



CISCO IRONPORT SYSTEMS LLC STANDARD TERMS AND CONDITIONS OF SALE

These Standard Terms and Conditions of Sale (“**Agreement**”) are entered into by and between Cisco IronPort Systems LLC, a Delaware limited liability company, having its principal place of business at 950 Elm Ave., San Bruno, California, 94066 (“**Cisco IronPort**”) and you (“**Customer**”), for Products and Services, unless Cisco IronPort 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 IronPort Products or Services being purchased and such agreement is in effect at the time the applicable Purchase Order is received by Cisco IronPort (“**Existing Agreement**”), in which case the terms and conditions of such Existing Agreement shall govern the purchase and license of those Cisco IronPort Products or Services.

This Agreement consists of this document, the AS Addendum attached hereto, and the End-User License Agreement (“**EULA**”) and Cisco IronPort services descriptions (“**Services Description**”), which are incorporated in this Agreement by this reference and can be found at:

http://www.cisco.com/web/about/doing_business/legal/service_descriptions/related.html.

GENERAL TERMS & CONDITIONS

1. **General.** The terms and conditions of this Agreement apply to the purchase of the Cisco IronPort products (the “**Products**”) and services (the “**Services**”) made available for purchase from the Cisco IronPort published price list solely for Customer’s internal business use. This Agreement shall be effective (“**Effective Date**”) upon the electronic acceptance, click-accept, or, if signed in hard copy, the date of last signature, or in the absence of any of the foregoing, this Agreement shall be effective from the date an order is placed by Customer.

2. **Purchase Orders.** Customer shall purchase Products and Services by issuing a purchase order, signed, if requested by Cisco IronPort, or (in the case of electronic transmission) sent by its authorized representative, indicating specific Products and Services, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and any other special instructions (collectively a “**Purchase Order**”). Prices for Products and Services shall be those specified in the then-current price list, less any applicable discount set forth in a valid written price quotation, if any, submitted by Cisco IronPort to Customer for such Products and Services. No terms, provisions or conditions of any purchase order, invoice or other business form or written authorization used by either party will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of either party to object to such terms, provisions, or conditions. Unless otherwise mutually agreed in writing, the terms of this Agreement shall govern the purchase by Customer of additional Products and Services after the Effective Date.

3. **Embedded Software; Intellectual Property Rights.** Cisco IronPort hereby grants Customer a non-exclusive, non-

transferable, non-sublicensable license to use the software contained on the Products (the “**Software**”) in object code format solely for the internal business purposes of Customer in accordance with the terms and conditions set forth in the EULA, which is incorporated herein by reference. Except as otherwise agreed by the parties hereto in writing, Customer will not use the Software as a service provider or as part of a product or service offering to third parties without Cisco IronPort’s prior written consent.

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

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

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

7. **Support Services.** So long as Customer has paid in full all associated fees for Cisco IronPort's Platinum and/or Platinum Plus support programs ("Support Services"), Cisco IronPort shall provide support and maintenance for the Products as more fully set forth in the Services Description, which is incorporated herein by reference. The initial term for the Support Services will commence on the Effective Date and remain in effect for the time period set forth in the valid price quotation and accepted Purchase Order. Support Services will automatically renew for additional one (1) year periods on each anniversary of the Effective Date, unless either party provides written notice of termination within thirty (30) days prior to such anniversary date. For each renewal term, Customer shall pay the then-current unit list price for the applicable Support Services. Fees are payable within thirty (30) days of the invoice date and are payable in advance of the applicable term. In the event that Customer desires to reinstate Support Services after allowing its Support Services to lapse, Customer will be required to pay Cisco IronPort's then-current standard fee for reinstating lapsed Support Services. Support Services fees are non-refundable unless Cisco IronPort has materially breached the maintenance terms and has failed to cure the breach after thirty (30) days written notice, in which case the prorated portion of any prepaid unused Support Services fees are refundable.

8. **Indemnity.**

(a) Claims. Cisco IronPort 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: (i) promptly notifies Cisco IronPort in writing of the Claim; and (ii) cooperates with Cisco IronPort in the defense of the Claim, and grants Cisco IronPort full and exclusive control of the defense and settlement of the Claim and any subsequent appeal.

(b) Additional Remedies. If a Claim is made or appears likely, Customer agrees to permit Cisco IronPort 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 IronPort determines that none of those alternatives is reasonably available, then Customer will return the Product and Cisco IronPort will refund Customer's remaining net book value of the Product calculated according to generally accepted accounting principles.

(c) Exclusions. Cisco IronPort has no obligation for any Claim based on: (i) compliance with any designs,

specifications, or instructions provided by Customer or a third party on Customer's behalf; (ii) modification of a Product by Customer or a third party; (iii) 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 (iv) combination, operation, or use of a Product with non-Cisco IronPort products, software or business processes.

(d) Sole and Exclusive Remedy. This Section states Cisco IronPort's entire obligation and Customer's exclusive remedy regarding any claims for intellectual property infringement.

9. **Warranty.**

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

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

(c) If during the Warranty Period: (i) Cisco IronPort is notified promptly in writing upon discovery of any defect in the Product, including a detailed description of such alleged defect, (ii) such Product is returned, transportation charges prepaid, to Cisco IronPort's designated manufacturing facility in accordance with Cisco IronPort's then-current return procedures, as set forth by Cisco IronPort from time to time, and (iii) Cisco IronPort's inspections and tests determine that the Product is indeed defective and has not been subjected to any of the conditions set forth in subsection (b) above, then, as Customer's sole remedy and Cisco IronPort's sole obligation under the foregoing warranty, Cisco IronPort will, at Cisco IronPort's option, repair or replace without charge the defective Product or refund a pro-rata portion of the purchase price of the Product based on a three (3) year straight-line amortization. Any Product that has either been repaired or replaced under this warranty will have warranty coverage for the longer of ninety (90) days or the remaining warranty period. Replacement parts used in the repair of Product may be new or equivalent to new.

(d) EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY

APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. ALL SUPPORT AND MAINTENANCE SERVICES ARE PROVIDED "AS IS."

(e) To the extent that any Product(s) were previously delivered for evaluation purposes, or that are spare units or demonstration units, and were used and/or refurbished units, the warranties set forth herein apply fully to such used and/or refurbished units.

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

11. Compliance with all Applicable Laws; Export Control. Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures including requirements applicable to the use of Products under the laws and regulations, of any government where the Products are to be used (collectively "Applicable Laws"). Customer will indemnify and hold harmless Cisco IronPort, for any violation or alleged violation of any Applicable Laws. Customer hereby acknowledges that the Products and technology or direct products thereof ("Products and Technology"), supplied by Cisco IronPort under this Agreement are subject to export controls under the laws and regulations of the United States (U.S.). Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of Cisco IronPort Products and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco IronPort and Customer each agree to provide the other such information and assistance as may reasonably be required by the other in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents. Customer agrees to maintain full, true, and accurate records of exports, re-exports, and transfers of the Products and Technology, purchased and deployed or distributed, according to U.S. and local laws (minimum 5 years). Customer acknowledges that detailed information regarding compliance with U.S. use, export, re-export, and transfer laws may be found at:

http://www.cisco.com/wwl/export/compliance_provision.htm
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12. Confidentiality.

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

13. Term and Termination. The terms of this Agreement shall commence on the Effective Date and continue thereafter for a period of one year, unless sooner terminated as set forth below. The terms of this Agreement 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 shall not be renewed. If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party will have the right to terminate this Agreement, including all licenses granted to Customer hereunder, at any time. Customer's breach of a payment obligation constitutes a default the date the payment is due and Cisco IronPort will have the right to terminate this Agreement immediately. The provisions of Sections 3, 8, 10, 11, 12, 13, 14, 15 and 16 and all accrued payment obligations, shall survive the termination of this Agreement.

14. Assignment; Entire Agreement; Modification. Neither party may assign or delegate its rights or obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that any such assignment shall not relieve the assigning entity of any obligation to pay monies that were owed prior to the date of the assignment. Notwithstanding the foregoing, (i) either party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to its parent or majority-owned subsidiary company of sufficient net worth to meet any potential liability under this Agreement, and (ii) Cisco IronPort may, without Customer's consent, assign the right to receive any amount due. This Agreement supersedes all prior communications, transactions, and understandings, whether oral or written, and, together with any applicable click-through agreements for third party software contained on the Products, constitutes the sole and entire agreement between the parties pertaining the referenced quotation or purchase order. No modification, addition or deletion, or waiver of any of the terms and conditions of this Agreement will be binding on either party unless made in a non-

preprinted agreement clearly understood by both parties to be a modification or waiver, and signed by a duly authorized representative of each party.

15. **Governing Law and Venue.** This Agreement will be governed by the laws of the State of California, U.S.A., without regard to provisions on the conflicts of laws. The parties consent to the exclusive jurisdiction of, and venue in, the state and federal courts within Santa Clara County, California, U.S.A. THE UNITED NATIONS

CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT.

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

CISCO IRONPORT SYSTEMS LLC
STANDARD TERMS AND CONDITIONS OF SALE – AS ADDENDUM

The terms and conditions of this AS Addendum (“AS Addendum”) shall govern the purchase of any Advanced Services from Cisco IronPort Systems LLC by Customer pursuant to a Statement of Work (“SOW”) entered into hereunder.

If you purchase project-related or consultancy services directly from Cisco IronPort pursuant to an SOW, and if you do not already have an effective agreed-upon Advanced Services Agreement or other master services agreement covering SOW-based services with Cisco IronPort, then any such SOW will be governed by the standard SOW terms and conditions set forth at: http://www.cisco.com/web/about/doing_business/legal/docs/SOW_Terms_and_Conditions.pdf, which is hereby incorporated into, and made part of, this Agreement and the SOW by this reference. For purposes of clarification, all references to “Cisco Systems, Inc.” and “Cisco” shall be replaced with references to “Cisco IronPort Systems LLC” and “Cisco IronPort”, and the obligations and terms shall only be between Cisco IronPort and Customer for the Cisco IronPort Advanced Services set forth in the applicable Cisco IronPort SOW.