

## 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 Canada Co., a Nova Scotia corporation having its principal place of business at Bay Wellington Tower, BCE Place, 181 Bay Street, Suite 3400, P. O. Box 802, Toronto, Ontario, M5J 2T3, Canada ("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: Shipping Terms
- Exhibit B: 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 **Cisco Branded** means a Product or a Service bearing a trademark or service mark of Cisco Systems, Inc. or any Cisco Affiliate.
- 1.4 **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.
- 1.5 **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.
- 1.6 **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.
- 1.7 **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.
- 1.8 **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.
- 1.9 **Products** are, individually or collectively as appropriate, Hardware, Software and Documentation listed on the then-current Price List.

- 1.10 **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.
- 1.11 **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.
- 1.12 **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.
- 1.13 **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 principal 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 With the exception of freight, handling and shipping insurance charges, all prices are exclusive of any taxes, fees, duties or other similar amounts, however designated, and including without limitation value added taxes, Goods and Services Tax (GST), provincial sales tax and withholding taxes that are levied or based upon such prices or charges, or upon these Terms of Sale. 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. 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 options available as well as applicable shipment terms (per Incoterms 2010) are set forth in Exhibit A hereto. The selected shipping option shall be indicated on the Purchase Order. Where applicable, Customer shall pay the shipping and handling charges in addition to the purchase price for the Products, which will be included in remittance and/or commercial invoices issued by Cisco. Title and risk of loss shall transfer from Cisco to Customer and delivery shall be deemed to occur in accordance with Exhibit A hereto. Customer shall be responsible for all freight, handling and insurance charges subsequent to delivery.
- 5.3 Where Customer places orders on any Cisco Affiliate other than Cisco, Customer shall pay invoices issued by such entity with respect to such orders and the delivery terms agreed with such entity shall apply. Different shipping terms may apply to such Purchase Orders as set forth on Exhibit A or otherwise as set out on Cisco.com.
- 5.4 Customer shall assume responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation

necessary for export clearance. This also applies in cases where Customer requests in its Purchase Order delivery of Products to Customer's forwarding agent or another representative in the country of shipment. Customer agrees not to use any export licenses owned by Cisco or any of its Affiliates.

For shipments under FCA as per the attached Exhibit A, Customer specifically agrees to provide Cisco with the complete name and address of each End User either (a) in the Purchase Order issued, or (b) in writing within five (5) days of receiving a request by Cisco, and other information required under this Agreement or requested by Cisco. Export clearance will ensure utilizing Cisco's general global export licenses or in the case a general global license does not include the listed End User destination, then individual export licenses must be obtained prior to export. Customer accepts any additional delays caused by the export licensing process as well as delays to comply with conditions of the individual export license.

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. Customer grants Cisco a security interest in Products purchased under these Terms of Sale to secure payment for such Products. If requested by Cisco, Customer agrees to execute financing statements to perfect this security interest.

## **7.0 PROPRIETARY RIGHTS AND SOFTWARE LICENSING**

7.1 Subject to Section 7.2 below and the terms contained in Exhibit B (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 For non-Cisco Branded Software and Documentation delivered in connection with this Agreement which is separately licensed by a third party, Customer's rights and responsibilities with respect to such Software or Documentation shall be governed in accordance with the third party's applicable software license. Customer shall, on request, enter into one or more separate "click-accept" license agreements or third party license agreements as part of the installation and/or download process which shall supersede this Agreement with respect to the non-Cisco Branded Software or Documentation covered by such license.
- 7.3 Where Customer is a certified Cisco Reseller, Customer shall provide a copy of the Cisco EULA and applicable third party license agreement 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 or third party license and further agrees that it will, at Cisco's request, assist Cisco in efforts to preserve Cisco's or its supplier's intellectual property rights including pursuing an action against any breaching third parties.

## 8.0 LIMITED WARRANTY

- 8.1 Products. The warranties for Cisco Branded 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 Cisco Branded 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 Restrictions. The limited warranties referenced in this Section 8.0 do not apply if the Cisco Branded 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.
- 8.5 Unless otherwise specified in writing by Cisco, the limited warranties referenced in this Section 8.0 do not apply to any non-Cisco Branded Software or Hardware that may be offered for sale on the Price List in the name of a third party. Non-Cisco Branded Hardware and Software are warranted solely by the applicable manufacturer or licensor. Cisco will pass through, to the extent permitted, the manufacturer's and/or licensor's warranties and Customer shall look solely to such manufacturer and/or licensor for warranty claims.

- 8.6 DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8.0, CISCO 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, OR SYSTEM INTEGRATION, OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS 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 INDEMNIFICATION

- 10.1 Claims. Cisco will defend any claim against Customer that a Product infringes third party patents or copyrights ("Claim") and will indemnify Customer against the final judgment entered by a court of competent jurisdiction or any settlements arising out of a Claim, provided that Customer:
- (a) Promptly notifies Cisco in writing of the Claim; and
  - (b) Cooperates with Cisco in the defense of the Claim, and grants Cisco full and exclusive control of the defense and settlement of the Claim and any subsequent appeal.
- 10.2 Additional Remedies. If a Claim is made or appears likely, Customer agrees to permit Cisco to procure for Customer the right to continue using the Product, or to replace or modify the Product with one that is at least functionally equivalent. If Cisco determines that none of those alternatives is reasonably available, then Customer will return the Product and Cisco will refund Customer's remaining net book value of the Product calculated according to generally accepted accounting principles.
- 10.3 Exclusions. Cisco has no obligation for any Claim based on:
- (a) Compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
  - (b) Modification of a Product by Customer or a third party;
  - (c) 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; or
  - (d) Combination, operation or use of a Product with non-Cisco products, software or business processes.
- 10.4 Sole and Exclusive Remedy. This Section 10.0 (Patent and Copyright Infringement Indemnification) states Cisco's entire obligation and Customer's exclusive remedy regarding any claims for intellectual property infringement.

## 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 Section 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/](http://www.cisco.com/go/servicedescriptions/). 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

Cisco products, technology and Services are subject to U.S. and local export control laws and regulations. Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of products, technology and services and will obtain all required U.S. and local authorizations, permits or licenses. Customer certifies that they are not on the U.S. Department of Commerce's Denied Persons List or affiliated lists, on the U.S. Department of Treasury's Specially Designated Nationals List or on any U.S. Government export exclusion lists. The export obligations under this clause shall survive the expiration or termination of this Agreement.

## 15.0 COMPLIANCE WITH LAWS, INCLUDING ANTI-CORRUPTION LAWS

- 15.1 Cisco Systems expects and requires that all of its suppliers, subcontractors, channel partners, consultants, agents and other parties with whom Cisco does business ("**Cisco Partners**"), act at all times in a professional and ethical manner in

carrying out their services and contractual obligations to Cisco, or on Cisco's behalf to a Cisco customer or other third party. To that end, all Cisco Partners shall:

- (a) Comply with all country, federal, state and local laws, ordinances, codes, regulations, rules, policies and procedures, including, but not limited to, anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act ("**Applicable Laws**"). Cisco Partners can find more information about the FCPA at the following URL: <http://www.usdoj.gov/criminal/fraud/fcpa/>, or by contacting [publicsectorcompliance@cisco.com](mailto:publicsectorcompliance@cisco.com);
- (b) Not take any action or permit the taking of any action by a supplier or third party which may render Cisco liable for a violation of Applicable Laws, including the FCPA;
- (c) Not use any money or other consideration paid by Cisco for any unlawful purposes, including any purposes violating the FCPA or other 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, Cisco's Partners may be required to have their own subcontractors, consultants, agents or representatives execute a similar written anti-corruption compliance statement, and to confirm to Cisco that such action has been taken laws;
- (e) The record-keeping, audit and other related terms and obligations, as set forth in Partners' agreement(s) with Cisco, shall equally apply to their compliance with this policy;
- (f) In no event shall Cisco be obligated under any supplier or third party 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 the FCPA or other Applicable Laws;
- (g) Cisco retains the right to suspend or terminate any Cisco Partner agreement immediately upon written notice if Cisco believes, in good faith, that such Cisco Partner has breached any elements of this policy, or if the Partner makes a false or fraudulent statement, representation or warranty while carrying out their contractual obligations;
- (h) **Cisco's Partners shall immediately report to Cisco any concerns it may have regarding any business practices by any Cisco employee or Cisco Partner by emailing [ethics@cisco.com](mailto: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.**

- (i) 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](http://www.cisco.com/legal/anti_corruption.html) (available in English and ten other languages), or by contacting [publicsectorcompliance@cisco.com](mailto:publicsectorcompliance@cisco.com).
- (j) Customer shall use its best efforts to regularly inform Cisco of any requirements under any Applicable Laws that directly or indirectly affect these Terms of Sale, 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;
- (k) 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 AND EXCLUSION OF LIABILITY**

16.1 Nothing in these Terms of Sale limits or excludes the liability of:

(a) Either party to the other for:

- (i) bodily injury or death resulting directly from the negligence of the other party;
- (ii) fraud or fraudulent misrepresentation;
- (iii) a breach of Section 9.0 (Confidential Information); or
- (iv) any liability that cannot be limited or excluded under applicable law.

(b) Customer to Cisco arising out of:

- (i) Customer's breach of Section 7.0 (Proprietary Rights and Software Licensing);
- (ii) Customer's breach of the End User License Agreement in Exhibit B (EULA); or
- (iii) any amounts due to Cisco under these Terms of Sale.

16.2 Subject to Section 16.1 above and Section 16.3 below, each party's total aggregate liability is limited to the money paid to Cisco under these Terms of Sale during the twelve (12) month period prior to the event that first gave rise to such liability.

16.3 Subject to Section 16.1 above, and notwithstanding anything else in these Terms of Sale to the contrary, neither party will be liable for any:

- (a) special, incidental, indirect or consequential damages;
- (b) loss of any of the following: profits, revenue, business, anticipated savings, use of any product or service, opportunity, goodwill or reputation;
- (c) lost or damaged data; or

- (d) wasted expenditure (other than any expenditure necessarily incurred to discharge the innocent party's duty or to mitigate its losses).
- 16.4 References in this Section 16.0 to (a) a "**party**" includes a party's affiliates, officers, directors, employees, agents and suppliers and (b) "**liability**" includes liability arising from contract, tort (including negligence), under any indemnity, strict liability or otherwise, in each case even if a party has been informed of the possibility of that liability. In Section 16.3, references to "**loss**" refers to any and all kinds of loss or damage including, without limitation, any damages, fines, costs, charges, fees or other liability.

## 17.0 GENERAL

- 17.1 Choice of Law. The validity, interpretation, and performance of these Terms of Sale shall be controlled by and construed under the laws of the Province of Ontario, as if performed wholly within the province and without giving effect to the principles of conflicts of law, and the courts of the Province of Ontario shall have exclusive jurisdiction over any claim arising 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 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.

- 17.7 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.
- 17.8 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.
- 17.9 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 license terms which will be made available to Customer at the time such items of Software are ordered by or provided to Customer.
- 17.10 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.
- 17.11 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 Indemnification), 11.0 (Term and Termination), 13.0 (Records), 14.0 (Export, Re-Export, Transfer and Use Controls), 16.0 (Limitation and Exclusion of Liability), 17.0 (General), and the license to use the Software set out in Exhibit B (End User License Agreement) (subject to the termination provisions set forth in Section 11.0 (Term and Termination) of these Terms of Sale).

17.12 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  
SHIPPING TERMS**

<b>Bill-To Location</b>	<b>Ship-to Location</b>	<b>Purchase Orders Placed On</b>	<b>Ship from Region</b>	<b>Routing</b>	<b>Shipping Term (Incoterms 2010)</b>	<b>Title transfer</b>	<b>Risk of Loss transfer</b>	<b>Delivery point</b>
APAC	APAC	Cisco International Limited or Cisco Systems International B.V.	All (excl EU)	Customer routed	FCA	First carrier	First carrier	Cisco Designated Shipping Point
APAC	APAC	Cisco International Limited or Cisco Systems International B.V.	EU	Customer routed	EXW	Cisco Designated Shipping Point	Cisco Designated Shipping Point	Cisco Designated Shipping Point
APAC	ACRP	Cisco International Limited or Cisco Systems International B.V.	All	Cisco Routed	CPT	First carrier	First Carrier	Import point (prior to customs clearance)
EMEA	EU except Italy	Cisco International Limited or Cisco Systems International B.V.	All	Cisco Routed	CIP*	First carrier	First Carrier	Ship to address indicated on the Purchase Order
EMEA	Norway and Switzerland	Cisco International Limited or Cisco Systems International B.V.	All	Cisco Routed	CIP	First carrier	First carrier	Ship to address indicated on the Purchase Order
EMEA	REMEA	Cisco International Limited or Cisco Systems International B.V.	All	Cisco routed	DAP	First carrier	Import Point (prior to customs clearance)	Import Point (prior to customs clearance)
EMEA	EMEA	Cisco International Limited or Cisco Systems	EU	Customer routed	EXW	Cisco Designated Shipping Point	Cisco Designated Shipping	Cisco Designated Shipping Point

		International B.V.					Point	
EMEA	EMEA	Cisco International Limited or Cisco Systems International B.V.	USA/APJ	Customer routed	FCA	First carrier	First carrier	Cisco Designated Shipping Point
EMEA	Anywhere except APAC and EMEA	Cisco International Limited or Cisco Systems International B.V.	EU	Customer routed	EXW	Cisco Designated Shipping Point	Cisco Designated Shipping Point	Cisco Designated Shipping Point
EMEA	Anywhere except APAC and EMEA	Cisco International Limited or Cisco Systems International B.V.	USA/APJ	Customer routed	FCA	First carrier	First carrier	Cisco Designated Shipping Point
All	USA	Cisco Systems, Inc.	USA	Customer routed	FCA	First carrier	First carrier	Cisco Designated Shipping Point
All	Anywhere except USA and Puerto Rico	Cisco Systems, Inc.	Anywhere except USA	Customer routed	FCA	First carrier	First carrier	Cisco Designated Shipping Point
LATAM	USA	Cisco Systems, Inc.	USA	Cisco Routed	FCA	Cisco Designated Shipping Point	Cisco Designated Shipping Point	Ship to address indicated on the Purchase Order
USA	All except USA	Cisco Systems, Inc.	All (except EU)	Customer routed	FCA	Cisco Designated Shipping Point	Cisco Designated Shipping Point	Cisco Designated Shipping Point
USA	USA, except Puerto Rico	Cisco Systems, Inc.	All	Customer routed	FCA	Cisco Designated Shipping Point	Cisco Designated Shipping Point	Cisco Designated Shipping Point
USA	USA, Puerto Rico	Cisco Systems, Inc.	All	Cisco routed	CPT	First carrier	First carrier	Ship to address indicated on the

								Purchase Order
Australia	Australia	Cisco Systems Australia Pty Ltd.	All	Cisco routed	CIP	First carrier	First carrier	Ship to address indicated on the Purchase Order
Canada	Canada	Cisco Systems Canada Co.	All	Cisco routed	CIP	First carrier	First carrier	Ship to address indicated on the Purchase Order
Japan	Japan	Cisco Systems G.K.	All	Cisco routed	CIP	First carrier	First carrier	Ship to address indicated on the Purchase Order
Anywhere	Italy	Cisco Systems (Italy) s.r.l.	All	Cisco routed	CIP	First carrier	First carrier	Ship to address indicated on the Purchase Order

#### **DEFINITIONS:**

1. **ACRP** means countries covered by the Asia Cisco Routed Program as determined by Cisco.
2. **APAC** means Asia Pacific which includes Bangladesh, Cambodia, China, Hong Kong S.A.R., India, Indonesia, Laos, Macau S.A.R., Malaysia, New Zealand, Philippines, Republic of Korea, Singapore, Taiwan, Thailand, and Vietnam. APAC excludes Japan and Australia.
3. **APJ** means Asia Pacific and Japan.
4. **CIP\*** means:
  - (1) For shipments to the EU destinations, Cisco will ship the Products in the EU free circulation. Cisco will prepay duty according to duty rates applicable under the Brussels Nomenclature and other EU regulations. Cisco will then invoice Integrator, Distributor or Customer, as applicable, and it will reimburse Cisco for such duties.
  - or
  - (2) On approval by Cisco, Integrator, Distributor or Customer, as applicable, may select a “duty unpaid” option. This will mean that Integrator, Distributor or Customer, as applicable, will be responsible for declaring the Products to customs authorities to facilitate EU free circulation and will be solely responsible for paying all associated costs, duties and taxes. Additionally, Integrator, Distributor or Customer, as applicable, will be responsible for ensuring that all declarations to custom authorities are in compliance with local, national and international laws.

5. **Cisco Designated Shipping Point** means any predefined point that Cisco deems appropriate for collection.
6. **Cisco Routed (opt-in)** means, where available, a shipping program as selected by Integrator, Distributor or Customer, as applicable, using Cisco's carrier of choice by which program shipment of Products is made in accordance with the Shipping term (Incoterms 2010) defined in the table above.
7. **Customer Routed (opt-out)** means, where available, a shipping program, as selected by Integrator, Distributor or Customer, as applicable, on the Purchase Order at the time of Purchase Order submission, by which Products are delivered in accordance with the Shipping term (Incoterms 2010) defined in the table above. Integrator's, Distributor's or Customer's, as applicable, carrier must be part of Cisco's Approved Vendor List (AVL).
8. **EMEA** means the countries located in the EU, the Middle East, Africa, the Commonwealth of Independent States (CIS), and Pakistan. For purposes of this Exhibit, EMEA excludes Russia, Kazakhstan and Belarus.
9. **EU** means the current member states of the European Union except Italy. As of the Effective Date, the list is as follows: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. Any additions to the above list by the EU shall be deemed to be automatically incorporated into the above list of EU countries for the purposes of this Exhibit.
10. **LATAM** means Latin America, including Mexico, Central America, South America, and the Caribbean island nations.
11. **REMEA** means the EMEA countries (except for the EU, Norway and Switzerland) and Russia, Kazakhstan and Belarus.

*END OF EXHIBIT*

**EXHIBIT B  
END USER LICENSE AGREEMENT**

**IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. IT IS VERY IMPORTANT THAT YOU CHECK THAT YOU ARE PURCHASING CISCO SOFTWARE OR EQUIPMENT FROM AN APPROVED SOURCE AND THAT YOU, OR THE ENTITY YOU REPRESENT (COLLECTIVELY, THE "CUSTOMER") HAVE BEEN REGISTERED AS THE END USER FOR THE PURPOSES OF THIS CISCO END USER LICENSE AGREEMENT. IF YOU ARE NOT REGISTERED AS THE END USER, YOU HAVE NO LICENSE TO USE THE SOFTWARE AND THE LIMITED WARRANTY IN THIS END USER LICENSE AGREEMENT DOES NOT APPLY. ASSUMING YOU HAVE PURCHASED FROM AN APPROVED SOURCE, DOWNLOADING, INSTALLING OR USING CISCO OR CISCO-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.**

**CISCO SYSTEMS, INC. OR ITS AFFILIATE LICENSING THE SOFTWARE ("CISCO") IS WILLING TO LICENSE THIS SOFTWARE TO YOU ONLY UPON THE CONDITION THAT YOU PURCHASED THE SOFTWARE FROM AN APPROVED SOURCE AND THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT PLUS ANY ADDITIONAL LIMITATIONS ON THE LICENSE SET FORTH IN A SUPPLEMENTAL LICENSE AGREEMENT ACCOMPANYING THE PRODUCT OR AVAILABLE AT THE TIME OF YOUR ORDER (COLLECTIVELY, THE "AGREEMENT"). TO THE EXTENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS END USER LICENSE AGREEMENT AND ANY SUPPLEMENTAL LICENSE AGREEMENT, THE SUPPLEMENTAL LICENSE AGREEMENT SHALL APPLY. BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE, YOU ARE REPRESENTING THAT YOU PURCHASED THE SOFTWARE FROM AN APPROVED SOURCE AND BINDING YOURSELF TO THE AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM AN APPROVED SOURCE, AND APPLIES ONLY IF YOU ARE THE ORIGINAL AND REGISTERED END USER PURCHASER. FOR THE PURPOSES OF THIS END USER LICENSE AGREEMENT, AN "APPROVED SOURCE" MEANS (A) CISCO; OR (B) A DISTRIBUTOR OR SYSTEMS INTEGRATOR AUTHORIZED BY CISCO TO DISTRIBUTE/SELL CISCO EQUIPMENT, SOFTWARE AND SERVICES WITHIN YOUR TERRITORY TO END USERS; OR (C) A RESELLER AUTHORIZED BY ANY SUCH DISTRIBUTOR OR SYSTEMS INTEGRATOR IN ACCORDANCE WITH THE TERMS OF THE DISTRIBUTOR'S AGREEMENT WITH CISCO TO DISTRIBUTE/SELL THE CISCO EQUIPMENT SOFTWARE AND SERVICES WITHIN YOUR TERRITORY TO END USERS.**

**THE FOLLOWING TERMS OF THE AGREEMENT GOVERN CUSTOMER'S USE OF THE SOFTWARE (DEFINED BELOW), EXCEPT TO THE EXTENT: (A) THERE IS A SEPARATE SIGNED CONTRACT BETWEEN CUSTOMER AND CISCO GOVERNING CUSTOMER'S USE OF THE SOFTWARE, OR (B) THE SOFTWARE INCLUDES A SEPARATE "CLICK-ACCEPT" LICENSE AGREEMENT OR THIRD PARTY LICENSE AGREEMENT AS PART OF THE INSTALLATION OR DOWNLOAD PROCESS GOVERNING CUSTOMER'S USE OF THE SOFTWARE. TO THE EXTENT OF A CONFLICT BETWEEN THE PROVISIONS OF THE FOREGOING DOCUMENTS, THE ORDER OF PRECEDENCE SHALL BE (1) THE SIGNED CONTRACT, (2) THE CLICK-ACCEPT AGREEMENT OR THIRD PARTY LICENSE AGREEMENT, AND (3) THE AGREEMENT. FOR PURPOSES OF THE AGREEMENT, "SOFTWARE" SHALL MEAN COMPUTER PROGRAMS, INCLUDING FIRMWARE AND COMPUTER PROGRAMS EMBEDDED IN CISCO EQUIPMENT, AS PROVIDED TO CUSTOMER BY AN APPROVED SOURCE, AND ANY UPGRADES, UPDATES, BUG FIXES OR MODIFIED**

VERSIONS THERETO (COLLECTIVELY, "UPGRADES"), ANY OF THE SAME WHICH HAS BEEN RELICENSED UNDER THE CISCO SOFTWARE TRANSFER AND RE-LICENSING POLICY (AS MAY BE AMENDED BY CISCO FROM TIME TO TIME) OR BACKUP COPIES OF ANY OF THE FOREGOING.

**LICENSE.** CONDITIONED UPON COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE AGREEMENT, CISCO GRANTS TO CUSTOMER A NONEXCLUSIVE AND NONTRANSFERABLE LICENSE TO USE FOR CUSTOMER'S INTERNAL BUSINESS PURPOSES THE SOFTWARE AND THE DOCUMENTATION FOR WHICH CUSTOMER HAS PAID THE REQUIRED LICENSE FEES TO AN APPROVED SOURCE. "DOCUMENTATION" MEANS WRITTEN INFORMATION (WHETHER CONTAINED IN USER OR TECHNICAL MANUALS, TRAINING MATERIALS, SPECIFICATIONS OR OTHERWISE) PERTAINING TO THE SOFTWARE AND MADE AVAILABLE BY AN APPROVED SOURCE WITH THE SOFTWARE IN ANY MANNER (INCLUDING ON CD-ROM, OR ON-LINE). IN ORDER TO USE THE SOFTWARE, CUSTOMER MAY BE REQUIRED TO INPUT A REGISTRATION NUMBER OR PRODUCT AUTHORIZATION KEY AND REGISTER CUSTOMER'S COPY OF THE SOFTWARE ON-LINE AT CISCO'S WEB-SITE TO OBTAIN THE NECESSARY LICENSE KEY OR LICENSE FILE.

CUSTOMER'S LICENSE TO USE THE SOFTWARE SHALL BE LIMITED TO, AND CUSTOMER SHALL NOT USE THE SOFTWARE IN EXCESS OF, A SINGLE HARDWARE CHASSIS OR CARD OR SUCH OTHER LIMITATIONS AS ARE SET FORTH IN THE APPLICABLE SUPPLEMENTAL LICENSE AGREEMENT OR IN THE APPLICABLE PURCHASE ORDER WHICH HAS BEEN ACCEPTED BY AN APPROVED SOURCE AND FOR WHICH CUSTOMER HAS PAID TO AN APPROVED SOURCE THE REQUIRED LICENSE FEE (THE "PURCHASE ORDER").

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 CUSTOMER'S INTERNAL BUSINESS PURPOSES. NO OTHER LICENSES ARE GRANTED BY IMPLICATION, ESTOPPEL OR OTHERWISE.

FOR EVALUATION OR BETA COPIES FOR WHICH CISCO DOES NOT CHARGE A LICENSE FEE, THE ABOVE REQUIREMENT TO PAY LICENSE FEES DOES NOT APPLY.

**GENERAL LIMITATIONS.** THIS IS A LICENSE, NOT A TRANSFER OF TITLE, TO THE SOFTWARE AND DOCUMENTATION, AND CISCO RETAINS OWNERSHIP OF ALL COPIES OF THE SOFTWARE AND DOCUMENTATION. CUSTOMER ACKNOWLEDGES THAT THE SOFTWARE AND DOCUMENTATION CONTAIN TRADE SECRETS OF CISCO, ITS SUPPLIERS OR LICENSORS, INCLUDING BUT NOT LIMITED TO THE SPECIFIC INTERNAL DESIGN AND STRUCTURE OF INDIVIDUAL PROGRAMS AND ASSOCIATED INTERFACE INFORMATION. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED UNDER THE AGREEMENT, CUSTOMER SHALL ONLY USE THE SOFTWARE IN CONNECTION WITH THE USE OF CISCO EQUIPMENT PURCHASED BY THE CUSTOMER FROM AN APPROVED SOURCE AND CUSTOMER SHALL HAVE NO RIGHT, AND CUSTOMER SPECIFICALLY AGREES NOT TO:

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 CISCO EQUIPMENT NOT PURCHASED BY THE CUSTOMER FROM AN APPROVED SOURCE OR ON 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 OR EXCEPT TO THE EXTENT THAT CISCO IS LEGALLY REQUIRED TO PERMIT SUCH SPECIFIC ACTIVITY PURSUANT TO ANY APPLICABLE OPEN SOURCE LICENSE;

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.

**SOFTWARE, UPGRADES AND ADDITIONAL COPIES.** NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE TO AN APPROVED SOURCE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT SUPPLIED BY AN APPROVED SOURCE FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

**PROPRIETARY NOTICES.** CUSTOMER AGREES TO MAINTAIN AND REPRODUCE ALL COPYRIGHT, PROPRIETARY AND OTHER NOTICES ON ALL COPIES, IN ANY FORM, OF THE SOFTWARE IN THE SAME FORM AND MANNER THAT SUCH COPYRIGHT AND OTHER PROPRIETARY NOTICES ARE INCLUDED ON THE SOFTWARE. EXCEPT AS EXPRESSLY AUTHORIZED IN THE AGREEMENT, CUSTOMER SHALL NOT MAKE ANY COPIES OR DUPLICATES OF ANY SOFTWARE WITHOUT THE PRIOR WRITTEN PERMISSION OF CISCO.

**TERM AND TERMINATION.** THE AGREEMENT AND THE LICENSE GRANTED HEREIN SHALL REMAIN EFFECTIVE UNTIL TERMINATED. CUSTOMER MAY TERMINATE THE AGREEMENT AND THE LICENSE AT ANY TIME BY DESTROYING ALL COPIES OF SOFTWARE AND ANY DOCUMENTATION. CUSTOMER'S RIGHTS UNDER THE AGREEMENT WILL TERMINATE IMMEDIATELY WITHOUT NOTICE FROM CISCO IF CUSTOMER FAILS TO COMPLY WITH ANY PROVISION OF THE AGREEMENT. UPON TERMINATION, CUSTOMER SHALL DESTROY ALL COPIES OF SOFTWARE AND DOCUMENTATION IN ITS POSSESSION OR CONTROL. ALL CONFIDENTIALITY OBLIGATIONS OF CUSTOMER, ALL RESTRICTIONS AND LIMITATIONS IMPOSED ON THE CUSTOMER UNDER THE SECTION TITLED "GENERAL LIMITATIONS" AND ALL LIMITATIONS OF LIABILITY AND DISCLAIMERS AND RESTRICTIONS OF WARRANTY SHALL SURVIVE TERMINATION OF THIS AGREEMENT. IN ADDITION, THE PROVISIONS OF THE SECTIONS TITLED "U.S. GOVERNMENT END USER PURCHASERS" AND "GENERAL TERMS APPLICABLE TO THE LIMITED WARRANTY STATEMENT AND END USER LICENSE AGREEMENT" SHALL SURVIVE TERMINATION OF THE AGREEMENT.

**CUSTOMER RECORDS.** CUSTOMER GRANTS TO CISCO AND ITS INDEPENDENT ACCOUNTANTS THE RIGHT TO EXAMINE CUSTOMER'S BOOKS, RECORDS AND ACCOUNTS DURING CUSTOMER'S NORMAL BUSINESS HOURS TO VERIFY COMPLIANCE WITH THIS AGREEMENT. IN THE EVENT SUCH AUDIT DISCLOSES NON-COMPLIANCE WITH THIS AGREEMENT, CUSTOMER SHALL PROMPTLY PAY TO CISCO THE APPROPRIATE LICENSE FEES, PLUS THE REASONABLE COST OF CONDUCTING THE AUDIT.

**EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS.** THE SOFTWARE, DOCUMENTATION AND TECHNOLOGY OR DIRECT PRODUCTS THEREOF (HEREAFTER REFERRED TO AS SOFTWARE AND TECHNOLOGY), SUPPLIED BY CISCO UNDER THE AGREEMENT ARE SUBJECT TO EXPORT CONTROLS UNDER THE LAWS AND REGULATIONS OF THE UNITED STATES (U.S.) AND ANY OTHER APPLICABLE COUNTRIES' LAWS AND REGULATIONS. CUSTOMER SHALL COMPLY WITH SUCH LAWS AND REGULATIONS GOVERNING

EXPORT, RE-EXPORT, TRANSFER AND USE OF CISCO SOFTWARE 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 EXPORT, RE-EXPORT, TRANSFER AND USE MAY BE LOCATED AT THE FOLLOWING URL: [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).

**U.S. GOVERNMENT END USER PURCHASERS.** THE SOFTWARE AND DOCUMENTATION QUALIFY AS "COMMERCIAL ITEMS," AS THAT TERM IS DEFINED AT FEDERAL ACQUISITION REGULATION ("FAR") (48 C.F.R.) 2.101, CONSISTING OF "COMMERCIAL COMPUTER SOFTWARE" AND "COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION" AS SUCH TERMS ARE USED IN FAR 12.212. CONSISTENT WITH FAR 12.212 AND DoD FAR SUPP. 227.7202-1 THROUGH 227.7202-4, AND NOTWITHSTANDING ANY OTHER FAR OR OTHER CONTRACTUAL CLAUSE TO THE CONTRARY IN ANY AGREEMENT INTO WHICH THE AGREEMENT MAY BE INCORPORATED, CUSTOMER MAY PROVIDE TO GOVERNMENT END USER OR, IF THE AGREEMENT IS DIRECT, GOVERNMENT END USER WILL ACQUIRE, THE SOFTWARE AND DOCUMENTATION WITH ONLY THOSE RIGHTS SET FORTH IN THE AGREEMENT. USE OF EITHER THE SOFTWARE OR DOCUMENTATION OR BOTH CONSTITUTES AGREEMENT BY THE GOVERNMENT THAT THE SOFTWARE AND DOCUMENTATION ARE "COMMERCIAL COMPUTER SOFTWARE" AND "COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION," AND CONSTITUTES ACCEPTANCE OF THE RIGHTS AND RESTRICTIONS HEREIN.

**IDENTIFIED COMPONENTS; ADDITIONAL TERMS.** THE SOFTWARE MAY CONTAIN OR BE DELIVERED WITH ONE OR MORE COMPONENTS, WHICH MAY INCLUDE THIRD-PARTY COMPONENTS, IDENTIFIED BY CISCO IN THE DOCUMENTATION, README.TXT\_FILE, THIRD-PARTY CLICK-ACCEPT OR ELSEWHERE (E.G. ON WWW.CISCO.COM) (THE "IDENTIFIED COMPONENT(S)") AS BEING SUBJECT TO DIFFERENT LICENSE AGREEMENT TERMS, DISCLAIMERS OF WARRANTIES, LIMITED WARRANTIES OR OTHER TERMS AND CONDITIONS (COLLECTIVELY, "ADDITIONAL TERMS") THAN THOSE SET FORTH HEREIN. YOU AGREE TO THE APPLICABLE ADDITIONAL TERMS FOR ANY SUCH IDENTIFIED COMPONENT(S).

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PROVINCE OF ONTARIO, CANADA, NOTWITHSTANDING ANY CONFLICTS OF LAW PROVISIONS; AND THE COURTS OF THE PROVINCE OF ONTARIO SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY CLAIM ARISING UNDER THE AGREEMENT OR WARRANTIES. IF YOU ACQUIRED THE SOFTWARE IN EUROPE, THE MIDDLE EAST, AFRICA, ASIA OR OCEANIA (EXCLUDING AUSTRALIA), UNLESS EXPRESSLY PROHIBITED BY LOCAL LAW, THE AGREEMENT AND WARRANTIES ARE CONTROLLED BY AND CONSTRUED UNDER THE LAWS OF ENGLAND, NOTWITHSTANDING ANY CONFLICTS OF LAW PROVISIONS; AND THE ENGLISH COURTS SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY CLAIM ARISING UNDER THE AGREEMENT OR WARRANTIES. IN ADDITION, IF THE AGREEMENT IS CONTROLLED BY THE LAWS OF ENGLAND, NO PERSON WHO IS NOT A PARTY TO THE AGREEMENT SHALL BE ENTITLED TO ENFORCE OR TAKE THE BENEFIT OF ANY OF ITS TERMS UNDER THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999. IF YOU ACQUIRED THE SOFTWARE IN JAPAN, UNLESS EXPRESSLY PROHIBITED BY LOCAL LAW, THE AGREEMENT AND WARRANTIES ARE CONTROLLED BY AND CONSTRUED UNDER THE LAWS OF JAPAN, NOTWITHSTANDING ANY CONFLICTS OF LAW PROVISIONS; AND THE TOKYO DISTRICT COURT OF JAPAN SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY CLAIM ARISING UNDER THE AGREEMENT OR WARRANTIES. IF YOU ACQUIRED THE SOFTWARE IN AUSTRALIA, UNLESS EXPRESSLY PROHIBITED BY LOCAL LAW, THE AGREEMENT AND WARRANTIES ARE CONTROLLED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW SOUTH WALES, AUSTRALIA, NOTWITHSTANDING ANY CONFLICTS OF LAW PROVISIONS; AND THE STATE AND FEDERAL COURTS OF NEW SOUTH WALES SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY CLAIM ARISING UNDER THE AGREEMENT OR WARRANTIES. IF YOU ACQUIRED THE SOFTWARE IN ANY OTHER COUNTRY, UNLESS EXPRESSLY PROHIBITED BY LOCAL LAW, THE AGREEMENT AND WARRANTIES ARE CONTROLLED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF CALIFORNIA, UNITED STATES OF AMERICA, NOTWITHSTANDING ANY CONFLICTS OF LAW PROVISIONS; AND THE STATE AND FEDERAL COURTS OF CALIFORNIA SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY CLAIM ARISING UNDER THE AGREEMENT OR WARRANTIES.

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