

DEVELOPMENT AND LICENSE AGREEMENT

This DEVELOPMENT AND LICENSE AGREEMENT (the "DLA") is made and entered into as of this ___ day of _____, 20__, (the "Effective Date") by and between Cisco Systems, Inc., a California corporation, with offices at 170 W. Tasman Drive, San Jose, California 95134 ("Cisco"), and _____, a _____ corporation having a place of business at _____ ("Developer").

This DLA has the following attachments, which are incorporated into this DLA by this reference and made a part hereof:

EXHIBIT A	-	CISCO PROPERTY
EXHIBIT B	-	DEVELOPER PROPERTY
EXHIBIT C	-	SPECIFICATIONS
EXHIBIT D	-	STATEMENT OF WORK
EXHIBIT E	-	DEVELOPER TECHNICAL SUPPORT
EXHIBIT F		OPEN SOURCE GUIDELINES
EXHIBIT G		NON-DISCLOSURE AGREEMENT

PRELIMINARY UNDERSTANDING

A. Cisco is in the business of developing, manufacturing and selling hardware and software products for use in computer and communications networks.

B. Developer is in the business of developing, manufacturing and selling components that are included in certain of Cisco's products.

C. Cisco and Developer desire that Developer develop, on behalf of Cisco, and make available for sale to Cisco, the Product (as defined herein) on the terms and conditions set forth herein.

D. The Parties acknowledge that as additional development projects arise and are agreed upon, the Parties shall reflect the appropriate Cisco Property, Developer Property, Specifications and Statements of Work in additional exhibits without the need to alter this DLA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1.1 "Affiliate" shall mean any entity, whether incorporated or not, which is controlled by, under common control with, or controls a party, where "control" means the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract, or otherwise.

1.2 "Cisco Property" shall mean such items provided by Cisco or its Affiliate, including but not limited to those items described in Exhibit A, any and all pre-existing technology of Cisco and its Affiliates, and all Intellectual Property Rights related thereto. Cisco Property shall include any derivatives, improvements or modifications thereto or thereof and any Intellectual Property Rights related thereto.

1.3 “Contamination” means that proprietary technology has become subject to the terms of an Open Source License under which downstream recipients or other third parties may claim the right to (i) copy, create derivative works of, or redistribute the proprietary technology, or (ii) receive source code to the proprietary technology.

1.4 “Deliverables” shall mean any tangible or intangible items to be delivered by Developer to Cisco pursuant to the Statement of Work.

1.5 “Developer Property” shall mean such items as described in Exhibit B and all Intellectual Property Rights related thereto. Developer Property shall include any derivatives, improvements or modifications thereto and related Intellectual Property rights, excepting those conveyed to Cisco in Section 3.1.

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

1.7 “Open Source License” means a software license under which the source code is made available under terms that allow any licensee to copy, create derivative works and distribute the software without any fee or cost.

1.8 “Open Source Technology” means any technology provided by Developer that is or becomes subject to the terms of an Open Source License.

1.9 “Product” shall mean the product which is achieved upon completion and acceptance of a Statement of Work, including all tangible and intangible results and items arising out of or constituting the results of the development of the Product , including without limitation Deliverable and documentation.

1.10 “Specifications” shall mean the technical and other specifications for the Product, as set forth in Exhibit C.

1.11 “Statement of Work” shall mean each statement of work as may be set forth in Exhibit D throughout the Term.

2. DEVELOPMENT EFFORT

2.1 Development Effort. Developer shall use its best efforts to develop and deliver the Deliverables in accordance with the Specifications and the SOW. Each Deliverable shall be delivered in such format and on such media as may be reasonably requested by Cisco.

2.2 Late Delivery. If Developer fails to deliver a Deliverable to Cisco within five (5) business days of the scheduled delivery date set forth in the SOW, Cisco shall have the right to terminate this DLA (or, at Cisco's option, that SOW) upon written notice to Developer. Immediately after receipt of such notice Developer shall refund any and all compensation previously paid to Developer by Cisco.

2.3 Acceptance. Upon receipt of the Deliverables by Cisco, Cisco will test whether the Deliverables conform to the applicable part of the Specifications and the SOW. Cisco will accept or reject each Deliverable within thirty (30) days after delivery by written notice thereof. In the event that a Deliverable is found not to conform to the applicable Specifications or SOW or is in any way defective in material or workmanship, or otherwise damaged ("Deficiencies"), Cisco may reject the Deliverable and will promptly notify Developer in writing of the basis of such rejection. Within thirty (30) days of receiving each report regarding Deficiencies, Developer shall correct the Deficiencies. The procedure in this Section 2.3 will be repeated with respect to a corrected Deliverable to determine whether it is acceptable to Cisco, unless and until Cisco issues a final rejection of any such corrected Deliverable after rejecting the Deliverable on at least two (2) prior occasions. If Cisco issues a final rejection, (i) Developer shall return any and all compensation previously paid to it by Cisco relating to the rejected Deliverable. Upon any such final rejection Cisco may, at its option, terminate the applicable SOWs or this DLA, and Sections 12.6 and 12.7 shall apply to such termination.

2.4 Changes. If Cisco proposes in writing a change to any SOW and/or applicable Specifications, Developer agrees to attempt in good faith to make such changes. In the event any such change materially increases Developer's costs hereunder or requires a modification to the schedule for development, Cisco and Developer shall use good faith efforts to attempt to reach an equitable adjustment to the charges and/or the schedule.

2.5 Communications. Each party agrees to appoint a project manager, on an SOW by SOW basis ("Project Managers"), through whom all project related communications shall be directed.

2.6 Technical Assistance. During development and up through final acceptance of any Product, Developer shall make available to Cisco free of charge, at Cisco's request, ongoing technical assistance with respect to the Product or any Deliverable provided by Developer to Cisco in connection with this DLA. After completion and acceptance of the final Product, Developer shall provide the support and training specified in Exhibit E at no charge.

2.7 Reports. Developer shall provide to Cisco weekly written reports regarding its work on any Product, any anticipated problems and any indication of delay in fixed or tentative schedules. The Project Managers shall meet weekly in person or by telephone, as mutually agreed, to discuss in detail the status of work, including projections for time of completion, delay solutions (if applicable), and problem identification and resolution. Additionally, Developer shall respond to Cisco's reasonable requests for oral reports regarding pending development work.

2.8 Audit. Cisco shall have the right upon reasonable notice to Developer to have a representative inspect and audit all applicable records, documents and facilities of Developer as are necessary to verify Developer's compliance with this DLA. Developer shall permit access to its premises and personnel to facilitate such inspection and audit which may include design reviews, "walk-throughs" and discussions regarding the status and conduct of the work being performed.

2.9 Additional Statements of Work. If Cisco desires to engage Developer for additional services which are not included in the Statement of Work and which do not constitute merely a revision or modification of the Statement of Work, the parties shall in good faith negotiate additional Statements of Work, each of which upon signing shall be deemed a part of this DLA. Additional Statements of Work shall be entered into by mutual agreement between Cisco and Developer and shall be substantially in the form of the Statement of Work attached hereto. Each Statement of Work shall be signed by authorized representatives of the parties. This DLA may cover more than one Statement of Work at any given time.

2.10 Removal of Proprietary Rights Notices. Cisco shall have the right to delete any Developer copyright or trademark notice appearing on a flash screen or other computer screen, or documentation and to relocate any other proprietary rights notices appearing on the Product or documentation. Cisco shall provide a copyright notice in connection with the Products.

2.11 Open Source Technology

2.11.1 Open Source Licenses. Developer will comply with the terms of all Open Source Licenses governing the software.

2.11.2 Guidelines. Developer will comply with Cisco's Open Source Guidelines for Suppliers (the "Guidelines," attached as Exhibit F). Developer will cooperate with Cisco to help it understand all information provided under the Guidelines and ensure that it is in the correct format.

2.11.3 Updates. Developer will update all information and technology provided under Section 2.11.2. Updated information and technology will be provided to Cisco promptly, but in no event later than thirty (30) days after the event that necessitated the update.

2.11.4 Request for Source Code. If, as a result of an alleged obligation under an Open Source License, Cisco receives a request from a third party to provide source code for all or a portion of the software (the "Request"), and the source code requested has not already been provided by Developer to Cisco under Section 2.11.2, then Cisco shall notify Developer and refer the requestor to Developer.

2.11.4.1 If Developer is obligated to provide all or part of the requested source code to Cisco under Section 2.11.2 or any other provision of this DLA, and has failed to do so, Developer shall provide such code within five (5) business days of notification

2.11.4.2 If the requested source code is not subject to release under Section 2.11.4.1 and the Request is not resolved within five (5) business days of notification, Developer shall meet with Cisco to discuss how it plans to respond to the Request. If the Request is not resolved within thirty (30) days of notification or as otherwise agreed by the parties, then Cisco may disclose any information (including portions of this DLA and any source code in its possession) reasonably necessary to respond to the Request and to any related public allegations regarding Cisco's open source compliance

2.11.4.3 If the license under which the Request is made provides for suspension or termination of license rights within a specified time period following notification of breach, then, unless otherwise agreed by Cisco, the 30-day period referred to in Section 2.11.4.2 above shall be shortened to require resolution at least five (5) business days prior to such suspension or termination.

2.11.5 Reimbursement for Non-compliance. If Developer (i) fails to comply with any of its obligations under Sections 2.11.2 ("Guidelines") or 2.11.3 ("Updates") and (ii) has not cured such non-compliance or commenced a compliance plan acceptable to Cisco within ten (10) days of written notice of such non-compliance from Cisco, and (iii) such failure results in costs reasonably incurred by Cisco ("Costs"), then upon receipt of a notice of non-compliance and a statement of Costs from Cisco, Developer shall promptly reimburse Cisco for the Costs identified in the statement. All Costs under this Section 2.11.5 shall be treated as direct damages and shall not be subject to the waivers and limitations of Section 11.

2.11.6 KLM. If the software includes one or more Kernel Loadable Modules ("KLM"s) for Linux, the source code for each KLM must be provided to Cisco.

3. OWNERSHIP

3.1 Ownership by Cisco. Cisco shall own all right, title, and interest in the Deliverables and Cisco Property (the "Cisco Collective Work"). Developer hereby irrevocably transfers, conveys and assigns to Cisco all of its right, title, and interest in such Cisco Collective Work. Developer shall execute such documents, render such assistance, and take such other action as Cisco may reasonably request, at Cisco's expense, to apply for, register, perfect, confirm, and protect Cisco's rights to the Cisco Collective Work, and all Intellectual Property Rights therein.

3.2 Ownership by Developer. Developer shall own all right, title, and interest in the Developer Property. Cisco hereby irrevocably transfers, conveys and assigns to Developer all of its right, title, and interest in such. Cisco shall execute such documents, render such assistance, and take such other action as Developer may reasonably request, at Developer's expense, to apply for, register, perfect, confirm, and protect Developer's rights to the Developer Property, and all Intellectual Property Rights therein.

3.3 Waiver of Moral Rights.

3.3.1 Developer hereby waives any and all moral rights, including without limitation any right to identification of authorship or limitation on subsequent modification that Developer (or its employees, agents or consultants) has or may have in any Cisco Collective Works and any derivatives, improvements or modifications thereof.

3.3.2 Cisco hereby waives any and all moral rights, including without limitation any right to identification of authorship or limitation on subsequent modification that Cisco (or its employees, agents or consultants) has or may have in any Developer Property; and any derivatives, improvements or modifications thereof.

3.4 Attorney In Fact. Developer agrees that if Cisco is unable because of Developer's unavailability, dissolution or incapacity, or for any other reason, to secure Developer's signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering the inventions and developments assigned to Cisco above, then Developer hereby irrevocably designates and appoints Cisco and its duly authorized officers and agents as Developer's agent and attorney in fact, to act for and in Developer's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright thereon with the same legal force and effect as if executed by Developer.

4. LICENSES BY CISCO TO DEVELOPER

4.1 Limited License of Cisco Property. Cisco hereby grants to Developer a non-exclusive, worldwide, nontransferable, royalty-free license to use the Cisco Property for the sole purpose of performing those tasks necessary to provide the Deliverables.

5. SALE OF PRODUCT

5.1 Manufacture and Sale of Product. Developer agrees to manufacture and sell Products to Cisco and its designated third parties Products for a period of no less than seven (7) year(s) following Cisco's first customer ship of the Cisco product incorporating the Product in accordance with the terms and conditions of the Master Purchase Agreement between the parties dated July 28, 2008, as amended (the "MPA").

5.2 Assurance of Supply. Developer agrees to take reasonable action to ensure that Products will be available, in suitable quantities and quality, for purchase by Cisco and its designated third parties, including, without limitation, the use of dual foundries and implementation of a disaster recovery plan, upon terms to be agreed by the parties as more particularly described in the MPA.

6. PAYMENT; TAXES

6.1 Payment. In consideration of the duties and obligations of Developer and the rights granted to Cisco hereunder, Cisco shall pay Developer in the amounts and manner as set forth in the applicable SOW.

6.2 Taxes.

6.2.1 In addition to the payment described above, Cisco shall pay all applicable taxes, including sales and use tax, but excluding any tax based upon the income of Developer, if imposed by any government as a result of payments made by Cisco to Developer under this DLA.

6.2.2 Cisco may withhold from payment to Developer under this DLA any income taxes required to be withheld by Cisco under the applicable laws of the United States or any other country. Such amount shall be paid to the appropriate taxing authorities and Cisco shall provide Developer with official receipts issued by said taxing authority or such other evidence as is reasonably available to establish that such taxes have been paid. Cisco shall cooperate with Developer and take all actions reasonably necessary in order to secure a reduction or elimination of withholding taxes pursuant to the income tax treaty between the United States and any other country.

6.3 License Fees. Developer shall be obligated to pay all license fees and royalties, if any, with respect to any third party proprietary rights and technologies which are required for the exercise of Cisco's rights under this DLA.

7. CONFIDENTIALITY

7.1 DLA as Confidential Information. The parties shall treat the terms and conditions and the existence of this DLA as Confidential Information.

7.2 Confidential Information. The parties shall comply with the provisions of the "Non-Disclosure Agreement" attached hereto as Exhibit G (the "NDA"). To the extent that the term stated in the NDA terminates prior to the termination of this DLA, the parties agree that the term of the NDA shall be automatically extended to the term of this DLA. In addition, notwithstanding any limitations in the NDA, the NDA shall apply to all Confidential Information disclosed in connection with this DLA, and the purpose of such disclosures shall include the purposes of this DLA.

8. USE OF CONTRACTORS

8.1 Limitations and Requirements. Developer may retain third parties ("Contractors") to furnish services to it in connection with the performance of its obligations hereunder and permit such Contractors to have access to Cisco's Confidential Information, but only to the extent and insofar as reasonably required in connection with the performance of Developer's obligations under this DLA. Developer may do so only if all such Contractors execute a written non-disclosure and work product assignment agreement (i) sufficient to secure compliance by the Contractors with Developer's obligations of confidentiality concerning Confidential Information set forth in this DLA; (ii) acknowledging the

Contractor's obligation to assign all work product in connection with performance hereunder; and (iii) effecting assignments to Cisco of all Intellectual Property Rights relating in any manner to the Product. Cisco, upon request, may review each such written non-disclosure and work product assignment agreement at any time before or after execution by such Contractors to ensure compliance with this DLA.

9. REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of Developer. Developer hereby represents and warrants to Cisco as follows:

9.1.1 All materials and services provided hereunder including, without limitation, all Deliverable and Product(s), are either owned or properly licensed by Developer or are in the public domain and the use thereof by Cisco, its representatives, OEMs, VARs or other resellers, or end users does not and will not infringe any proprietary rights of any third party. As of the Effective Date of this DLA, Developer represents that it has not received any notice or claim from a third party alleging that any of the Property or Deliverables to be provided by Developer infringes any Intellectual Property Rights of such third party.

9.1.2 Developer has the full power to enter into this DLA, to carry out its obligations under this DLA and to grant the rights and licenses granted to Cisco in this DLA.

9.1.3 The Product will (i) perform in accordance with the applicable published or mutually agreed upon specifications and related documentation provided by Developer (and will achieve any function described therein), and (ii) be free from defects in materials, workmanship or design. Developer will promptly correct or replace (at its option and cost) any defective Product. **NO OTHER WARRANTIES ARE EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** The warranty with respect to Product units purchased by Cisco from Developer shall be set forth in the MPA.

9.2 Representations and Warranties of Cisco. Cisco hereby represents and warrants to Developer that Cisco has the full power to enter into this DLA and to carry out its obligations under this DLA.

10. INDEMNITY

10.1 Indemnification by Developer. Developer shall defend, indemnify and hold harmless Cisco, Cisco contract manufacturers, Cisco resellers, distributors and other sales agents and their respective officers, directors, employees, shareholders, agents, direct and indirect customers, successors and assigns (collectively the "Indemnified Parties") from and against any and all loss, damages, liabilities, settlement, costs, or expenses (including legal expenses and the expenses of other professionals) as incurred, resulting from or arising out of (i) any breach of this DLA; (ii) any claim of product liability in any way relating to the Product; or (iii) any claim that any Deliverable, the Product (other than the Cisco Property incorporated therein), or the Developer Property, or any part of the foregoing, infringes or misappropriates any Intellectual Property Right of a third party. As a condition to such defense and indemnification, Cisco will provide Developer with prompt written notice of the claim and permit Developer to control the defense, settlement, adjustment or compromise of any such claim. Cisco may employ counsel at its own expense to assist it with respect to any such claim; provided, however, that if such counsel is necessary because of a conflict of interest of either Developer or its counsel or because Developer does not assume control, Developer will bear the expense of such counsel. Developer shall not enter into any settlement that affects Cisco's rights or interests without Cisco's prior written approval.

Cisco shall have no authority to settle any claim on behalf of Developer, unless Developer fails to perform its obligations pursuant to this Section. If Developer fails to fulfill its defense and indemnification obligations hereunder, Cisco may take control and Developer shall remain liable for all damages, settlements, and other expenses related to or arising out of such resolution of all such claims.

10.2 Developer's Efforts. If the manufacture, use, import, or sale of the Product is enjoined or becomes the subject of a claim of infringement, Developer shall obtain such licenses, or make such replacements or modifications, as are necessary to continue the manufacture, use, import, and sale of the Product to, by or on behalf of Cisco without infringement and in compliance with the Specifications. If Developer is unable to achieve the foregoing within thirty (30) days (or such longer period as determined by Cisco in good faith) after the holding of infringement or the entry of the injunction, as applicable, Developer shall refund to Cisco all amounts paid by Cisco to Developer with respect to development of the Product (including without limitation amounts paid prior to the date of this DLA) and any license fees or royalties paid hereunder. Nothing in this section shall limit any other remedy of Cisco or Developer's indemnification obligation as set forth in Section 10.1.

10.3 Exceptions to Developer Indemnity. Developer shall have no obligation under Sections 10.1 and 10.2 to the extent any claim of infringement or misappropriation results from (i) use of the Product in combination with any other products not identified to Developer by Cisco, if the infringement would not have occurred but for such combination; or (ii) any alteration or modification of the Product not provided or authorized by Developer, if the infringement would not have occurred but for such alteration or modification.

11. LIMITATION OF LIABILITY

EXCEPTING DEVELOPER'S OBLIGATIONS UNDER SECTION 10 (INDEMNIFICATION) AND THE PARTIES' RESPECTIVE CONFIDENTIALITY OBLIGATION UNDER SECTION 7, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS IN CONNECTION WITH THE SUBJECT MATTER OF THIS DLA. THIS SECTION DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY.

12. TERM AND TERMINATION

12.1 Term. Unless terminated earlier as provided herein, this DLA shall have an initial term of ten (10) years from the Effective Date (the "Initial Term") and shall automatically renew for additional periods of one (1) year each (the "Extended Term", and together with the Initial Term, referred to herein collectively as the "Term") unless the appropriate written notice of non-renewal is received as follows: (i) Developer shall provide to Cisco notice of any such non-renewal one hundred and twenty (120) days prior to the expiration of the then applicable term; or (ii) Cisco shall provide to Developer notice of any such non-renewal sixty (60) days prior to the expiration of the then applicable term. Notwithstanding the foregoing, this DLA shall continue to remain in effect with respect to any SOW already issued hereunder at the time of expiration or termination, until such SOW(s) themselves are terminated or performance thereunder is completed.

12.2 Termination For Convenience. Cisco may terminate this DLA or any SOW for no reason or any reason upon sixty (60) days notice to Developer. In the event of any such termination, Developer shall be entitled to receive and retain all development payments made or payable by Cisco, as called for in the

applicable SOW and for which the relevant Deliverable(s) or Product(s) have been accepted, prior to the date of such termination.

12.3 Termination By Cisco. Cisco may independently terminate this DLA or any of the SOWs hereto as follows:

12.3.1 Upon Developer's failure to comply with any of the material provisions of this DLA or SOW which failure is not remedied during the thirty (30) days (or other extended period as may be agreed to by the parties) following written notice to Developer of such failure.

12.3.2 Notwithstanding Cisco's rights in Section 12.3.1, upon fifteen (15) days notice, if Cisco (i) determines that Developer's performance under this DLA or any SOW is deficient; and (ii) identifies to Developer those deficiency(ies); and (iii) provides to Developer a reasonable opportunity to correct the same give the nature of the deficiency and/or utilize appropriate paths of escalation; and (iv) determines that such identified deficiencies still remain.

12.3.3 Upon thirty (30) days notice, if Supplier has failed to deliver Products for a minimum of thirty (30) days due to force majeure causes as set forth in Section 13.4.

12.3.4 Immediately upon any transfer by sale, merger or other working combination of ownership of or control over more than twenty percent (20%) of the voting securities or control of Supplier.

12.4 Termination By Either Party. Either party may terminate this MPA as follows:

12.4.1 Upon notice to the other party upon the occurrence of any one of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (iv) either party is liquidated, dissolved or ceases business operations.

12.5 Survival; Support After Termination. Sections 1, 2.8, 3, 5, 7, 9, 10, 11, 12, and 13 shall survive termination or expiration of this DLA or any SOW. Following termination or expiration, Supplier shall continue to provide support at Developer's prevailing rates for a minimum of three (3) years or other longer period as mutually agreed to by the parties.

12.6 Return of Materials Upon Termination. On or before ten (10) days after the termination of this DLA, Developer shall deliver to Cisco or destroy and certify such destruction by an officer of Developer, all Cisco Confidential Information and Property owned by Cisco, including but not limited to all work product, diagrams, designs, schematics, and work in progress in Developer's possession. Cisco shall be entitled to retain any Developer Confidential Information to continue to support the Product.

12.7 Effect of Termination. In the event of termination of this DLA or a SOW, no payment shall be required of Cisco beyond the last payment made under the applicable Statement(s) of Work. Immediately after termination, Developer shall collect and deliver to Cisco, in a manner reasonably prescribed by Cisco, whatever work product then exists with regard to any items owned by Cisco under Section 3 hereof. Except as otherwise provided herein, the ownership of the Product and all work product related thereto shall be as set forth in Section 3.

13. MISCELLANEOUS

13.1 Controlling Law and Jurisdiction. This DLA and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of California and the United States, without regard to the conflicts of law provisions thereof. The exclusive jurisdiction and venue of any action with respect to the subject matter of this DLA shall be the state courts of the State of California for the County of Santa Clara or the United States District Court for the Northern District of California and each of the parties hereto submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.

13.2 Equitable Relief. Each party acknowledges that any breach of the confidentiality or proprietary rights provisions of this DLA may cause the non-breaching party irreparable injury, for which the award of damages would not be adequate compensation. Consequently, non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.

13.3 Relationship of Parties. The parties are independent contractors under this DLA and no other relationship is intended. Each party shall be solely responsible for its own financial obligations. Nothing contained herein shall be construed to imply any partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or other special relationship. Neither party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other in connection with the performance hereunder, and neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

13.4 Force Majeure. Neither of the parties shall be considered in default of performance under this DLA to the extent that performance of such obligations is delayed or prevented by fire, flood, earthquake or similar natural disasters, riot, war, terrorism or civil strife, to the extent such default is beyond the reasonable control of such party. Notwithstanding the foregoing, in the event Developer fails to deliver a Deliverable or Product due to such causes, Cisco may either:

13.4.1 Terminate this DLA in whole or in part after thirty (30) days prior written notice where Developer fails to make any such delivery for thirty (30) days due to the force majeure event;

13.4.2 Suspend this DLA in whole or in part for the duration of the delaying cause, and, at Cisco' option, obtain the Deliverables or Products elsewhere and deduct from any amount due to Developer such costs. Developer shall resume performance under this DLA after the delaying cause ceases and Cisco has approved such resumption of performance.

13.5 Notices. Any notice required or permitted to be given by either party under this DLA shall be in writing and shall be personally delivered or sent by a reputable overnight mail service (*e.g.*, Federal Express), or by first class mail (certified-return receipt requested), or by facsimile confirmed by first class mail (certified-return receipt requested), to the Project Manager of the other party. Notices will be deemed effective (i) three (3) working days after deposit, postage prepaid, if mailed, (ii) the next day if sent by overnight mail, or (iii) the same day if sent by facsimile and confirmed as set forth above. A copy of any notice shall be sent to the following:

Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134
Attn: General Counsel
Fax: (408) 526-7019

"Developer"

13.6 Assignment. Developer may not assign or transfer this DLA, in whole or in part without the prior written consent of Cisco. Any attempt to assign or transfer without such consent is void. For purposes of this Section 13.6, any transfer by sale, merger or other working combination of ownership or control over more than twenty percent (20%) of the voting securities or control of Developer shall constitute an assignment.

13.7 Compliance with Laws. Developer warrants that in performance of work under this DLA it has complied with or shall comply with all applicable federal, state, local laws and ordinances now or hereafter enacted. Upon Cisco's reasonable request, Developer agrees to provide reasonable assistance to Cisco to facilitate compliance with such laws. Upon Cisco's request, Developer shall issue certificates certifying compliance with any such applicable laws or regulations as may be applicable to the Deliverables, Product and/or services being furnished hereunder.

13.8 Import and Export. Developer shall provide Cisco with information and assistance as may be reasonably required in connection with executing import, export, sales, and trade programs, including but not limited to, manufacturer's affidavits, harmonized tariff schedule, export control classification number, qualification information (*e.g.* origin), and U.S. Federal Communications Commission's identifier when applicable. Developer shall provide such information at the shipping line level before initiating first delivery to Cisco and immediately upon any relevant change. Developer shall reasonably provide subsequent information following receipt of Cisco's written request.

13.9 No Third Party Beneficiaries. Unless otherwise expressly provided, no provisions of this DLA are intended or shall be construed to confer upon or give to any person or entity other than Cisco and Developer any rights, remedies or other benefits under or by reason of this DLA.

13.10 Attorneys' Fees. The prevailing party in any action arising out of this DLA shall be entitled to recover its costs in addressing such dispute, including its reasonable attorneys' and professional fees.

13.11 Modification. No alteration, amendment, waiver, cancellation or any other change in any term or condition of this DLA shall be valid or binding on either party unless the same shall have been mutually assented to in writing by both parties.

13.12 Waiver. The failure of either party to enforce at any time any of the provisions of this DLA, or the failure to require at any time performance by the other party of any of the provisions of this DLA, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of either party to enforce each and every such provision thereafter. The express waiver by either party of any provision, condition or requirement of this DLA shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

13.13 Severability. If for any reason a court of competent jurisdiction finds any provision of this DLA to be unenforceable, that provision of the DLA will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this DLA will continue in full force and effect.

13.14 Headings. Headings used in this DLA are for ease of reference only and shall not be used to interpret any aspect of this DLA.

13.15 Interpretation. This DLA represents the negotiated DLA of the parties, with the advice and assistance of counsel, and shall not be construed against either party as the drafter thereof.

13.16 Entire DLA. This DLA, including all exhibits and documents which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.

13.17 Counterparts. This DLA may be executed in two counterparts, each of which shall be an original and together which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this DLA by persons duly authorized as of the Effective Date.

CISCO SYSTEMS, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

CISCO PROPERTY

EXHIBIT B

DEVELOPER PROPERTY

EXHIBIT D

STATEMENT OF WORK

1. **STATEMENT OF PROJECT SCOPE**

2. **PROJECT MANAGERS**

Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134
Phone: (408)_____
Fax: (408)_____

Phone: (____)_____
Fax: (____)_____

3. **SUMMARY OF THE DEVELOPMENT**

4. **PRODUCT**

The Product is (or shall consist of) _____

5. **RESOURCES TO BE PROVIDED BY DEVELOPER**

6. **RESOURCES TO BE PROVIDED BY CISCO**

7. **PAYMENT, DELIVERABLES AND DELIVERY DATES**

7.1 **Development and Delivery Dates.** Developer shall develop the Product and deliver the Deliverables to Cisco as set forth in the following schedule.

Development Plan	Deliverables (Yes/No)	Due Date
SOW executed		
Functional Specifications		
Technical Specifications		
Testing procedures completed and accepted		
Acceptance Criteria completed and accepted		
Development Plan completed and accepted		
Design Completed		
Simulations Completed		

Tape Out		
Initial Fab		
Prototype delivered		
Testing and debugging completed		
Acceptance of Prototype		
Code delivered		
Documentation delivered		
Final Acceptance		

7.2 Payment.

AS NEGOTIATED

8. LIQUIDATED DAMAGES IN CASE OF LATENESS.

In recognition of the difficulty is assessing damages for delay, if Developer does not meet any delivery date, Cisco, at its option may demand payment from Developer or withhold from any payment to Developer, as liquidated damages and not as a penalty, the following percentage from any payment due to Developer:

NUMBER OF ___ LATE	APPLICABLE PERCENTAGE OF PAYMENT*

*In no event shall the total liquidated damages exceed ___% of the total amount payable to Developer under this particular SOW. Developer acknowledges that these liquidated damage amounts are reasonable under the circumstances existing as of the date of this SOW.

9. LOCATION OF WORK FACILITIES

Substantially all of the development work will be conducted by Developer at its regular office location in _____ or at Cisco's facilities in _____. The parties agree to obey all pertinent rules and regulations of the other party while on the premises of the other party.

10. THIRD PARTY TECHNOLOGY

11. SPECIAL TERMS

EXHIBIT E

DEVELOPER SUPPORT

1.0 SUPPORT LEVEL DEFINITIONS

1.1 LEVEL 1 SUPPORT

Level 1 Support includes the following:

- Ability to provide general product information, configuration support, collection of relevant technical problem identification information, filter non-technical problems from technical problems.

1.2 LEVEL 2 SUPPORT

Level 2 Support includes the following:

- All Level 1 support capabilities plus:
- Ability to support problem isolation and product specification defect determination
- Lab simulation and interoperability testing
- Action plan definition
- Ability to analyze traces

1.3 LEVEL 3 SUPPORT

Level 3 Support includes the following:

- Fixing Product bugs or generating work-arounds;
- Troubleshooting bugs that Level 2 support is unable to bring to resolution.

2.0 PROBLEM PRIORITIES DEFINITIONS

Problem priorities shall be classified as follows, to the extent that the cause is identified to result from the Products:

2.1 PRIORITY 1

Cisco's and its Affiliate's (hereinafter "Cisco") customer's production network is down, causing critical impact to business operations if service is not restored quickly. No work around is available. Cisco, Cisco's customer, and Developer will commit full-time resources around the clock to resolve the situation.

2.2 PRIORITY 2

Cisco's customer's production network is severely degraded, impacting significant aspects of business operations. No work-around is available. Cisco, Cisco's customer, and Developer will commit full-time resources during Business Hours to resolve the situation.

2.3 PRIORITY 3

Cisco's customer's network performance is degraded. Network functionality is noticeably impaired, but most business operations continue.

2.4 PRIORITY 4

Cisco or Cisco's customer requires information or assistance on Product capabilities, installation, or configuration.

2.5 BUSINESS HOURS

“Business Hours” means 8:00 a.m. to 6:00 p.m., Pacific Standard Time, Monday through Friday, excluding Cisco-observed holidays.

3.0 ESCALATION GUIDELINES

3.1 The following table sets forth the escalation guidelines by which Developer shall address customer support problems reported by Cisco that have been determined to result from the Product and involve its management personnel to address such problems. Priority 1 problem escalation times are measured in calendar hours, twenty-four (24) hours per day, seven (7) days per week. Priority 2, Priority 3, and Priority 4 escalation times correspond with Business Hours. The Developer manager to whom the problem is escalated will take ownership of the problem and ensure that updates are provided to the appropriate Cisco personnel. Cisco-initiated escalations will begin at the Technical Program Manager level and proceed upward. This will allow those most closely associated with the support resources to correct any service problems quickly.

3.2 It is Cisco's policy to work with its customer to establish the Priority for a problem and to accept the customer's determination of the Priority. Developer shall accept the Priority designation agreed to by Cisco and Cisco's customers and communicated to Developer by Cisco. Developer will work with Cisco according to the processes and procedures contained in this Exhibit E.

Elapsed Time	Priority 1	Priority 2	Priority 3	Priority 4
1-Hour	Technical			

	Program Manager			
4-Hour	Account Manager	Technical Program Manager		
24-Hour	Global Account Director	Account Manager		
48-Hour	Vice President/Sponsor	Global Account Director		
72-Hour			Technical Program Manager	
96-Hour			Account Manager	Technical Program Manager

1. Name:
Title:
Phone number:
Cell Phone:
Email:

2. Name:
Title:
Phone number:
Cell Phone:
Email:

3. Name:
Title:
Phone number:
Cell Phone:
Email:

- 4. Name:
Title:
Phone number:
Cell Phone:
Email:

4.0 SUPPORT

4.1 PRODUCT SUPPORT

Developer will support any release of Product for a period of thirty-six (36) months from the date of Cisco's announced end-of-sale of that release, meaning that for that time period, errors in that release will be attempted (using commercially reasonable efforts) to be corrected either by means of a patch or correction to that release. Subject to the prior written approval of the Cisco Serviceability Design Engineer for the Product, not to be unreasonably withheld, a subsequent release may be substituted to correct an error in any Product release. Product releases shall be downward compatible, so that new releases of software are compatible with pre-existing configurations and data formats of earlier software versions. Developer shall have the capability to electronically transfer Product patches/fixes to Cisco.

4.2 CALL FLOW

The typical call flow shall be as follows: Cisco's Customer Response Center ("CRC") will receive the initial customer call. The CRC will open a case and forward to the appropriate Cisco Technical Assistance Center ("TAC") for Level 1 support and Level 2 support. In the event that a Product problem cannot be resolved at this stage, the Product problem will be escalated to the appropriate Cisco Development Engineering group ("Cisco DE"). If a Product problem still cannot be resolved, Cisco DE shall contact Developer's Development Engineering Support Group ("Developer DE") for Level 3 support. (See appropriate Cisco and Developer contacts in Section 6 of this Exhibit E.) Developer DE may consult with Cisco DE. Developer DE will advise Cisco DE of its progress and TAC will close the case when the problem is resolved. The TAC may occasionally call Developer's Product Support Team directly for assistance in resolving a case involving a Product.

4.3 SUPPORT PRIORITIZATION AND ESCALATION GUIDELINES

To ensure that all Product problems and technical inquiries are reported in a standard format, Developer will use and comply with the problem priority definitions and escalation guidelines herein pursuant to Section 3.2. Based on the priority of a Product problem, Developer will provide to Cisco fixes or work-arounds accordingly. Developer and Cisco will diligently work together on a plan for addressing all problems.

4.4 SUPPORT DOCUMENTATION

Promptly upon Cisco's written request, during the term of this Support Exhibit Developer will supply Cisco with all technical documentation in its possession reasonably useful or necessary to perform customer support and troubleshooting or to analyze the technical benefits and risks of introducing new releases of Product into Cisco's customer base. Such support documentation will include, without limitation: (i) Product specifications, (ii) release notes, (iii) debugging/support tools, and (iii) lists of all error messages with explanations as needed and recommended actions. Developer will regularly supply Cisco with all release notes or other documentation defining the relevant Product information, symptoms, solutions or work-arounds for Product problems. Developer will keep accurate records of Product bugs and make such reports available to Cisco at least quarterly. Developer will maintain an electronic means (e.g., an FTP server) through which Cisco can obtain up-to-date information on Product bugs, fixes, and code updates. During the term of this Support Exhibit, Developer will provide such support to Cisco at no charge.

5.0 TRAINING

5.1 Developer shall offer, at no cost to Cisco, prior to Developer's first commercial shipment of any major Product release, a conventional engineering training and instruction class in the service and maintenance of Developer's Product at a location mutually and reasonably agreed upon by Developer and Cisco. Training shall be provided at no cost to Cisco, except that Cisco shall bear all travel expenses for its employees during such training.

5.2 In addition, this training shall be offered, from time to time, upon request by Cisco at such time, place and amount as reasonably agreed to by Developer and shall also include, if necessary, compatibility issues and engineering debug capabilities. All of Developer's reasonable expenses in connection with such additional training shall be pre-approved and reimbursed by Cisco, consistent with Cisco's standard policies. Such additional training shall be offered to Cisco at a discount off Developer's standard pricing for support training.

6.0 CISCO AND DEVELOPER CONTACTS

6.1 CISCO CONTACT INFORMATION

For questions concerning software:

Name:

(Office) phone number:

(Pager) phone number:

(Cellular) phone number:

(Other) phone number:

For questions concerning this DLA:

Name:
(Office) phone number:
(Pager) phone number:
Email:

6.2 DEVELOPER CONTACT INFORMATION

Name:
(Office) phone number:
(Pager) phone number:
(Cellular) phone number:
Other:

For questions to Developer concerning Product support:

Name:
(Office) phone number:
(Cellular) phone number:
Email:

7.0 SUPPORT AND TERMINATION

- 7.1 Unless terminated earlier as provided herein, this Support Exhibit shall have a term commencing on the Effective Date of the DLA and ending on the First Customer Ship, unless terminated sooner by written notice given by a party pursuant to this Section. This support exhibit may be renewed for additional successive one (1) year periods during the Term of the DLA and thereafter, on mutually agreeable terms.
- 7.2 Cisco may terminate this Support Exhibit at any time for its convenience, for no reason or for any reason, with thirty (30) business days' written notice to Developer.
- 7.3 This Support Exhibit may be terminated by Developer or Cisco for cause pursuant to Section 12.4 of the DLA.
- 7.4 In the event of any termination or expiration of the DLA, at Cisco's request, Developer shall make available to Cisco the support reflected in this Exhibit E at Developer's reasonable and customary rates for a minimum of three (3) years after such termination or expiration.

The terms and conditions of this Section 7 supersede any terms and conditions of the DLA which are inconsistent with these terms and conditions.

EXHIBIT F

OPEN SOURCE GUIDELINES FOR CISCO SUPPLIERS

[attached PDF document]

EXHIBIT G
NON-DISCLOSURE AGREEMENT