

## COMMERCE AGREEMENT

This Commerce Agreement ("Agreement") is entered into by and between Cisco Systems, Inc., a California corporation ("Cisco") having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134 and [REDACTED], a {Customer Type} formed under the laws of Alabama ("Customer") having its principal place of business at [REDACTED], ALABAMA, United States. This Agreement is entered into as of the date a representative of Customer who is authorized to accept the terms of this Agreement ("Authorized User") clicks the "I Agree" button at the end of this Agreement, indicating Customer's acceptance of the terms of this Agreement ("Effective Date"). Capitalized terms used herein shall have the meanings given in this Agreement or any exhibit hereto.

This Agreement shall apply to all purchase orders placed with Cisco Resellers for Products or Services, unless Cisco and Customer have entered into another agreement (meaning a tangible, physically signed agreement) regarding the purchase and license of the specific Cisco Products or Services being purchased and such agreement is in effect ("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.

This Agreement consists of these terms and conditions and the following exhibits, including any URLs referred to therein, which are deemed to form part of this Agreement:

Exhibit A: Terms of Sale

This Agreement is the complete agreement between the parties hereto concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties other than an Existing Agreement which shall continue in effect in accordance with its terms. This Agreement specifically replaces any Internet Commerce Agreement or similar on-line agreement previously accepted by Customer. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. This Agreement may be modified only by a written document executed by the parties hereto.

IN WITNESS WHEREOF, Customer has caused this Agreement to be executed as of the Effective Date. By clicking "I Agree" below, Customer's representative warrants and represents that he/she is authorized to execute this Agreement on behalf of Customer.

**EXHIBIT A**  
**TERMS OF SALE**  
**AND SOFTWARE 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 **Hardware** is the tangible Cisco product acquired by Customer from Cisco and listed on the Price List. Hardware does not include any tangible product listed on the Price List in the name of a third party.
- 1.6 **Network Services** are any services offered by Customer, as Customer's primary business model, which services may include the following: access to the Internet, data and voice transmission and any other communications service furnished by Customer by means of Customer's communications network.
- 1.7 **Price List** is the price list(s) published at Cisco.com applicable to the relevant Cisco entity.
- 1.8 **Products** are, individually or collectively as appropriate, Hardware, Software and Documentation listed on the then-current Price List.
- 1.9 **Purchase Order** is an order issued by Customer to a Cisco Reseller for Products or Services to be purchased, licensed or provided under these Terms of Sale.
- 1.10 **Services** are any maintenance, technical support, or any other services performed or to be performed by Cisco, provided that "Services" does not include those services for which Cisco requires a separate statement of work to be executed between the parties.
- 1.11 **Software** is the machine readable (object code) version of the computer programs listed from time to time on the Price List or provided with the Hardware and made available by Cisco for license to Customer including firmware, and any copies made, bug fixes for, updates to, or upgrades thereof. Software does not include any computer programs listed on the Price List in the name of a third party.
- 1.12 **Territory** is any country(ies) in which Customer has been granted Cisco resale certifications, or in the absence of any such certifications, the country in which Customer's 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, including under such arrangements as a direct General Services Administration ("GSA") Schedule contract, California Multiple Award Schedule ("CMAS") or similar state or federal schedule contract.

## **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's Reseller, or in accordance with an applicable, valid written price quotation, if any, submitted by Cisco to Customer for such Products or Services.
- 3.2 Unless otherwise required by State law, all prices are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon these Terms of Sale. Customer shall pay any taxes related to Products and 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, to the extent practical, be billed as a separate item on the invoice.

## **4.0 ORDERS**

- 4.1 Customer shall purchase or license Products or Services by issuing a Purchase Order to a Cisco Reseller authorized to sell under the applicable ALJP contract. 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 and/or its partners.

## **5.0 SHIPPING AND DELIVERY**

- 5.1 Scheduled shipping dates will be assigned by the Cisco reseller(s) authorized to resell Cisco Products and Services under the ALJP award.
- 5.2 Shipping options available as well as applicable shipment terms (per Incoterms 2010) are set forth in Attachment 1 hereto.
- 5.3 Customer shall not export Cisco's Products and/or Services.

For shipments under FCA as per the attached Attachment 1, Customer specifically agrees to provide Cisco's Reseller 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.

5.4 CISCO SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY FOR DELAY IN DELIVERY OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY. CISCO SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH SHIPMENT, NOR SHALL THE CARRIER BE DEEMED TO BE AN AGENT OF CISCO.

5.5 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, or (ii) such Product is unopened.

## **6.0 PAYMENT**

Payment terms shall be thirty (30) days from shipping date or as otherwise agreed between Customer and the Cisco reseller(s) authorized to resell Products and Services under the ALJP award.

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

7.1 Subject to Section 7.2 below and the terms contained in Attachment 2 (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.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 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 foregoing) 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.

## **12.0 SERVICES**

Customer may place Purchase Orders to Cisco's reseller(s) authorized to resell under the ALJP contract 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. Customershall 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 ATTACHMENT 2 (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; OR
- (C) LOST OR DAMAGED DATA.

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 State of California,

United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the state and federal courts of California 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 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.
- 17.9 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 below this Agreement (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.
- 17.10 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 Attachment 2 (End User License Agreement) (subject to the termination provisions set forth in Section 11.0 (Term and Termination) of these Terms of Sale).
- 17.11 Headings. Headings of sections have been added solely for convenience of reference and shall not be deemed part of these Terms of Sale.

**ATTACHMENT 1  
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</b>	<b>Title transfer</b>	<b>Risk of Loss transfer</b>	<b>Delivery point</b>
USA	USA, except Puerto Rico	Cisco Systems, Inc.	All	Customer routed	FOB Destination	Upon Delivery to Ship to address indicated on the Purchase Order	Upon Delivery to Ship to address indicated on the Purchase Order	Ship to address indicated on the Purchase Order

*END OF EXHIBIT*

**ATTACHMENT 2  
END USER LICENSE AGREEMENT**

CISCO'S END USER LICENSE (EULA) MAY BE ACCESSED AT THE FOLLOWING SITE:  
[HTTP://WWW.CISCO.COM/EN/US/PARTNER/DOCS/GENERAL/WARRANTY/ENGLISH/EU1KEN .HTML](http://www.cisco.com/en/US/partner/docs/general/warranty/english/eu1ken.html)