

TERMS OF SALE AND SOFTWARE LICENSE AGREEMENT

These Terms of Sale and Software License Agreement (“**Terms of Sale**”) are entered into by and between Cisco Systems Australia Pty Ltd. ABN 52 050 332 940, an Australian corporation having its principal place of business at Level 9, 80 Pacific Highway, North Sydney, NSW 2060 (“**Cisco**”) and you (“**Customer**”) for Products and Services, unless Cisco and Customer enter into or have entered into another agreement (including but not limited to a written, click-wrap, click-and-accept or electronic agreement) regarding the purchase and license of the specific Cisco Products or Services being purchased and such agreement is in effect at the time the applicable Purchase Order is received by Cisco (“**Existing Agreement**”), in which case the terms and conditions of such Existing Agreement shall govern the purchase and license of those Cisco Products or Services.

The following exhibits are incorporated into these Terms of Sale:

Exhibit A: End User License Agreement

1.0 DEFINITIONS

- 1.1 **Affiliate** means any corporation, firm, partnership or other entity that directly or indirectly controls, or is controlled by, or is under common control with Cisco or Customer.
- 1.2 **Cisco.com** is Cisco’s suite of on-line services and information at <http://www.cisco.com>.
- 1.3 **Documentation** is user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials and other information relating to Products or Services offered by Cisco, whether distributed in print, electronic, CD-ROM or video format.
- 1.4 **Effective Date** is the date these Terms of Sale are electronically accepted, click-accepted or, if signed in hard copy by Customer, the date of last signature, or in the absence of any of the forgoing, these Terms of Sale shall be effective from the date an order is placed by Customer.
- 1.5 **Hardware** is the tangible Cisco product acquired by Customer from Cisco and listed on the Price List. Hardware does not include any tangible product listed on the Price List in the name of a third party.
- 1.6 **Network Services** are any services offered by Customer, as Customer’s primary business model, which services may include the following: access to the Internet, data and voice transmission and any other communications service furnished by Customer by means of Customer’s communications network.
- 1.7 **Price List** is the price list(s) published at Cisco.com applicable to the relevant Cisco entity to which each Purchase Order is issued by Customer.
- 1.8 **Products** are, individually or collectively as appropriate, Hardware, Software and Documentation listed on the then-current Price List.
- 1.9 **Purchase Order** is an order issued by Customer to Cisco for Products or Services to be purchased, licensed or provided under these Terms of Sale.
- 1.10 **Services** are any maintenance, technical support, or any other services performed or to be performed by Cisco, provided that “Services” does not include those

services for which Cisco requires a separate statement of work to be executed between the parties.

- 1.11 **Software** is the machine readable (object code) version of the computer programs listed from time to time on the Price List or provided with the Hardware and made available by Cisco for license to Customer including firmware, and any copies made, bug fixes for, updates to, or upgrades thereof. Software does not include any computer programs listed on the Price List in the name of a third party.
- 1.12 **Territory** is any country(ies) in which Customer has been granted Cisco resale certifications, or in the absence of any such certifications, the country in which Customer's principle place of business is located.

2.0 SCOPE

- 2.1 These Terms of Sale set forth the terms and conditions for Customer's purchase of Products and Services solely for use in the Territory and solely for (i) Customer's internal business use, (ii) providing Network Services if Customer's primary business is Network Services, or (iii) resale only if and where Customer has been granted appropriate reseller certifications or distribution rights by Cisco for the specific Products or Services to be resold/distributed. Customer shall not resell to, make available for use by, or otherwise transfer title to any Product to, any end user or other third party, including any reseller, without such reseller certifications or distribution rights.
- 2.2 Customer is not authorized by these Terms of Sale to resell Products to any United States Federal, state, or local entity.

3.0 PRICES

- 3.1 Prices for Products and Services shall be those specified in Cisco's then current Price List, less any applicable discount at the time of acceptance of the Purchase Order by Cisco, or in accordance with an applicable, valid written price quotation, if any, submitted by Cisco to Customer for such Products or Services.
- 3.2 All prices are exclusive of Goods and Services Tax (GST) or sales tax. To the extent that any supply made under or in connection with these Terms of Sale is a taxable supply, the consideration for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, which will be added to the price. Prices are otherwise inclusive of any taxes, fees and duties which are levied or based upon such prices or charges, as of the Effective Date of these Terms of Sale. Any taxes, fees or duties levied, or rates changed, after the Effective Date of these Terms of Sale, which relate to the Products or Services provided pursuant to these Terms of Sale shall be paid or reimbursed by Customer or Customer shall present an exemption certificate acceptable to all relevant taxing authorities. Customer shall pay any taxes related to Products or Services provided pursuant to these Terms of Sale (except for taxes based on Cisco's revenue income) or shall present an exemption certificate acceptable to all relevant taxing authorities and to Cisco. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible.

4.0 ORDERS

- 4.1 Customer shall purchase or license Products or Services by issuing a Purchase Order, signed, if requested by Cisco, or (in the case of electronic transmission) sent by its authorized representative, indicating specific Products and Services, Cisco Product numbers, quantity, unit price, total purchase price, shipping instructions,

requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference, and identity of the end user for each Product and Service. No contingency contained on any Purchase Order shall be binding upon Cisco. The terms of these Terms of Sale shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms are deemed rejected by Cisco.

- 4.2 Cisco shall use commercially reasonable efforts to provide order acknowledgement information within three (3) business days for all Purchase Orders placed on Cisco.com or within ten (10) business days of receipt for Purchase Orders placed by any other method. Upon and subject to credit approval by Cisco following Cisco's receipt of any Purchase Order, Cisco Customer Service will review and accept or decline any or all Purchase Orders for the Cisco entity that will supply the Products or Services, and no other person is authorized to accept Purchase Orders on behalf of Cisco. Cisco Customer Service may accept a Purchase Order even if some of the information required by Section 4.1 above is missing or incomplete.
- 4.3 Customer may defer Product shipment for up to thirty (30) days from the original shipping date scheduled by Cisco, provided written or electronic notice (issued, in either case, by an authorized representative of Customer) is received by Cisco at least ten (10) days before the originally scheduled shipping date. Cancelled Purchase Orders, rescheduled shipments or Product configuration changes requested by Customer less than ten (10) days before the original scheduled shipping date shall be subject to (a) acceptance by Cisco, and (b) a charge of fifteen percent (15%) of the total invoice amount relating to the affected Products. Cisco reserves the right to reschedule shipment in cases of configuration changes requested by Customer within ten (10) days of scheduled shipment. No cancellation shall be accepted by Cisco where Products are purchased with implementation services, including design, customization or installation services, except as may be set forth in the agreement or statement of work under which the services are to be rendered.

5.0 SHIPPING AND DELIVERY

- 5.1 Scheduled shipping dates will be assigned by Cisco as close as practicable to Customer's requested date based on Cisco's then-current lead times for the Products. Cisco will communicate scheduled shipping dates in the order acknowledgement or on Cisco.com. Unless given written instruction by Customer, Cisco shall select the carrier.
- 5.2 Shipping terms are CIP (Carriage and Insurance Paid) (per Incoterms 2000) duty unpaid to the named place of destination in Australia which appears on Cisco's order acknowledgement and/or is accessible via Cisco.com. Title and risk of loss shall pass from Cisco to Customer and delivery shall be deemed to occur immediately following the moment that the Products are imported at the customs handling facility at port of entry for ongoing transport to the Customer's named destination in Australia. With the exception of costs for carriage and shipping insurance charges, Customer will be responsible for all other costs associated with importation of the Products, including all GST, sales tax, duty and other official or similar charges.
- 5.3 For Purchase Orders requesting shipment to destinations outside the shipping area of Cisco Systems Australia Pty Ltd. but within the Territory, Customer may need to contract with, and/or order from, a Cisco Affiliate. Different shipping terms may apply to such Purchase Orders.

- 5.4 If Customer requests in its Purchase Order delivery of Products to Customer's forwarding agent or another representative in the country of shipment, Customer shall assume responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance.
- 5.5 Cisco shall not be liable for any loss, damage, or penalty for delay in delivery or for failure to give notice of any delay. Except in accordance with the applicable shipping terms set forth in these Terms of Sale, Cisco shall not have any liability in connection with shipment, nor shall the carrier be deemed to be an agent of Cisco.
- 5.6 All sales are final. Except as provided in Cisco's warranty statements, Cisco does not accept returns unless (i) Cisco shipped a product other than as specified in the Purchase Order, (ii) such Product is unopened, and (iii) the Product is returned in accordance with Cisco's then current RMA policy and procedures.

6.0 PAYMENT

Upon and subject to credit approval by Cisco, payment terms shall be thirty (30) days from shipping date. All payments shall be made in the currency of the Price List applicable to the Purchase Order. If at any time Customer is delinquent in the payment of any invoice, or is otherwise in breach of these Terms of Sale, Cisco may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order, require Customer to prepay for further shipments, and/or withhold the provision of Services, until complete payment has been received. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (i) ten per cent per annum or (ii) the maximum rate permitted by law, whichever is less.

7.0 PROPRIETARY RIGHTS AND SOFTWARE LICENSING

- 7.1 Subject to the terms contained in Exhibit A (Cisco's End User License Agreement ("EULA")), Cisco grants to Customer a non-exclusive, non-transferable license (a) to use the Software and Documentation for Customer's internal use, and (b) where Customer is a certified Cisco reseller or authorized distributor, to market and Resell the Software and related Documentation in the Territory during the term of these Terms of Sale, solely as permitted by Section 2.0 (Scope) and this Section 7.0 (Proprietary Rights And Software Licensing) of these Terms of Sale. Any resale of Software or Documentation to any person or entity other than as expressly permitted by Section 2.0 (Scope) is expressly prohibited. Customer may not sublicense, to any person or entity, any rights to distribute the Software or Documentation.
- 7.2 Where Customer is a certified Cisco Reseller, Customer shall provide a copy of the Cisco EULA to each end user with delivery of the Product or prior to installation of the Software. Customer shall notify Cisco promptly of any breach or suspected breach of the Cisco EULA and further agrees that it will, at Cisco's request, assist Cisco in efforts to preserve Cisco's intellectual property rights including pursuing an action against any breaching third parties.

8.0 LIMITED WARRANTY

- 8.1 Products. The warranties for Products may be found at the following URL: <http://www.cisco.com/go/warranty>.
- 8.2 Notwithstanding any other term of these Terms of Sale, Cisco's sole and exclusive warranty and obligations are set forth in Cisco's Limited Warranty Statement delivered with the Product and this Section 8.0. Customer shall not make any

warranty commitment, whether written or oral, on Cisco's behalf. Customer shall indemnify Cisco against any warranties made in addition to Cisco's standard warranty and for any misrepresentation of Cisco's reputation or of Cisco's Products and Services.

- 8.3 Services. Services provided hereunder shall be performed in a workmanlike manner consistent with industry standards. Customer must notify Cisco promptly, but in no event more than thirty (30) days after completion of the Services, of any claimed breach of this warranty. Customer's sole and exclusive remedy for breach of this warranty shall be, at Cisco's option, re-performance of the Services, or termination of these Terms of Sale or the applicable Service and return of the portion of the Service fees paid to Cisco by Customer for such non-conforming Services. The provision of Services under these Terms of Sale shall not extend the warranties provided with any Hardware purchased or Software licensed by Customer.
- 8.4 Where any Act of Parliament ("Act") implies any term, condition or warranty in these Terms of Sale, and that Act avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under such term, condition or warranty, then such term, condition or warranty shall be deemed to be included in these Terms of Sale. However, Cisco's liability for any breach of such term, condition or warranty shall be limited, at Cisco's option, to any one or more of the following:
- 8.4.1 if the breach relates to Products:
- (a) the replacement of the Products or the supply of equivalent goods;
 - (b) the repair of such Products;
 - (c) the payment of the cost of replacing the Products or of acquiring equivalent products; or
 - (d) the payment of the cost of having the Products repaired;
- 8.4.2 if the breach relates to Services:
- (a) the supplying of Services again; or
 - (b) the payment of the cost of having the Services supplied again.
- 8.5 Restrictions. The limited warranties referenced in this Section 8.0 do not apply if the Product (a) has been altered, except by Cisco, (b) has not been installed, operated, repaired, used or maintained in accordance with instructions made available by Cisco, (c) has been subjected to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated; (d) is acquired by Customer for beta, evaluation, testing, demonstration purposes or other circumstances for which Cisco does not receive a payment of a purchase price or license fee.
- 8.6 The limited warranties referenced in this Section 8.0 do not apply to any Software or Hardware that may be offered for sale on the Price List in the name of a third party.
- 8.7 Disclaimer of Warranty. Except as expressly provided in this Section 8.0, Cisco hereby disclaims and Customer waives all representations, warranties, conditions or other terms (whether express, implied, or statutory), including, without limitation, any warranty, condition, or term (a) of merchantability, fitness for a particular purpose, reasonable care and skill, noninfringement, satisfactory quality, accuracy, or system integration, or (b) arising from any course of dealing, course of performance, or usage in the industry. To the extent permitted by law, if a warranty, condition, or term cannot be disclaimed, such warranty, condition, or term shall be limited in duration to the applicable express warranty period.

9.0 CONFIDENTIAL INFORMATION

- 9.1 “**Confidential Information**” to be disclosed by Customer under these Terms of Sale is information regarding Customer's network operations and technical plans and marketing and financial data, and “**Confidential Information**” to be disclosed by Cisco under these Terms of Sale is information regarding Cisco's Products and Services, technical, financial, and marketing data, information relating to future product and service development, and information posted on Cisco.com.
- 9.2 The receiving party (“**Receiving Party**”) may use the Confidential Information solely for the purpose of furtherance of the business relationship between the parties, as provided in these Terms of Sale and shall not disclose the Confidential Information to any third party, other than to employees of the Receiving Party who have a need to have access to and knowledge of the Confidential Information, solely for the purpose authorized above. Each party shall take appropriate measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure. Information (other than that on Cisco.com) disclosed by the disclosing party (“**Disclosing Party**”) in written or other tangible form will be considered Confidential Information only if such information is conspicuously designated as “Confidential,” “Proprietary” or bears a similar legend. Information disclosed orally shall be considered Confidential Information only if: (i) identified as confidential, proprietary or the like at the time of disclosure, and (ii) confirmed as confidential, proprietary or the like in writing within thirty (30) days of disclosure. Confidential Information disclosed to the Receiving Party by any affiliate or agent of the Disclosing Party is subject to these Terms of Sale.
- 9.3 The Receiving Party shall have no obligation with respect to information that (i) was rightfully in possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (ii) is, or subsequently becomes, legally and publicly available without breach of these Terms of Sale; (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; or (v) is disclosed by the Receiving Party pursuant to and in accordance with a valid order issued by a court or government agency, provided that the Receiving Party provides (a) prior written notice to the Disclosing Party of such order and (b) the Disclosing Party prior opportunity to oppose or restrict such disclosure. Upon written demand by the Disclosing Party, the Receiving Party shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.
- 9.4 Each party shall retain all right, title and interest to such party's Confidential Information. No license to any intellectual property (or application for intellectual property protection) is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not reverse-engineer, decompile, or disassemble any software disclosed to it and shall not remove, overprint or deface any notice of copyright or confidentiality, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party or from any copies the Disclosing Party is authorized to make.
- 9.5 Neither party shall disclose, advertise, or publish either the existence, the subject matter, any discussions relating to, or any of the terms and conditions, of these Terms of Sale (or any summary of any of the forgoing) to any third party without the prior written consent of the other party. Any press release, publication,

advertisement or public disclosure regarding these Terms of Sale is subject to both the prior review and the written approval of both parties.

10.0 PATENT AND COPYRIGHT INFRINGEMENT

- 10.1 Cisco 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 these Terms of Sale infringes Third Party IPR (as defined below). Cisco 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. Cisco's obligations to defend the IPR Claim and indemnify Customer are conditional upon:
- 10.1.1 Customer notifying Cisco promptly in writing of the IPR Claim or threat thereof;
 - 10.1.2 Customer giving Cisco full and exclusive authority for the conduct of the defense and settlement of the IPR Claim and any subsequent appeal; and
 - 10.1.3 Customer giving Cisco all information and assistance reasonably requested by Cisco in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.
- 10.2 Third Party IPR means an Australian or United States copyright existing as at the Effective Date or an Australian or United States patent issued as at the Effective Date.
- 10.3 If an IPR Claim has been made, or in Cisco's opinion is likely to be made, Customer agrees to permit Cisco, at Cisco's option and expense, either to: (a) procure for Customer the right to continue using the Product; (b) replace or modify the Product so that there is no longer an infringement; or (c) immediately terminate both parties' respective rights and obligations under these Terms of Sale with regard to the Product, in which case Customer will promptly return the Product to Cisco and Cisco will refund to Customer the price originally paid by Customer to Cisco 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.
- 10.4 Notwithstanding the foregoing, Cisco has no liability for, and Customer will defend and indemnify Cisco against, any IPR Claim arising from:
- 10.4.1 the combination, operation, or use of a Product with any third party product, device, or software;
 - 10.4.2 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;
 - 10.4.3 the alteration or modification of any Product supplied under these Terms of Sale;
 - 10.4.4 Cisco's compliance with Customer's designs, specifications, or instructions; or
 - 10.4.5 Customer's use of the Product after Cisco has informed Customer of modifications or changes required to avoid such an IPR Claim if the alleged infringement would have been avoided by implementation of Cisco's recommended modifications or changes.

- 10.5 This Section states the entire obligation of Cisco and its suppliers, and the exclusive remedy of Customer, in respect of any infringement or alleged infringement of any intellectual property rights or proprietary rights. To the extent permitted by law, this indemnity obligation and remedy are given to Customer solely for its benefit and in lieu of, and Cisco disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any Product.

11.0 TERM AND TERMINATION

- 11.1 These Terms of Sale shall commence on the Effective Date and continue thereafter for a period of one year, unless sooner terminated, as set forth below. These Terms of Sale shall be automatically renewed thereafter, for successive one (1) year periods, unless at least forty-five (45) days prior to the date of any such renewal, either party shall have given written notice to the other of its intention that these Terms of Sale not be renewed. These Terms of Sale shall automatically terminate at the end of the annual period during which such notice is given.
- 11.2 Either party may terminate these Terms of Sale at any time by providing the other party with at least forty-five (45) days' prior written notice of termination.
- 11.3 A party may terminate these Terms of Sale immediately by written notice if (i) the other party ceases or threatens to cease to carry on business as a going concern; or (ii) the other party becomes or is reasonably likely to become subject to voluntary or involuntary proceedings in bankruptcy or liquidation; or (iii) a receiver or similar officer is appointed with respect to the whole or a substantial part of the other party's assets; or (iv) an event similar to any of the foregoing occurs under any applicable law.
- 11.4 If a party breaches any of the provisions of these Terms of Sale, the non-breaching party may terminate these Terms of Sale as follows: (a) immediately upon providing written notice to the breaching party if the breach is not capable of being cured, and (b) thirty (30) days after providing written notice to the breaching party if the breaching party fails to cure such breach within such thirty (30) day period.
- 11.5 Cisco may terminate these Terms of Sale upon twenty (20) days' written notice in the event it becomes known that (i) Customer or an affiliate or Customer's direct or indirect parent has acquired or intends to acquire a controlling interest in a third party, or (ii) Customer or its direct or indirect parent is to be acquired by a third party, or (iii) a controlling interest in Customer or its direct or indirect parent is to be transferred to a third party.
- 11.6 Cisco may terminate these Terms of Sale immediately upon written notice in the event that Customer is in breach of Sections 7.0 (Proprietary Rights and Software Licensing), Section 9.0 (Confidential Information), or Section 14.0 (Export, Re-Export, Transfer & Use Controls), or 15.0 (Compliance with Laws, Including Anti-Corruption Laws).
- 11.7 Upon termination or expiration of these Terms of Sale, (a) Cisco reserves the right to cease all further delivery of Product or Services, (b) all outstanding invoices immediately become due and payable by certified or cashier's check, and (c) all rights and licenses of Customer under these Terms of Sale shall terminate, subject to the terms of the last sentence of this paragraph. If Cisco agrees to complete delivery of any further Products or Services due against any existing Purchase Orders then Customer shall pay for such Products or Services in advance by certified or cashier's check. Except for a termination of these Terms of Sale resulting from Customer's breach of Section 7.0 (Proprietary Rights and Software Licensing), Section 9.0 (Confidential Information), or Section 14.0 (Export, Re-

Export, Transfer & Use Controls), upon termination or expiration of these Terms of Sale, Customer may continue to use, in accordance with these Terms of Sale, Products provided to it by Cisco prior to the date of termination or expiration.

- 11.8 Upon termination or expiration of these Terms of Sale, Customer shall immediately return to Cisco all Confidential Information (including all copies thereof) then in Customer's possession, custody or control; provided, that except for a termination resulting from Customer's breach of Section 7.0 (Proprietary Rights and Software Licensing), or Section 14.0 (Export, Re-Export, Transfer & Use Controls), Customer may retain a sufficient amount of such Confidential Information and material to operate its installed base of Products.
- 11.9 In the event that, following the expiration or termination of these Terms of Sale, Customer places Purchase Orders and Cisco accepts such Purchase Orders, then any such Purchase Orders shall be governed by these Terms of Sale notwithstanding the earlier expiration or termination of these Terms of Sale; provided, however, that acceptance by Cisco of any such Purchase Order will not be considered to be an extension of the term of these Terms of Sale nor a renewal thereof.

12.0 SERVICES

Customer may place Purchase Orders for the various Services offered by Cisco. Such Services, if accepted by Cisco, shall be subject to these Terms of Sale, as well as the additional terms and conditions set forth in Cisco's then-current applicable Service descriptions that describe the deliverables and other terms applicable to such Services unless an Existing Agreement is in effect in which case the terms of the Existing Agreement shall govern any such Services. Copies of Cisco's Services descriptions may be found at www.cisco.com/go/servicedescriptions/ or obtained by sending a request to serviceterms@cisco.com, indicating the Service requested, the country in which Customer is located and the country in which the requested Services are to be delivered. Cisco reserves the right to subcontract Services to a third party maintenance organization to provide Services to Customer.

13.0 RECORDS

- 13.1 Customer shall keep full, true, and accurate records and accounts, in accordance with generally-accepted accounting principles, of each Product, Service and Software license purchased, resold, and/or deployed, including information regarding Software usage and export or transfer. Customer shall make such records available for review by or on behalf of Cisco upon fifteen (15) days' prior written notice, during regular business hours, at Customer's principal place of business and shall provide Cisco with reasonable assistance in order to review and secure copies of such records. In the event such review discloses non-compliance with these Terms of Sale, Customer shall promptly pay to Cisco the appropriate license fees, plus the reasonable cost of conducting the review.
- 13.2 Inventory Review. From time-to-time Cisco may perform an inventory review of Customer's installed base of Products and review serial numbers and other records (upon reasonable advance notice) to validate Service entitlement. Cisco will charge a Service fee if it finds that Services are being provided beyond that for which Customer has paid Cisco. This Service fee includes amounts which should have been paid, interest, attorneys' fees, if any, and audit fees. Cisco requires that Customer take all necessary action (for example, disabling passwords) to ensure that any former employees or contractors do not access or use the Services.

14.0 EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS

The Products and technology or direct products thereof (hereafter referred to as Products and Technology), supplied by Cisco under these Terms of Sale 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 export, re-export, transfer and use of Cisco Products and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Information regarding compliance with U.S. export, re-export, transfer and use laws may be located at the following URL: http://www.cisco.com/www/export/compliance_provision.html. Customer's obligations under this clause shall survive the expiration or termination of these Terms of Sale.

15.0 COMPLIANCE WITH LAWS, INCLUDING ANTI-CORRUPTION LAWS

15.1 In connection with the sale or distribution of Cisco Products or Services, or otherwise in carrying out its obligations under this Agreement, Customer represents and warrants the following:

- (a) Customer shall obtain all licenses, permits and approvals required by any government or applicable authority, including any recycling or take back programs applicable to packaging of Products. In addition, Customer will comply with all country, federal, state and local laws, ordinances, codes, regulations, rules, policies and procedures of any government or other competent authority where the Products are purchased by Customer or are to be sold, used or deployed, including, without limitation, all anti-corruption laws, including, the U.S. Foreign Corrupt Practices Act (Applicable Laws). Customer can find more information about the Foreign Corrupt Practices Act at the following URL: <http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html>, or by contacting publicsectorcompliance@cisco.com.
- (b) Customer shall not take any action or permit or authorize any action in violation of the Applicable Laws;
- (c) Customer will not use money or other consideration paid by Cisco (and Customer will not use its own money on Cisco's behalf) for any unlawful purposes, including any purposes violating Applicable Laws, such as direct or indirect payments, for the purpose of assisting Cisco in obtaining or retaining business, to any of the following:
 - (i) Government officials (including any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or of any public international organization, such as the United Nations or World Bank, or any person acting in any official capacity for or on behalf of such government, public enterprise or state-owned business);
 - (ii) Political parties or party officials;
 - (iii) Candidates for political office; or
 - (iv) Any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly to any of the above-identified persons or organizations.

- (d) Upon request by Cisco, Customer will require that its own subcontractors, consultants, agents or representatives execute a written compliance statement containing substantially similar representations as are contained in this section;
- (e) Customer's record-keeping obligation, set forth in the "Audit" provision herein, shall equally apply to Customer's representations and warranties in this section, and Cisco's audit rights, as set forth herein, apply to Customer's compliance with the Applicable Laws;
- (f) In no event shall Cisco be obligated under this Agreement to take any action or omit to take any action that Cisco believes, in good faith, would cause it to be in violation of any laws of the Territory(ies) identified in this Agreement or the Applicable Laws;
- (g) The owner(s), principals, directors, officers and employees of Customer's business are not government officials or employees (at any level of government);
- (h) The owner(s), principals, directors, officers and employees of Customer's business are not employees of Cisco (including any of its affiliated companies);
- (i) No person working for or on behalf of Cisco ("**Cisco Personnel**") has, either directly or indirectly, (i) any ownership interest or other right or interest in the profits and/or revenues of Customer, or (ii) has or will receive any payment or other benefit as a result of any transaction under this Agreement. Customer shall promptly report to Cisco any proposed transaction or dealing with Cisco Personnel that may violate this section;
- (j) Customer, its owner(s), principals, directors and officers have not been formally charged with, convicted of, or plead guilty to, any offense involving fraud or corruption;
- (k) Customer, its owner(s), principals, directors and officers have not been listed by any government or public agency (such as the United Nations or World Bank) as debarred, suspended, or proposed for suspension or debarment or otherwise ineligible for government procurement programs;
- (l) Customer has not offered to pay, nor has Customer paid, nor will Customer pay, any political contributions to any person or entity on behalf of Cisco;
- (m) If Customer is a non-governmental entity, it will notify Cisco in writing if any of its owners, partners, principals, officers, or employees are or become, during the term of this Agreement, officials, officers or representatives of any government, political party or candidate for political office outside the United States and are responsible for a decision regarding obtaining or retaining business for Cisco Products or Services by such government. Customer will also promptly inform Cisco if any other portion of the statements set forth in subsections (g) through (k) above changes.
- (n) Notwithstanding any other provision in this Agreement, Cisco may suspend performance or terminate this Agreement immediately upon written notice if Customer breaches any of the representations and warranties set forth in this section. Customer will indemnify and hold harmless Cisco for any violation by Customer of any Applicable Laws;

- (o) Customer can report to Cisco any concerns it may have regarding any business practices by emailing ethics@cisco.com, or by calling Cisco's Helpline toll free number in North America 1-877-571-1700 or worldwide number (reverse calling charges to Cisco) 001-770-776-5611. Contact ethics@cisco.com for other available regional hotline numbers;
- (p) Customer has read and agrees to act consistently with Cisco's Policy re: Compliance with Global Anticorruption Laws by Cisco's Partners, published at http://www.cisco.com/legal/anti_corruption.html.
- (q) Customer hereby represents and warrants that: (a) it shall comply with all Applicable Laws; and (b) this Agreement and each of its terms are in full conformance and compliance with such Applicable Laws;
- (r) Customer shall use its best efforts to regularly inform Cisco of any requirements under any Applicable Laws that directly or indirectly affect this Agreement, the sale, use and distribution of Products or Services, or Cisco's trade name, trademarks or other commercial, industrial or intellectual property interests, including, but not limited to, certification or type approval of the Products from the proper authorities in the Territory;
- (s) Additionally, Customer shall comply, and notify end users of their obligations to comply, with all applicable Cisco published policies, including Software Transfer Policy, Used Equipment Policy, as published by Cisco and as amended from time to time. Customer shall promptly notify Cisco of any failure by any end user to comply with any of the foregoing policies that comes to Customer's attention.

16.0 LIMITATION OF LIABILITY

- 16.1 Subject to the following paragraph, and notwithstanding anything else in these Terms of Sale to the contrary, all liability of Cisco, its affiliates, officers, directors, employees, agents and suppliers collectively for claims under these Terms of Sale or otherwise howsoever arising (including, without limitation, in contract, tort (including negligence) and/or under any indemnity) shall be limited separately for Products and Services purchased to the money paid to Cisco for Products or for Services, separately and as applicable, under these Terms of Sale during the twelve (12) month period preceding the event or circumstances first giving rise to such liability. This limit of liability for Products and Services is cumulative and not per-incident (i.e., the existence of two or more claims will not enlarge this limit).

17.0 WAIVER OF CONSEQUENTIAL AND OTHER DAMAGES

Subject to the exceptions enumerated below in this paragraph, and notwithstanding anything else in these Terms of Sale to the contrary, 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. The foregoing waiver shall not apply to any liability arising out of or in connection with: Customer's breach of Section 7.0 (Proprietary Rights And Software Licensing) or Exhibit A (End User License Agreement), or amounts due for Products and Services purchased or Software used or transferred with respect to the payment of which no bona fide dispute exists.

18.0 GENERAL

- 18.1 Choice of Law. The validity, interpretation, and performance of these Terms of Sale shall be controlled by and construed under the laws of the State of New South Wales, Australia, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the State and federal courts of New South Wales shall have exclusive jurisdiction over any claim arising thereunder. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.
- 18.2 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.
- 18.3 No Waiver. The waiver by either party of any right provided under these Terms of Sale shall not constitute a subsequent or continuing waiver of such right or of any other right under these Terms of Sale.
- 18.4 Assignment. Neither these Terms of Sale nor any rights or obligations under these Terms of Sale shall be assigned by a party without the other's prior written consent, which will not be unreasonably withheld or delayed. Any attempted assignment shall be void and of no effect. Notwithstanding the foregoing, the parties may assign these Terms of Sale and any right or obligation under it without the other's approval, to any Affiliate. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all amounts due under these Terms of Sale.
- 18.5 Severability. In the event that part of or one or more terms of these Terms of Sale become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from these Terms of Sale. All remaining terms of these Terms of Sale shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of these Terms of Sale is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate these Terms of Sale by written notice with immediate effect to the other.
- 18.6 Attorneys' Fees. In any suit or proceeding relating to these Terms of Sale 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 these Terms of Sale, and shall survive expiration or termination and shall not be merged into any such judgment.
- 18.7 No Agency. These Terms of Sale do 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 these Terms of Sale. 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.

- 18.8 Entire Agreement. These Terms of Sale constitute the entire agreement between the parties concerning the subject matter of these Terms of Sale and replace any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. These Terms of Sale may be modified only by a written document executed by the parties hereto.
- 18.9 Future Products and Services. For any Products and Services included in the Price List, including Products and Services which become or have become Cisco Products or Services as a result of an acquisition by Cisco of another entity, Cisco may stipulate certification, installation, or training requirements for Customer prior to allowing Customer (if Customer is a certified Cisco reseller) to purchase such Products and Services for resale, and may require on-going fulfillment of some or all of the requirements to retain the right to purchase, license, resell or support such Products and Services. Cisco reserves the right, during the term of these Terms of Sale, to license and distribute additional items of Software. Such items of Software may be licensed under additional or different policies and license terms which will be made available to Customer at the time such items of Software are provided to Customer.
- 18.10 Notices. All notices required or permitted under these Terms of Sale will be in writing and will be deemed given one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the first page of these Terms of Sale, (and notices to Cisco shall be further addressed to the Office of the General Counsel, Attn: Contract Notice) or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph, or, in the absence of such an address from customer, to the address to which the last invoice under these Terms of Sale was sent before notice is served. Notwithstanding the foregoing, notices regarding changes in pricing, Software license terms, policies or programs may be by posting on Cisco.com or by e-mail or fax.
- 18.11 Survival. The following sections shall survive the expiration or earlier termination of these Terms of Sale: Sections 2.0 (Scope), 6.0 (Payment), 7.0, (Proprietary Rights and Software Licensing), 8.0 (Limited Warranty), 9.0 (Confidential Information), 10.0 (Patent and Copyright Infringement), 11.0 (Term and Termination), 13.0 (Records), 14.0 (Export, Re-Export, Transfer and Use Controls), 16.0 (Limitation of Liability), 17.0 (Waiver of Consequential and Other Damages), 18.0 (General), and the license to use the Software set out in Exhibit A (End User License Agreement) (subject to the termination provisions set forth in Section 11.0 (Term and Termination) of these Terms of Sale).
- 18.12 Headings. Headings of sections have been added solely for convenience of reference and shall not be deemed part of these Terms of Sale.

**EXHIBIT A
END USER LICENSE AGREEMENT**

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UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE DOCUMENTATION OR ANY APPLICABLE SUPPLEMENTAL LICENSE AGREEMENT, CUSTOMER SHALL USE THE SOFTWARE SOLELY AS EMBEDDED IN, FOR EXECUTION ON, OR (WHERE THE APPLICABLE DOCUMENTATION PERMITS INSTALLATION ON NON-CISCO EQUIPMENT) FOR COMMUNICATION WITH CISCO EQUIPMENT OWNED OR LEASED BY CUSTOMER AND USED FOR

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TRANSFER, ASSIGN OR SUBLICENSE ITS LICENSE RIGHTS TO ANY OTHER PERSON OR ENTITY (OTHER THAN IN COMPLIANCE WITH ANY CISCO RELICENSING/TRANSFER POLICY THEN IN FORCE), OR USE THE SOFTWARE ON UNAUTHORIZED OR SECOND-HAND CISCO EQUIPMENT, AND CUSTOMER ACKNOWLEDGES THAT ANY ATTEMPTED TRANSFER, ASSIGNMENT, SUBLICENSE OR USE SHALL BE VOID;

MAKE ERROR CORRECTIONS TO OR OTHERWISE MODIFY OR ADAPT THE SOFTWARE OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE, OR PERMIT THIRD PARTIES TO DO THE SAME;

REVERSE ENGINEER OR DECOMPILE, DECRYPT, DISASSEMBLE OR OTHERWISE REDUCE THE SOFTWARE TO HUMAN-READABLE FORM, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PERMITTED UNDER APPLICABLE LAW NOTWITHSTANDING THIS RESTRICTION;

PUBLISH ANY RESULTS OF BENCHMARK TESTS RUN ON THE SOFTWARE;

USE OR PERMIT THE SOFTWARE TO BE USED TO PERFORM SERVICES FOR THIRD PARTIES, WHETHER ON A SERVICE BUREAU OR TIME SHARING BASIS OR OTHERWISE, WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF CISCO; OR

DISCLOSE, PROVIDE, OR OTHERWISE MAKE AVAILABLE TRADE SECRETS CONTAINED WITHIN THE SOFTWARE AND DOCUMENTATION IN ANY FORM TO ANY THIRD PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF CISCO. CUSTOMER SHALL IMPLEMENT REASONABLE SECURITY MEASURES TO PROTECT SUCH TRADE SECRETS.

TO THE EXTENT REQUIRED BY LAW, AND AT CUSTOMER'S WRITTEN REQUEST, CISCO SHALL PROVIDE CUSTOMER WITH THE INTERFACE INFORMATION NEEDED TO ACHIEVE INTEROPERABILITY BETWEEN THE SOFTWARE AND ANOTHER INDEPENDENTLY CREATED PROGRAM, ON PAYMENT OF CISCO'S APPLICABLE FEE, IF ANY. CUSTOMER SHALL OBSERVE STRICT OBLIGATIONS OF CONFIDENTIALITY WITH RESPECT TO SUCH INFORMATION AND SHALL USE SUCH INFORMATION IN COMPLIANCE WITH ANY APPLICABLE TERMS AND CONDITIONS UPON WHICH CISCO MAKES SUCH INFORMATION AVAILABLE.

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[HTTP://WWW.CISCO.COM/WEB/ABOUT/DOING_BUSINESS/LEGAL/GLOBAL_EXPORT_TRADE/GENERAL_EXPORT/CONTRACT_COMPLIANCE.HTML](http://www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export/contract_compliance.html)

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