CISCO DEVELOPER NETWORK PROGRAM AGREEMENT

PLEASE READ THIS CISCO DEVELOPER NETWORK PROGRAM AGREEMENT (the "Agreement") CAREFULLY. PRESSING "I AGREE" AT THE END OF THIS AGREEMENT CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT. BY PRESSING "I AGREE," YOU ARE BINDING THE BUSINESS ENTITY THAT YOU REPRESENT ("DEVELOPER") TO THIS AGREEMENT. IF YOU DO NOT ACCEPT ALL OR ANY PART OF THIS AGREEMENT, DO NOT PRESS "I AGREE" AND YOU WILL NOT BE PERMITTED TO JOIN THE PROGRAM DESCRIBED HEREIN.

The Agreement is entered into between Developer and the applicable Cisco entity specified below ("Cisco"):

- If Developer's principal place of business is located in Australia, "Cisco" is defined as Cisco Systems Australia Pty Limited, ABN 52 050 332 940, an Australian corporation having its principal place of business at Level 9, 80 Pacific Highway, North Sydney, NSW 2060, Australia.
- If Developer's principal place of business is located in Canada, "Cisco" is defined as Cisco Systems Canada Co., a Canadian corporation having its principal place of business at 181 Bay Street, Suite 3400, P.O. Box 802, Toronto, Ontario, M5J 2T3, Canada.
- If Developer's principal place of business is located in Japan, "Cisco" is defined as Cisco Systems G.K., a Japanese corporation having its principal place of business at Midtown Tower, 9.7.1 Akasaka, Minato-ku, Tokyo 107-6227, Japan.
- If Developer's principal place of business is located in the United States of America or the Emerging Markets West (Latin America and the Caribbean), "Cisco" is defined as Cisco Systems, Inc., a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California 95134, USA.
- If Developer principal place of business is located in Central or Eastern Europe (excluding member states of the European Economic Area), the Netherlands, Italy, the Asia Pacific region (excluding Australia and Japan), or the Emerging Markets - East (the Middle East and Africa, Russia and Commonwealth of Independent States (CIS)), "Cisco" is defined as Cisco Systems International B.V., a Dutch corporation having its principal place of business at Haarlerbergpark, Haarlerbergweg 13-19, 1101 CH, Amsterdam, the Netherlands.
- If Developer principal place of business is located in a member state of the European Economic Area (excluding the Netherlands and Italy), Switzerland, Andorra, Guernsey, Isle of Man, Israel, Jersey or Monaco, "Cisco" is defined as Cisco International Limited, registered in England and Wales (Company Number 06640658) with its registered office at 1 Callaghan Square, Cardiff CF10 5BT.

This Agreement enters into effect when accepted by Developer. Cisco and Developer may be referred to individually as a "Party" and collectively as the "Parties".

A. <u>Definitions</u>

Agreement means and includes all terms and conditions of this Cisco Developer Network Program Agreement, including all Exhibits, amendments, the Program Guidelines and the CDN Website Terms of Use, all of which are incorporated herein by reference.

Beta/EFT Test Period means a period of time mutually agreed by the parties during which beta or early field trial ("EFT") testing of and adjustments to one or more Product(s) will be undertaken. The Beta/EFT Test Period for a given Product shall be as identified by Cisco in the Transmittal Letter.

CDN Website means the Cisco website located at the following URL: http://developer.cisco.com or successor location.

CDN Website Terms of Use means the terms and conditions users accept when registering with the CDN Website.

Cisco Parties means the Cisco entity entering into this Agreement and its officers, directors, employees, successors and assigns.

Claims means all claims, suits, demands and actions brought by a third party against a party hereto.

Confidential Information means the terms and conditions of this Agreement and any information regarding each party's products, services, product designs, plans and roadmaps, prices and costs, trade secrets, know how, inventions, development plans, techniques, processes, programs, schematics, software, data, customer lists, financial information, sales and marketing plans, business opportunities, personnel data, research and development activities, and pre-release products, and any information posted on www.cisco.com (to the extent that such information is not publicly accessible), or any other information which the receiving party ("Receiving Party") knows or reasonably ought to know is confidential, proprietary or trade secret information of the disclosing party ("Disclosing Party").

Damages means all damages, losses, cost and liabilities (including reasonable attorney and professional fees) that arise or result from Claims.

Developer Logo means Developer's corporate logo, name(s), brand or other mark provided by Developer to Cisco for use hereunder.

Developer Parties means Developer and its officers, directors, employees, successors and assigns.

Developer Services means the products, technology and support services available to Developers as described in the Program Guidelines.

Documentation means such supporting written materials as Cisco may in its discretion provide to Developer in connection with the use of a Product.

Effective Date means the date Developer electronically accepts this Agreement.

Fee means the non-refundable sum required to be paid by Developer to cover costs of Developer Services available under Program for the initial term or any renewal.

Hardware means the tangible equipment provided as part of the Product to be tested.

Product means the Cisco product(s) including Software, Hardware and Documentation, if any, provided by Cisco to Developer for purposes of beta testing and early field trial testing in accordance with Section 6.

Program means the Cisco Developer Network program.

Program Guidelines means the then-current operational details, conditions and requirements for the Program.

Program Logos means the logos, designations or badges Cisco authorizes for the Program, in its sole discretion; provided, however, that "Program Logos" expressly excludes the Cisco corporate logo or any other Cisco logo or trademark not expressly authorized by Cisco for use under the Program.

Software means the computer programs provided as part of or together with any Product.

"Transmittal Letter" means communication(s) from Cisco to Developer, in writing (including email) which identifies the Product(s) to be tested, the applicable Beta/EFT Test Period for such Product(s), and any other information deemed appropriate by Cisco and Developer. The Transmittal Letter(s) may be delivered by Cisco with the Product(s) or prior to or subsequent to the delivery of the Product(s) to be tested, and must be accepted by Developer before they are binding upon the parties.

Solution means the combination or interoperability hereunder of any Cisco product, technology or service with a Developer product, technology or service.

In consideration of payment of the Fee and the mutual promises contained herein, the Parties hereby agree as follows:

1.0 SCOPE OF AGREEMENT

1.1 This Agreement governs the rights and obligations of the Parties with respect to the Program. Neither Party shall have any rights or obligations vis-vis one another by reason of Developer's participation in the Program that are not expressly granted or provided for in this Agreement (including without limitation any Transmittal Letter).

1.2 The Program is intended to foster a collaborative network. The Program offers multiple tiers of membership. Benefits available vary by Program tier. The requirements for and benefits of

each tier are set forth in the Program Guidelines. Program benefits may require separate fees, and may require consent to additional terms, conditions, and licenses.

1.3 Developer confirms that Cisco has not given it, nor has it relied on, any representations or assurances of future revenues, sales opportunities or similar benefits arising from participation in this Program.

1.4 Except as set forth in Section 6 ("Multiple Use Beta Test Agreement"), software made available under the Program shall be subject to the terms and conditions of the end user license or other terms accompanying such software. If no license or terms are expressly indicated, the following terms shall apply:
http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN_.html.

2.0 PROGRAM GUIDELINES

2.1 Cisco shall electronically post or otherwise make available for distribution the Program Guidelines. Developer understands and agrees that the Program Guidelines are a material part of this Agreement, and Developer shall comply with the Program Guidelines at all times.

2.2 Cisco may change the Program Guidelines at any time in its sole discretion. Cisco will exercise commercially reasonable efforts to notify Developer via the CDN Website after changes to the Program Guidelines are made. Changes to the Program Guidelines shall take effect 5 (five) business days after Cisco first posts notice of such change. Cisco may, but is not required, to solicit feedback in advance of any change to the Program Guidelines.

3.0 INTEROPERABILITY TESTING, CUSTOMER SUPPORT AND TRAINING.
Developer agrees to undergo any interoperability testing, provide any product support, training or other related services in accordance with the Program Guidelines.

4.0 CISCO DISCOUNT PURCHASE PROGRAM

Developer is eligible to purchase a limited number of discounted, NFR ("Not for Resale") Cisco products from authorized Cisco distributors or resellers. Use of NFR products is subject to the NFR terms and conditions set forth in the Program Guidelines. Any use of NFR products except as authorized by the Program Guidelines is a material breach of this Agreement.

5.0 DEVELOPER SERVICES

Developer Services are available to Developer as part of the Program. Developer Services shall be provided in accordance with the descriptions, terms and conditions set forth in the Program Guidelines.

6.0 MULTIPLE USE BETA TEST AGREEMENT

The parties may agree from time-to-time to undertake beta testing or early field trials of Cisco Products by Developer. In the absence of a separate, written Beta Test Agreement or Multiple

Use Beta Testing Agreement ("MUBTA") between the parties, the following Beta and Early Field Trial testing terms and conditions shall apply. The parties shall initiate any such beta testing by mutual consent in an exchange of emails or in writing, as further described below.

6.1 Beta & EFT Obligations of Developer

(a) Testing; Restriction on Use. During a Beta/EFT Test Period, Developer agrees to run such test suites and other test programs as reasonably requested by Cisco. Developer also agrees to use such special and non-standard operating procedures as may be reasonably required by Cisco to accomplish testing of the Product. Developer shall not use the Product in any manner to operate or support its own products or business of any kind. In no event shall Developer use the Product for the benefit of any third party or for any purpose other than for Developer's internal purpose of testing and evaluating the Product. Any use of the Product and accompanying Software will, subject to the foregoing, also be subject to the the accompanying EULA described in Section 6.4(b).

(b) Reporting. The Developer agrees to provide to Cisco written reports on all test and performance results of the Product on a weekly basis or otherwise as mutually agreed. Developer shall notify Cisco of any failure, error or other malfunction of any part of the Product within one business day of such occurrence.

(c) Modifications. Developer agrees promptly to implement any updates, modifications and/or changes to the Product during the Beta/EFT Test Period as requested by Cisco. Developer understands that these updates, modifications and changes may be incompatible with previous modifications and could include substantial changes to the system and its operating procedures. Developer shall not alter or modify the Product during the Beta/EFT Test Period without Cisco's prior written direction or approval. Developer hereby assigns to Cisco Developer's entire right, title, and interest (including, without limitation, all patent rights, design rights, copyrights and trade secret rights) in any modifications or improvements to the Product which Developer may propose or make during the Beta/EFT Test Period or which Developer and Cisco may jointly make during the Beta/EFT Test Period.

(d) Access. During the Beta/EFT Test Period, Developer will grant Cisco such access to the Product as Cisco reasonably requests.

(e) Protection. Developer agrees to keep the Product in good condition and working order and if the Product includes Hardware with a value in excess of $10,000, insure the Product against loss, theft, or damage to the extent of full commercial value. At the end of a Beta/EFT Test Period, or upon Cisco's request, Developer shall promptly return the Product to Cisco. Developer shall keep the Product in a security-enabled area with access limited solely to Developer personnel involved in the testing.

(f) Acknowledgement. Developer acknowledges that these Beta & EFT Terms apply to all Product(s) provided by Cisco to Developer for testing that are covered in a Transmittal Letter referencing these terms. Beta/EFT Test Period(s) may run concurrently or consecutively.

6.2 Obligations of Cisco.

(a) Technical Assistance. Cisco will provide Developer such technical assistance as Cisco may deem appropriate to install, operate, and test the Product at the test site.

(b) Modifications. During the Beta/EFT Test Period, Cisco will consult with Developer's Product Manager regarding the performance of the Product and will evaluate the test data and error reports provided by Developer.

Notwithstanding anything to the contrary herein, Cisco is under no obligation to make Product(s) available to Developer for beta testing and/or early field trial testing.

6.3 DISCLAIMER OF WARRANTY.

THE PRODUCT IS PROVIDED HEREUNDER "AS IS." CISCO DISCLAIMS ANY WARRANTIES IN CONNECTION WITH THE PRODUCT, INCLUDING MODIFICATIONS AND IMPROVEMENTS THERETO, DELIVERED HEREUNDER, WHETHER EXPRESS, IMPLIED, OR STATUTORY. CISCO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

6.4 OWNERSHIP AND SOFTWARE LICENSE.

(a) Ownership. Developer acknowledges that Cisco retains exclusive ownership of all right, title and interest to the Product, the Product design and Documentation, and the intellectual property rights therein and thereto (including without limitation, all patent rights, design rights, copyrights and trade secret rights). Developer agrees not to (i) alter, modify, copy, or in any way reverse engineer, decompile or disassemble the Product Hardware or Software or design, make derivative works based upon the Product, or use the Product to develop any products; or (ii) sell, license, rent, or transfer the Product to any third party. All Products (Software or Hardware) and Documentation constitute Cisco Confidential Information notwithstanding any identification or marking that might otherwise be required hereunder to obtain the protections of Section 8 ("Confidential Information").

(b) Software License Grant. Cisco hereby grants to Developer and Developer accepts a personal, non-transferable, non-exclusive license (without right to sublicense) to use the Software during the Beta/EFT Test Period solely for Developer's internal purpose of testing and evaluating the Product at a single Developer site. The Software may be used only with the Product with which it is delivered and no copies of the Software shall be made except for one (1) archival copy. Except as explicitly provided herein, use of the Product will also be subject to the accompanying click-wrap agreement, shrink-wrap agreement or other End Developer License Agreement and EULA Supplement accompanying the Product (collectively, "EULA").

(c) Restricted Rights. For U.S. Government Users: This Software and Software Documentation, when delivered under a contract with a Department of Defense entity, is commercial computer

software and commercial computer software documentation and is provided with the commercial rights and restrictions described herein for non-governmental customers. This Software (including documentation thereof), when delivered under a contract with other U.S. Government entities, is "RESTRICTED RIGHTS SOFTWARE" pursuant to FAR 52.227-14(g)(3) (Jun 1987), if such clause is included in this contract, and otherwise is "RESTRICTED COMPUTER SOFTWARE" subject to the restrictions set forth in FAR 52.227-19(c) (Jun 1987), which are incorporated herein by reference. Use, reproduction, or disclosure is subject to the restrictions set forth in either the Beta & EFT Terms under which this documentation has been provided or, alternatively, Cisco's written software license that is provided with Cisco equipment or software.

(d) Export Controls. Developer hereby acknowledges that the Product supplied by Cisco under the Beta & EFT Terms is subject to export or import controls under the laws and regulations of the United States (U.S.). Developer shall comply with such laws and regulations.

7.0 PROGRAM FEE

Developer agrees to pay in full the Fee required hereunder for the term of the Agreement and any renewal terms. All payments hereunder are due within thirty days of receipt of invoice. Fee payments are nonrefundable.

8.0 CONFIDENTIAL INFORMATION

In the absence of a non-disclosure agreement making specific reference to the Parties, the Program and this Agreement, and subject to the confidentiality provisions of any license agreement in effect between the Parties related to the Program, the following terms related to the use and disclosure of Confidential Information shall apply:

8.1 The Receiving Party shall treat as confidential only information disclosed by the Disclosing Party that is (i) clearly marked as "Confidential," "Proprietary" or by similar legend if information is disclosed in writing (or other tangible form); (ii) clearly identified as confidential, proprietary or the like at the time of disclosure if information is disclosed orally; or (iii) the Receiving Party knows or reasonably should know is confidential, proprietary or a trade secret of the Disclosing Party. Notwithstanding anything to the contrary herein, any source code disclosed under this Agreement is deemed Confidential Information regardless of whether it is identified or marked as confidential, proprietary or the like at the time of disclosure.

8.2 The Receiving Party may only use Confidential Information of the Disclosing Party as reasonably necessary to perform according to this Agreement. The Disclosing Party shall not disclose the Confidential Information of the Receiving Party to any third parties; provided, however, the Receiving Party may disclose Confidential Information to its employees and contractors who: (i) need the Confidential Information for the performance of this Agreement; (ii) have been advised of the obligations of confidentiality; and (iii) are under obligations of confidentiality substantially similar to those set out in this Agreement. The obligations of confidentiality set forth herein shall apply for a period of five (5) years following receipt of the applicable Confidential Information, or in the case of source code, the obligations of confidentiality shall survive in perpetuity.

8.3 The Receiving Party shall have no obligation to retain as confidential any information the Receiving Party can show (i) was legally in its possession or known to 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 this Agreement or other confidentiality restriction (provided, however, that Cisco Confidential Information disclosed by a third party on Cisco.com or the CDN Website shall not be deemed "legally and publicly available"); (iii) is legally obtained by the Receiving Party from a third party source without any obligation of confidentiality; or (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be documented. The Receiving Party may disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the Receiving Party provides the Disclosing Party: (a) prior written notice of such obligation; and (b) a reasonable opportunity to oppose such disclosure or obtain a protective order.

8.4 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) certify in writing by an authorized representative of the Receiving Party that the Receiving Party has complied with the obligations set forth in this paragraph.

8.5 The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Nothing in this Agreement will prohibit the Receiving Party from developing or having developed for it products, services, concepts, systems or techniques that are similar to or compete with the products, services, concepts, systems or techniques contemplated by or embodied in the Disclosing Party's Confidential Information provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development. Neither Party shall have any obligation to limit or restrict the assignment of its employees or consultants as a result of their having had access to Confidential Information. Further, subject to any copyrights, mask work rights or patent rights, the Parties agree that as a result of exposure to Confidential Information of the Disclosing Party, employees of the Receiving Party may gain or enhance general knowledge, skills and experience (including ideas, concepts, know-how and techniques) related to Receiving Party's business ("General Knowledge"). The subsequent use by these employees of General Knowledge as retained in their unaided memories, without reference to Confidential Information in written, electronic or other fixed form, shall not constitute a breach of this Agreement. Neither Party shall have any obligation to limit or restrict the assignment of persons or to pay royalties for any work resulting from the use of General Knowledge.

8.6 Each Party shall retain all right, title and interest to such Party's Confidential Information. No license under any trade secret, patent or copyright, or application for same which are now or thereafter may be obtained by such Party is either granted or implied merely by disclosure of Confidential Information.

8.7 ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". The Disclosing Party is not be liable for the accuracy or completeness of the Confidential Information, nor are there any

express or implied representations or warranties by either party to the other including with respect to the infringement of any intellectual property rights, or any right of privacy, or any rights of third persons.

8.8 Developer shall obtain Cisco's review and approval prior to the issuance of any press release or other public announcement concerning the existence or subject matter of either this Agreement or Developer's participation in the Program. When Cisco approves a contribution to Developer's press release or approves of such release, the release may appear no later than thirty (30) days after approval date. Where the content of a Cisco-originated public notice or similar document references Developer as a participant in the Program, Cisco will obtain Developer's review and approval thereof prior to the public release, provided that such consent shall not be unreasonably withheld, and if Developer does not disapprove of such communication within five (5) business days of Cisco's request for review, Developer's approval shall be deemed to have been granted. Notwithstanding the foregoing, where the content of a Cisco-originated public notice or similar document contains material information regarding Developer's datasheets, collateral and similar information, such deemed approval shall not apply, and in such case Cisco must receive Developer's review and approval thereof prior to public release. Notwithstanding anything to the contrary in this Agreement, Cisco shall not be required to seek individual Developer approval for generic Program public notices.

9.0 TERM AND TERMINATION

9.1 The term of this Agreement shall be twelve (12) months from the Effective Date. Unless earlier terminated and provided Developer pays the applicable Fee for each renewal, the term shall automatically renew for additional twelve-month terms unless either party gives not less than thirty (30) days' notice prior to the expiration of the initial term or any renewal term. Either party may terminate this Agreement at any time, without cause, upon 60 calendar days' written notice. Neither party will be responsible to the other for any costs or damages that are a direct result of such termination. Either party may terminate this Agreement in the event the other party fails to cure a material breach of the Agreement within thirty (30) days after receiving written notice thereof. Cisco may discontinue the Program upon sixty (60) days notice to Developer, delivered via the CDN Website or otherwise as permitted hereunder. Developer confirms that it has no expectation or belief that Cisco shall continue the Program or Developer's membership therein indefinitely.

9.2 Upon termination or expiration of the Agreement for any reason all licenses granted under this Agreement shall terminate; provided, however that each Party shall have a reasonable time to cease all display and use of the other Party's logos, brands, trademarks or other indicia licensed hereunder, not to exceed thirty (30) days from the date of such termination or expiration.

9.3 All definitions and the rights and obligations of the Parties contained in Sections 7, 8, 9, 10, 12, 13 and 14 shall survive any expiration or termination of this Agreement.

9.4 Following termination or expiration of the Agreement for any reason, Developer agrees to continue to provide support for any of Developer's products included in any Solution in

accordance with the Program Guidelines in effect during the shipping life or other commercial availability of the Solution. Termination of this Agreement will not, by itself, result in the termination of any unresolved request for support made before termination. The terms of this Agreement will continue in effect solely for the purpose of such unresolved support requests until the requests are resolved or are otherwise closed.

10. TRADEMARKS AND LOGOS

10.1 Cisco may design, establish and register in such jurisdictions as it deems appropriate one or more Program Logos to be used solely as authorized by Cisco. Developer confirms that the Program Logos are trademarks of Cisco. Cisco shall have the right to modify the Program Logos or prepare additional Program Logos from time to time in its sole and absolute discretion. Eligibility for the Program Logos is as set forth in the Program Guidelines. Subject to and expressly conditioned upon Developer's eligibility to use any of the Program Logos, Cisco grants Developer a worldwide, nonexclusive, nontransferable, royalty-free, personal license to use such Program Logos in strict accordance with the Program Guidelines or as otherwise approved by Cisco in writing, in each instance. Developer confirms that all use of the Program Logos shall comply with the Program Guidelines, any usage guidelines delivered with the Program Logos and the Cisco branding policy found at http://www.cisco.com/web/about/ac50/ac47/about_cisco_policies_list.html, which policy is incorporated herein by reference. Developer agrees that use of any Program Logo will be in connection with products or services of a quality at least as high as the products services offered by Developer prior to the Effective Date. Developer expressly acknowledges and agrees that it may not qualify for any or all of the Program Logos available under the Program, and that Developer is entitled to use only those Program Logos for which it qualifies. Program Logos shall be made available to eligible Developers in print-ready format.

10.2 Subject to and expressly conditioned upon compliance with the terms and conditions of this Agreement, Developer grants Cisco a worldwide, nonexclusive, nontransferable, royalty-free, personal license to copy, distribute and otherwise use the Developer's Logo, solely to identify Developer's participation in the Program and in connection with the marketing and sale of Solutions, in each case, solely in conformity with Developer's written guidelines communicated to Cisco or as approved by Developer in writing. Cisco agrees that all use of the Developer Logo hereunder will be of a quality at least as high as the services currently offered by Cisco as of the Effective Date. Developer shall make the Developer Logo available to Cisco in print ready format.

10.3 Without limiting the provisions of Section 10.1, Developer acknowledges Cisco's right to review and approve prior to publication the form and content of advertising or promotional materials containing a Program Logo. Developer also recognizes Cisco's right to review Developer's use of the Program Logo at any time and Developer agrees to make modifications to its use of the Program Logo as Cisco reasonably requests. The Parties agree to cooperate with each other to facilitate periodic review of each party's use of the other's mark(s) licensed hereunder. Cisco and Developer shall use commercially reasonable efforts to promptly make such modifications in such materials as are required to conform to the Program Guidelines.

10.4 Developer acknowledges and agrees that Cisco retains all right, title and interest in and to the Program Logos, and Cisco acknowledges and agrees that Developer retains all right, title and interest in and to the Developer Logo. Nothing herein is intended to grant any right in the Program Logos or the Developer Logo other than the right to use the same in accordance with the requirements set forth in this Agreement and the Program Guidelines. The license to use the Program Logo and the Developer Logo will terminate no later than termination or expiration of the Agreement. Notwithstanding any other termination provision, however, Cisco reserves the right to take action against any use that does not conform to these requirements or Cisco's brand policies; that infringes or otherwise violates Cisco's intellectual property or other rights; or that violates other applicable law. In any and all such cases, Cisco reserves the right to terminate Developer's license to use one or more of the Program Logos. Notwithstanding any other termination provision, however, Developer reserves the right to take action against any use that does not conform to its Developer Logo use requirements; that infringes or otherwise violates Developer's intellectual property or other rights; or that violates other applicable law.

10.5 Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppel or otherwise, a license to any proprietary right belonging to the other party other than as expressly set forth under this Agreement.

10.6 Developer expressly acknowledges and agrees that Cisco, by permitting Developer to participate in the Program and to use the Program Logos in the manner specified hereunder, is not in any manner certifying the use, operation or functionality of Developer's products. Accordingly, Developer acknowledges and agrees that the use of Program Logos in connection with qualified products or solutions may be subject to disclaimer or other legal notices required by Cisco in its sole discretion.

11. MARKETING AND SALES / ADDITIONAL ACTIVITIES

11.1 SEPARATE ACTIVITIES

Developer agrees to cooperate reasonably with Cisco in any marketing or distribution of Solutions in accordance with the terms of this Agreement and the Program Guidelines. Each Party will be solely responsible for developing, marketing, and selling/licensing its own products. Neither Party will be required to make any representation or warranty regarding the other Party's products. For Developers that offer products under the Program, neither Party will be obligated to provide customer support for the other Party's products; provided however, that the Parties agree to provide coordinated product support to customers as set forth in the Program Guidelines.

11.2 EXTERNAL WEB SITE

Cisco will establish and maintain the CDN Website for the Program. Additionally, Cisco will maintain information regarding the Program and Developer on its central website, www.cisco.com (or any successor address) or other related sites. Collectively, the CDN Website, Cisco.com or related sites are referred to as the "External Sites." Cisco will solicit information from Developer to populate the External Sites with Developer details. Both Cisco and Developer

must approve Developer's content before such content is posted. Cisco reserves the right to determine and update the format or layout of the External Websites in its sole discretion. Developer shall not provide any non-public or confidential information for the External Sites.

11.3 CISCO INTERNAL WEB SALES SITE

Cisco may also maintain an internal web site ("Internal Web Site") for the Program which shall be accessible only to Cisco employees and permitted contractors. The Internal Web Site will contain more detailed technical information and sales contacts of each Developer as provided by the Developer from time to time in accordance with the Program Guidelines.

11.4 COPYRIGHT LICENSE

Developer hereby grants to Cisco a nonexclusive right and license under Developer's copyrights or other intellectual property rights to copy, have copied, make derivative works based on, and display and distribute in electronic, web-based and/or printed form, any and all materials submitted to Cisco by or on behalf of Developer for the External Sites or the Internal Site, or for any marketing materials distributed in under the Program. Cisco agrees that any derivatives of materials submitted hereunder will materially reflect their original meaning, except as approved by Developer in each case.

11.5 JOINT MARKETING COLLATERAL

As mutually agreed in each case, each Party will provide the other with marketing collateral, information, brochures, and such other marketing materials relating to each other's products and shall reasonably cooperate in creating joint data sheets or other marketing materials as appropriate.

12.0 WARRANTY; LIMITATION OF LIABILITY

12.1 ANY DEVELOPER SERVICES SHALL BE PERFORMED IN A WORKMANLLIKE MANNER. EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, NEITHER PARTY MAKES ANY WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT. ALL TECHNICAL INFORMATION, HARDWARE, SOFTWARE, LOGOS, TRADEMARKS AND CONFIDENTIAL INFORMATION PROVIDED BY EITHER PARTY TO THE OTHER IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND EACH PARTY SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

12.2 EXCEPT FOR BREACH OF ANY OF THE LICENSES GRANTED HEREIN, BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS OR LIABILITY FOR INDEMNITY UNDER SECTION 13 (INDEMNIFICATION), 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, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS

OR LOST DATA IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT OR ITS TERMINATION. EXCEPT FOR BREACH OF ANY OF THE LICENSES GRANTED HEREIN, BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS OR LIABILITY UNDER SECTION 13 (INDEMNIFICATION), NEITHER PARTY'S LIABILITY HEREUNDER SHALL EXCEED THE AMOUNT OF THE FEE(S) OWED OR PAID (WHICHEVER IS GREATER) BY DEVELOPER. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

12.3 EACH PARTY CONFIRMS THAT THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY IN THIS SECTION 12 ARE THE MATERIAL, BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

13.0 INDEMNIFICATION

13.1 Developer will defend, indemnify and hold harmless each of the Cisco Parties from and against any Claim for Damages, as incurred, resulting from or arising out of Developer's breach of this Agreement or use of the Program Logos in any manner. As a condition to receiving such defense and indemnity, Cisco shall provide Developer with prompt written notice of the Claim and permit Developer to control the defense, settlement, adjustment or compromise thereof. Cisco may employ counsel at its own expense to assist it with respect to any 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 promptly assume control of such Claim, Developer will bear the expense of such counsel. Cisco will have no authority to settle any claim on behalf of Developer.

13.2 Cisco will defend, indemnify and hold harmless the Developer Parties from and against any Claim for Damages, as incurred, resulting from or arising out of Cisco's breach of this Agreement or any Program Logo infringing the registered U.S. trademark rights of any third party. As a condition to receiving such defense and indemnity, Developer shall provide Cisco with prompt written notice of the Claim and permit Cisco to control the defense, settlement, adjustment or compromise thereof. Developer 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 Cisco or its counsel or because Cisco does not promptly assume control of such Claim, Cisco will bear the expense of such counsel. Developer will have no authority to settle any Claim on behalf of Cisco.

14.0 GENERAL TERMS AND CONDITIONS

14.1 ASSIGNMENT

Developer may not assign this Agreement or any interest or rights granted hereunder to any third party without the prior written consent of Cisco. A change of control or reorganization of

Developer pursuant to a merger, sale of assets or stock (other than an initial public offering) will be deemed to be an assignment under this Agreement. This Agreement will terminate immediately upon occurrence of any prohibited assignment.

14.2 RELATIONSHIP OF PARTIES

The Parties are independent contractors under this Agreement and no other relationship is intended, unless specified by a separate agreement. Without limitation, the Parties expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary or other special relationship. Neither Party will act in a manner that expresses or implies a relationship other than that of independent contractor. Neither Party has the right or authority to, and will not, assume or create any obligation of any nature whatsoever on behalf of the other Party or bind the other Party in any respect whatsoever.

14.3 PROGRAM CONTACT

Developer is required to designate at least one point of contact (each, a "Program Contact"). Developer may add or remove any Program Contact in its discretion. By designating a Program Contact, Developer represents that such Program Contact is authorized to act as an agent of Developer, including but not limited to sending and receiving Program-related communications on behalf of Developer. Developer hereby consents, on behalf of itself and any Program Contact, to the receipt of any Program-related communications via e-mail or other means deemed appropriate by Cisco.

14.4 NOTICE

Any notice required or permitted to be given by either Party under this Agreement shall be in writing, e-mail, or facsimile and and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile or e-mail (followed by the actual document in air mail/air courier); (c) three days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one day after deposit with a commercial express courier specifying next day delivery (or two days for international courier packages specifying two-day delivery), with written verification of receipt. Any notice to Cisco shall be addressed as follows: General Counsel, Cisco Systems, Inc., 170 West Tasman Drive, San Jose, CA 95134. Any notice to Developer shall be delivered to the attention and address of the Developer Contact, and if no address is provided, delivery shall be made to Developer's business headquarters. Notwithstanding anything to the contrary herein, all Transmittal Letters sent by Cisco to Developer shall be deemed properly given hereunder when sent by confirmed facsimile or electronic mail (need not be followed by the actual document in air mail/air courier); and all of Developer's responses to the Transmittal Letters shall be deemed properly given when sent by confirmed facsimile or electronic mail (need not be followed by the actual document in air mail/air courier).

14.5 EXPORT COMPLIANCE

Developer hereby acknowledges that Products, technology or direct products thereof supplied by Cisco in connection with the Program or the CDN Website (isco Technology are subject to export controls under the laws and regulations of the United States (U.S.). Developer shall comply with such laws and regulations governing use, export, re-export, and transfer of Cisco Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Developer each agree to provide the other such information and assistance as may reasonably be required by the other in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents. Developer agrees to maintain full, true, and accurate records of exports, re-exports, and transfers of Cisco Technology, purchased and deployed or distributed, according to U.S. and local laws (minimum 5 years). Developer acknowledges that detailed information regarding compliance with U.S. use, export, re-export, and transfer laws may be found at: http://www.cisco.com/wwl/export/compliance_provision.html.

14.6 GOVERNING LAW

The validity, interpretation, and enforcement of this Agreement shall be governed as follows:

Canada. If Developer's principal place of business is located in Canada, the validity, interpretation, and enforcement of this Agreement shall be governed by the domestic laws of the Province of Ontario and the laws of Canada applicable as if performed wholly within the province and without giving effect to principles of conflicts of laws. Each party submits itself to the jurisdiction of the Ontario and Federal courts within the Province of Ontario. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

Japan. If Developer's principal place of business is located in Japan, the validity, interpretation, and enforcement of this Agreement shall be governed by the domestic laws of Japan, without giving effect to principles of conflicts of laws. Each party submits itself to the jurisdiction of the Tokyo District Court of Japan.

Caribbean, Latin America or United States. If Developer's principal place of business is located in the Caribbean, Latin America or the United States, the validity, interpretation, and enforcement of this Agreement shall be governed by the domestic laws of the State of California, United States of America, as if performed wholly within the State and without giving effect to principles of conflicts of laws, and the State and Federal courts of California shall have exclusive jurisdiction over any claim arising hereunder, except as expressly provided below. 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 proprietary rights. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

Europe, Asia Pacific, Emerging Markets East. If Developer principal place of business is located in Europe, the Asia Pacific region (excluding Australia and Japan), the Middle East,

Africa, Russia and the Commonwealth of Independent States [CIS], or Eastern Europe, the validity, interpretation, and enforcement of this Agreement shall be governed by the laws of England, without giving effect to principles of conflicts of laws. Cisco and Developer accept the exclusive jurisdiction of the English courts, provided that either party may bring an action before any court of appropriate jurisdiction for interim injunctive relief for protection of intellectual property rights and confidential information. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods..

14.7 NO WAIVER

Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the Parties. This Agreement may only be modified by a written document executed by the Parties hereto, except the Program Guidelines may be revised from time to time in the manner specified herein.

14.8 ORDER OF PRECEDENCE

If there is any conflict between specific terms and conditions of this Agreement and the Program Guidelines, the terms and conditions of the Program Guidelines shall prevail. In the event of any conflict between the terms of this Agreement and any Transmittal Letter, this Agreement controls except where the parties have expressed in a Transmittal Letter a clear agreement to amend or modify the terms and conditions set forth herein by reference to the Section or subsection modified.

14.9 ENTIRE AGREEMENT

This Agreement (including any applicable Beta terms referenced in Section 6.0) 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. This Agreement supersedes any similar agreement between the parties or their predecessors in interest entered into prior to the Effective Date, including but not limited to: i) the Cisco Technology Developer Program Agreement; ii) the Cisco Industry Solutions Developer Program Agreement (Innovation or Validation Agreement); iii) any program agreement regarding the Cisco AVVID Developer Program or the Cisco Service Provider Solutions Ecosystem Program or iv) any CCX program agreement. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied relating to the subject matter hereof, which are not specified in this Agreement. For the avoidance of doubt, this Agreement does not supersede or modify any technology license, end user or other license agreement between the parties, including without limitation the confidentiality provisions therein.

14.10 TAXATION

The Fee and amounts to be paid to Cisco under this Agreement are exclusive of any taxes, fees, duties or other applicable amounts arising as a result of or in connection with the transactions

contemplated under or any supply made (or deemed to be made) under this Agreement. Developer shall bear financial responsibility for and pay the taxes related to the supply made (or deemed to be made) under this Agreement, or Developer shall present an exemption certificate acceptable to the applicable taxing authorities. Applicable taxes, if any, shall be billed as a separate item on the applicable invoice. For the avoidance of doubt, these taxes do not include taxes that Cisco is obligated to pay under applicable law based on the net worth, capital, property, or income of Cisco. If, in accordance with local laws and regulations or after a determination by foreign tax authorities, any taxes are required to be withheld on payments made by Developer to Cisco, Developer may deduct such taxes from the amount owed to Cisco and pay them to the appropriate taxing authority. Developer must promptly secure and deliver to Cisco an official receipt for any such taxes withheld or other documents necessary to enable Cisco to claim a U.S. Foreign Tax Credit. Developer will ensure that any taxes withheld are minimized to the extent possible under applicable law. However, Cisco reserves the right to increase the Fee or other amounts due hereunder in the event Developer determines any withholding tax obligation prevents Cisco from receiving the specified Fee. Cisco is not liable for any of Developer's taxes that Developer is legally obligated to pay which are incurred or arise in connection with or related to the sale of goods and services under this Agreement, and all such taxes (including but not limited to net income or gross receipts taxes, franchise taxes, and/or property taxes) shall be Developer's sole financial responsibility.