agreement between the Company and IronPort or the Company and an IronPort reseller, or the valid terms of any purchase order accepted by IronPort in connection therewith, containing the purchase terms for the Software license granted by this Agreement.

1.6 "Service(s)" means (i) the provision of the Software functionality, including Updates and Upgrades, and (ii) the provision of support by IronPort or its reseller, as the case may be.

1.7 "Software" means: (i) IronPort's proprietary software licensed by IronPort to Company along with IronPort's hardware products; (ii) any software provided by IronPort's third-party licensors that is licensed to Company or sublicensed by IronPort to Company to be implemented for use with IronPort's hardware products; (iii) any other IronPort software module(s) licensed by IronPort to Company along with IronPort's hardware products; and (iv) any and all Updates and Upgrades thereto.

1.8 "Updates" means minor updates, error corrections and bug fixes that do not add significant new functions to the Software, and that are released by IronPort or its third party licensors. Updates are designated by an increase to the Software's release number to the right of the decimal point (e.g., Software 1.0 to Software 1.1). The term Updates specifically excludes Upgrades or new software versions marketed and licensed by IronPort or its third party licensors as a separate product.

1.9 "Upgrade(s)" means revisions to the Software, which add new enhancements to existing functionality, if and when it is released by IronPort or its third party licensors, in their sole discretion. Upgrades are designated by an increase in the Software's release number, located to the left of the decimal point (e.g., Software 1.x to Software 2.0). In no event shall Upgrades include any new versions of the Software marketed and licensed by IronPort or its third party licensors as a separate product.

## 2. LICENSE GRANTS AND CONSENT TO TERMS OF DATA COLLECTION

2.1 License of Software. By using the Software and the Documentation, Company agrees to be bound by the terms of this Agreement, and so long as Company is in compliance with this Agreement, IronPort hereby grants

to Company a non-exclusive, non-sublicensable, non-transferable, worldwide license during the Term to use the Software only on IronPort's hardware products, solely in connection with the provision of the Company Service to End Users. The duration and scope of this license(s) is further defined in the Ordering Document. Except for the license rights granted herein, no right, title or interest in any Software is granted to the Company by IronPort, IronPort's resellers or their respective licensors. This license and any Services are co-terminus.

2.2 Consent and License to Use Data. Subject to Section 3 hereof, and subject to the IronPort Privacy Statement at <http://www.ironport.com/privacy.html>, as the same may be amended from time to time by IronPort with notice to Company, Company hereby consents and grants to IronPort a license to collect and use the data from the Company as described in the Documentation, as the same may be updated from time to time by IronPort ("Data"). To the extent that reports or statistics are generated using the Data, they shall be disclosed only in the aggregate and no End User identifying information may be surmised from the Data, including without limitation, user names, phone numbers, unobfuscated file names, email addresses, physical addresses and file content. Notwithstanding the foregoing, Company may terminate IronPort's right to collect and use Data at any time upon prior written or electronic notification, provided that the Software or components of the Software may not be available to Company if such right is terminated.

3. CONFIDENTIALITY. Each party agrees to hold in confidence all Confidential Information of the other party to the same extent that it protects its own similar Confidential Information (and in no event using less than a reasonable degree of care) and to use such Confidential Information only as permitted under this Agreement. For purposes of this Agreement "Confidential Information" means information of a party marked "Confidential" or information reasonably considered by the disclosing party to be of a proprietary or confidential nature; provided that the Data, the Software, information disclosed in design reviews and any pre-production releases of the Software provided by IronPort are expressly designated Confidential Information whether or not marked as such.

4. PROPRIETARY RIGHTS; OWNERSHIP. Title to and ownership of the Software and other materials and all associated Intellectual Property Rights (as defined below) related to the foregoing provided by IronPort or its reseller to Company will remain the exclusive property of IronPort and/or its superior licensors. Company and its employees and agents will not remove or alter any trademarks, or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software or other materials delivered to Company by IronPort or its reseller. Company will not modify, transfer, resell for profit, distribute, copy, enhance, adapt, translate, decompile, reverse engineer, disassemble, or otherwise determine, or attempt to derive source code for any Software or any internal data files generated by the Software or to create any derivative works based on the Software or the Documentation, and agrees not to permit or authorize anyone else to do so. Unless otherwise agreed in writing, any programs, inventions, concepts, documentation, specifications or other written or graphical materials and media created or developed by IronPort or its superior licensors during the course of its performance of this Agreement, or any related consulting or professional service agreements,

including all copyrights, database rights, patents, trade secrets, trademark, moral rights, or other intellectual property rights ("Intellectual Property Right(s)") associated with the performance of such work shall belong exclusively to IronPort or its superior licensors and shall, in no way be considered a work made for hire for Company within the meaning of Title 17 of the United States Code (Copyright Act of 1976).

## 5. LIMITED WARRANTY AND WARRANTY DISCLAIMERS

5.1 Limited Warranty. IronPort warrants to Company that the Software, when properly installed and properly used, will substantially conform to the specifications in the Documentation for a period of ninety (90) days

from the Delivery Date or the period set forth in the Ordering Document, whichever is longer ("Warranty Period"). FOR ANY BREACH OF THE WARRANTY CONTAINED IN THIS SECTION, COMPANY'S EXCLUSIVE REMEDY AND IRONPORT'S ENTIRE LIABILITY, WILL BE PROMPT CORRECTION OF ANY ERROR OR NONCONFORMITY, PROVIDED THAT THE NONCONFORMITY HAS BEEN REPORTED TO IRONPORT AND/OR ITS RESELLER BY COMPANY WITHIN THE WARRANTY PERIOD. THIS WARRANTY IS MADE SOLELY TO COMPANY AND IS NOT TRANSFERABLE TO ANY END USER OR OTHER THIRD PARTY. IronPort shall have no liability for breach of warranty under this Section or otherwise for breach of this Agreement if such breach arises directly or indirectly out of or in connection with the following: (i) any unauthorized, improper, incomplete or inadequate maintenance or calibration of the Software by Company or any third party; (ii) any third party hardware software, services or system(s); (iii) any unauthorized modification or alteration of the Software or Services; (iv) any unauthorized or improper use or operation of the Software or Company's failure to comply with any applicable environmental specification; or (v) a failure to install and/or use Updates, Upgrades, fixes or revisions provided by IronPort or its resellers from time to time.

5.2 WARRANTY DISCLAIMER. THE EXPRESS WARRANTIES SET FORTH IN SECTION 5.1 OF THIS AGREEMENT CONSTITUTE THE ONLY PERFORMANCE WARRANTIES WITH RESPECT TO THE SOFTWARE OR SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IRONPORT LICENSES THE SOFTWARE AND SERVICES HEREUNDER ON AN "AS IS" BASIS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, IRONPORT AND ITS SUPERIOR LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY (EITHER IN FACT OR BY OPERATION OF LAW), AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER IRONPORT NOR ITS THIRD PARTY LICENSORS WARRANT THAT THE SOFTWARE OR SERVICES (1) IS FREE FROM DEFECTS, ERRORS OR BUGS, (2) THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED, OR (3) THAT ANY RESULTS OR INFORMATION THAT IS OR MAY BE DERIVED FROM THE USE OF THE SOFTWARE WILL BE ACCURATE, COMPLETE, RELIABLE AND/OR SECURE.

6. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF BUSINESS, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF SUCH PARTY RECEIVED ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF IRONPORT ARISING UNDER ANY PROVISION OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT, OR OTHER LEGAL THEORY, EXCEED THE TOTAL AMOUNT PAID TO IRONPORT FOR THE SOFTWARE OR SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

7. **TERM AND TERMINATION.** The term of this Agreement shall be as set forth in the Ordering Document (the "Term"). If IronPort defaults in the performance of any material provision of this Agreement, then Company may terminate this Agreement upon thirty (30) days written notice if the default is not cured during such thirty (30) day period. If Company defaults in the performance of any material provision of this Agreement, IronPort may terminate this Agreement upon thirty (30) days written notice if the default is not cured during such thirty (30) day notice and without a refund. This Agreement may be terminated by one party immediately at any time, without notice, upon (i) the institution by or against the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of such party's debts, (ii) such other party making a general assignment for the benefit of creditors, or (iii) such other party's dissolution. The license granted in Section 2 will immediately terminate upon this Agreement's termination or expiration. Within thirty (30) calendar days after termination or expiration of this Agreement, Company will deliver to IronPort or its reseller or destroy all copies of the Software and any other materials or documentation provided to Company by IronPort or its reseller under this Agreement.

8. **U.S. GOVERNMENT RESTRICTED RIGHTS; EXPORT CONTROL.** The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. Company acknowledges that the Software and Documentation must be exported in accordance with U.S. Export Administration Regulations and diversion contrary to U.S. laws is prohibited. Company represents that neither the United States Bureau of Export Administration nor any other federal agency has suspended, revoked or denied Company export privileges. Company represents that Company will not use or transfer the Software for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license. Company acknowledges it is Company's ultimate responsibility to comply with any and all import and export restrictions, and other applicable laws, in the U.S. or elsewhere, and that IronPort or its reseller has no further responsibility after the initial sale to Company within the original country of sale.

9. **MISCELLANEOUS.** ~~This Agreement is governed by the laws of the United States and the State of California, without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of (i) any provision of any present or future law or regulation of the United States or any applicable law that applies to the subject hereof, and (ii) interruptions in the electrical supply, failure of the Internet, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such party. This Agreement and the Ordering Document set forth all rights for the user of the Software and is the entire agreement between the parties and supersedes any other communications with respect to the Software and Documentation. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of IronPort, except that IronPort may modify the IronPort Privacy Statement at any time, in its discretion, via notification to Company of such modification that will be posted at <http://www.ironport.com/privacy.html>. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by IronPort or a duly authorized representative of IronPort. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. The parties confirm that it is their wish that this Agreement has been written in the English language only.~~

10. IRONPORT CONTACT INFORMATION. If Company wants to contact IronPort for any reason, please write to CISCO IRONPORT SYSTEMS LLC, 950 Elm Avenue, San Bruno, California 94066, or call or fax us at tel: 650.989.6500 and fax:650.989.6543.

**Exhibit #6**  
**IronPort Product/Services Offering & Price Schedule**



**WSCA MASTER AGREEMENT**  
**Amendment #4**  
**IronPort List Price & WSCA Discount**

**IronPort List Price**

IronPort Products and Services sold under the WSCA Master Agreement, Amendment #4 are subject to the then-current list price for Government and Public Sector Academic customers set forth in the Cisco IronPort *North American Price Book* in effect at time of Order. ("IP List Price") Contractor shall maintain the IP Pricebook on Contractor's WSCA website during the Prime Contract term.

WSCA Government Purchasers

Public sector purchasers other than public sector k-12 or higher education academic users purchase at the IP list price for "Government" users.

WSCA Academic Purchasers

Public sector k-12 or higher education academic customers purchase at the IP list price for "Academic Users."

**IronPort Discount-off-List**

IP Orders under this Amendment #4 are subject to the following minimum price discounts off the applicable IP Price book list price applicable to the Customer (e.g., Government or Academic):

<u>IP OFFERING</u>	<u>DISCOUNT OFF LIST:</u>
<u>Product</u>	35%
o Bundles	
o Software	
o Security Services	
o Individual H/W & Accessories	
o Support	
<u>Training &amp; ProServe</u>	10%