

ESCROW AGREEMENT

This Manufacturing Escrow Agreement (“Escrow Agreement”) is entered into as of _____ (“Effective Date”), by and among Cisco Systems, Inc., a California corporation, with offices at 170 West Tasman, San Jose, California, 95134 (“Cisco”), _____, a _____ corporation, with offices at _____ (“Supplier”), and “_____” with offices at _____ (“Escrow Agent”).

PRELIMINARY UNDERSTANDING

A. Cisco and Supplier have entered into a certain Master Purchase Agreement (“MPA”) simultaneously with this Escrow Agreement in which Supplier agrees to sell certain Products to Cisco and its authorized contract manufacturers (“Authorized Purchasers”) and has licensed to Cisco, Authorized Purchasers and Cisco’s end-users certain Supplier software;

B. Supplier has granted to Cisco rights to manufacture certain Products for itself or through third parties upon the occurrence of certain events or circumstances;

C. This Escrow Agreement is intended to ensure that Cisco can exercise those manufacturing rights by requiring Supplier to provide to the Escrow Agent all of the materials identified in Attachment A hereto (collectively referred to as the “Escrow Materials”) and the Escrow Agent to release such Escrow Materials to Cisco as called for herein;

D. Cisco and Supplier desire this Manufacturing Escrow Agreement to be supplementary to the MPA pursuant to 11 USC Section 365(n); and

E. Escrow Agent is willing to act as escrow agent for Cisco and Supplier on the terms and conditions set forth herein.

Now, therefore, in consideration of the mutual covenants, agreements and conditions set forth herein, the parties agree as follows:

0.0 Definitions.

0.1 **Capitalized terms** not specifically defined in this Escrow Agreement shall have the meaning as set forth in the MPA.

0.2 **Escrow Materials** means that information identified in Attachment A.

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

0.4 **Software** means any computer code in object code format and whether embedded in or bundled with the Products in any manner, including as firmware, and even if provided separately on disks or other media or by electronic transmission, together with all bug fixes, revisions and upgrades thereto.

1.0 Appointment.

Cisco and Supplier hereby appoint Escrow Agent to hold the Escrow Materials so long as this Escrow Agreement is in effect and Escrow Agent accepts such appointment on the terms and conditions set forth herein. Escrow Agent confirms that it shall receive solely for the purpose of fulfilling its obligations hereunder, a copy of the MPA. Further, Escrow Agent acknowledges that the MPA is a highly confidentially document of both Cisco and Supplier and its content is not to be disclosed or revealed, in whole or in part, to any third party.

2.0 Deposit of Escrow Materials.

Supplier shall deposit with Escrow Agent, within five (5) business days after execution of this Escrow Agreement, one (1) complete copy of the Escrow Materials. Supplier further agrees to deposit as part of the Escrow Materials one (1) complete copy of all updates or modifications to the Escrow Materials on at least a quarterly basis. After providing written notice to Supplier, Cisco may request that Escrow Agent inspect the Escrow Materials deposited by Supplier with Escrow Agent for the sole purpose of determining the existence and completeness of the deposited Escrow Materials; provided, however, that such inspection must be conducted on or at Escrow Agent's premises and in the presence of a Supplier representative. Supplier shall use its diligent efforts to make such representative available to facilitate any inspection requested by Cisco hereunder. Cisco shall have no right to be present at such inspections.

2.1 Deposit Inspection. When Escrow Agent receives the Escrow Materials, it will conduct a deposit inspection by visually matching the labeling of the Escrow Materials to the item descriptions and quantities described in Attachment A. In addition to the deposit inspection, Cisco may elect to cause a verification of the Escrow Materials by providing written notice to Supplier and Escrow Agent. Supplier has the right to be present at the verification. Only Escrow Agent or an independent third party selected and supervised by Escrow Agent may conduct the verification.

2.2 Acceptance of Deposit. Upon completion of the deposit inspection, if Escrow Agent determines that the labeling of the Escrow Materials matches the item descriptions and quantities on Attachment A, it will provide written notice thereof to Supplier and Cisco pursuant to Attachment B, which shall constitute notice of receipt and acceptance of the Escrow Materials. In the event it determines that the labeling does not match, Escrow Agent will (i) note the discrepancies in writing; (ii) date and sign the discrepancy report; and (iii) mail a copy of such discrepancy report to Supplier and Cisco pursuant to Attachment B.

2.3 Additional Inspection Right. Cisco, after written notice to Supplier and Escrow Agent, may request that Escrow Agent inspect the Escrow Materials deposited by Supplier with Escrow Agent for the sole purpose of determining the existence and completeness of the deposited Escrow Materials; provided, however, that such inspection must be conducted on or at Escrow Agent's premises and in the presence of a Licensor representative. Supplier shall use its diligent efforts to make such representative available to facilitate any inspection requested by Cisco hereunder. Cisco, in its sole discretion, shall have the right to be present at such inspections.

3.0 Purpose.

The Escrow Materials shall constitute a reserve to be made available to Cisco, under the terms of this Escrow Agreement, only upon the occurrence of one of the events set forth herein. Cisco's use of the Escrow Materials released pursuant to this Escrow Agreement shall be as set forth in Section 6 below. Escrow Agent shall hold and dispose of the Escrow Materials only in accordance with the terms of this Escrow Agreement and the MPA.

4.0 Ownership.

Supplier hereby transfers title to the tangible embodiments of the Escrow Materials to the Escrow Agent; provided, however, that: (i) the Escrow Agent shall hold the Escrow Materials subject to all terms of this Escrow Agreement; (ii) the Escrow Agent shall not acquire any right or interest in any of the Intellectual Property rights embodied in the Escrow Materials; and (iii) upon return to Supplier of the Escrow Materials in accordance with the terms of this Escrow Agreement, the Escrow Agent shall re-convey title thereto to Supplier.

5.0 Releasing Events.

The deposited Escrow Materials will be delivered to Cisco by Escrow Agent upon the earliest of one of the release events identified in the Section of the MPA titled "Manufacturing Rights," the terms of such Section being incorporated herein by reference.

6.0 Use of Escrow Materials.

Supplier confirms that once transferred to Cisco, Cisco may use the Escrow Materials in any manner designed to implement its Manufacturing Rights as set forth in the MPA.

7.0 Escrow Release.

Subject to the provisions of Sections 8, 9 and 10 below, Escrow Agent is authorized to release the Escrow Materials to Cisco upon receiving written notice from Cisco certifying that Cisco is entitled to the Escrow Materials (the "Notice") pursuant to Section 5 above. Cisco will specifically instruct the Escrow Agent how to make such delivery.

8.0 Counternotice.

Within three (3) business days after receipt of the Notice, Escrow Agent shall deliver to Supplier a copy of the Notice and shall confirm such delivery in writing to Cisco. In the event that Escrow Agent is unable to deliver the notice to Supplier for any reason, it shall notify Cisco in writing. If Escrow Agent, within five (5) business days after delivery of the Notice by Escrow Agent to Supplier, does not receive (a) a written statement from Cisco withdrawing such Notice, or (b) a counter notice from Supplier detailing the circumstances which it believes indicate that the release conditions specified by Cisco did not occur ("Counternotice"), then Escrow Agent shall promptly deliver the Escrow Materials to Cisco as its directs.

9.0 Disputed Notice.

If Supplier disputes the existence of the conditions upon which the Notice is based, then Supplier shall, within five (5) business days following its receipt of Notice, submit a Counternotice to Escrow Agent. If the Counternotice is received by Escrow Agent before the close of business on

the fifth (5th) business day following receipt of the Notice by Supplier, then Escrow Agent shall, within three (3) business days after receipt of the Counternotice, serve a copy of the Counternotice on Cisco and withhold delivery of the Escrow Materials pending receipt of (a) a decision evidencing the outcome of the arbitration provided for in Section 10 below, or (b) other written instructions signed by both Supplier and Cisco. Upon receipt of said decision or other instruction, Escrow Agent shall deliver a copy of the Escrow Materials only in accordance with the decision or instruction.

10.0 Arbitration.

10.1 Supplier and Cisco agree that, if the Counternotice is given by Supplier pursuant to Section 8 above, then the parties shall submit the dispute to expedited binding arbitration in Santa Clara County, California, under the Commercial Arbitration Rules of the American Arbitration Association (AAA) by one (1) arbitrator appointed in accordance with said rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Supplier and Cisco hereby acknowledge their submission to the jurisdiction of the state courts in Santa Clara County, California and all federal courts located in Santa Clara and San Francisco counties, California. The sole question before the arbitrator shall be whether there existed, at the time Cisco transmitted the Notice to Escrow Agent, the conditions permitting release of the Escrow Materials. The parties agree that the decision of the arbitrator shall be final and binding and that this decision shall be immediately delivered to the parties to the arbitration and to Escrow Agent. If the arbitrator finds that the Notice was properly given by Cisco, then Escrow Agent shall promptly deliver the Escrow Materials to Cisco. If the arbitrator finds to the contrary, then Escrow Agent shall not release the Escrow Materials. All fees and charges of the American Arbitration Association shall be paid by the non-prevailing party in the arbitration. Additionally, the prevailing party will be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including reasonable attorneys' fees. All costs of the arbitration incurred by Escrow Agent, including reasonable attorney's fees and costs, shall be paid by the party that does not prevail in the arbitration or as otherwise agreed to by the Supplier and Cisco.

10.2 Except with regard to matters involving equitable remedies, any dispute or claim arising out of or in connection with this Escrow Agreement will be finally settled by expedited binding arbitration in Santa Clara County, California under the rules of the AAA as set forth in Section 10.1 above. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision.

11.0 Termination.

This Escrow Agreement and the escrow established pursuant to this Escrow Agreement shall terminate upon (i) notice of such termination by Cisco, (ii) five (5) years after the termination of the MPA; or (iii) notice of such termination by Escrow Agent for non-payment of Escrow Agent's fees, after providing Cisco the ability to cure the non-payment. Upon termination, the Escrow Agent will promptly return all materials to Supplier including all copies, provided that all fees due Escrow Agent are paid in full prior to such release to Supplier. Either Cisco or Supplier shall have the opportunity to cure any default of payment. Cisco shall notify Escrow Agent upon termination of the MPA.

12.0 Notices.

12.1 No Liability. It is agreed that Escrow Agent will incur no liability for acting upon any instruction, notice, direction or other document believed by it in good faith to be genuine and to

have been made, signed, sent or presented by the person or persons authorized to perform such act under the terms of this Escrow Agreement.

12.2 **Delivery.** All notices, instructions, deliveries and other communications required or permitted to be given hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when personally delivered, when delivered to a nationally recognized overnight courier or (3) days after mailing if mailed by registered or certified mail, return receipt requested, as follows (provided that notice of change of address shall be deemed given only when received):

To Escrow Agent: To the address first set forth above, and to the attention of the person signing this Escrow Agreement on behalf of Escrow Agent.

To Supplier: To the address first set forth above.

To Cisco: To the address first set forth above.

or to such other name or address as Escrow Agent, Supplier or Cisco, as the case may be, shall designate by notice to the other parties hereto in the manner specified in this Section.

13.0 Liability of Escrow Agent.

The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Escrow Agreement, and Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Escrow Agreement. In the event of any controversy hereunder or with respect to any questions as to the construction of this Escrow Agreement or any action to be taken by Escrow Agent, Escrow Agent may, at its expense, consult with counsel selected and employed by it, and Escrow Agent shall incur no liability for any action taken or suffered in good faith in accordance with the good faith opinion of such counsel. Escrow Agent shall not be responsible in any manner whatsoever for any failure or inability of Supplier, Cisco or any third party to perform or comply with any of the provisions of this Escrow Agreement. Except for intentional misrepresentation, gross negligence or intentional misconduct, Escrow Agent shall not be liable to Supplier or Cisco for any act or failure to act by Escrow Agent in connection with this Escrow Agreement.

14.0 Governing Law.

This Escrow Agreement and all action related hereto will be governed by the laws of the State of California without reference to principles of conflict of laws.

15.0 Entire Agreement.

This Escrow Agreement and the MPA sets forth the entire understanding of the parties hereto with respect to the subject matter hereof and cannot be changed, modified, or terminated orally.

16.0 Validity.

No action taken by Escrow Agent in accordance with the terms and provisions hereof shall be deemed to constitute a representation of Escrow Agent as to the validity or value of any documents or instructions held by, or delivered to, it.

17.0 Resignation/Replacement.

17.1 Resignation. Upon sixty (60) days' prior written notice given to Supplier and Cisco, Escrow Agent may resign. Within fifteen (15) days after the giving of such notice, Supplier and Cisco shall mutually designate a successor escrow agent. Such successor escrow agent shall be bound by the terms and provisions of this Escrow Agreement. In the event that no such agreement is reached within such fifteen (15) day period, Escrow Agent shall continue to hold the Escrow Materials then held by it until a successor can be found. Escrow Agent shall cooperate with its successor in order to effectuate the transfer of its duties to the successor escrow agent.

17.2 Replacement. Upon ninety (90) days' written notice, Supplier and Cisco may replace Escrow Agent with a successor, who shall replace Escrow Agent and be bound by all the terms and conditions of this Escrow Agreement.

18.0 Fees and Expenses.

Cisco shall pay the fees of Escrow Agent for its services hereunder during the term of this Escrow Agreement. Such fees shall consist of initiation fees, periodic escrow maintenance charges, at Escrow Agent's standard rates and fees charged for carrying out its duties hereunder. Escrow Agent's current schedule of fees for the first year of this Escrow Agreement is attached hereto as Attachment B. Escrow Agent shall have no obligations under this Escrow Agreement until the initial invoice has been paid in full.

19.0 Indemnification.

Supplier and Cisco jointly and severally agree to indemnify Escrow Agent from and against any and all third party liabilities, claims, suits and other proceedings, all judgments and other awards against Escrow Agent in connection herewith, and all costs and expenses incurred in connection with the defense thereof, in each case which may be imposed on, or incurred by, or asserted against, Escrow Agent as a direct result of this Escrow Agreement and the action or inaction of Cisco, Supplier or a third party, provided that neither Supplier nor Cisco shall be liable for that portion of any such indemnification amount resulting in whole or in part from Escrow Agent's gross negligence or willful misconduct or violation by Escrow Agent of any terms or provisions of this Escrow Agreement.

20.0 Limitation of Liability.

No party hereunder shall be liable for special, indirect, incidental, punitive or consequential damages hereunder.

21.0 Successors.

This Escrow Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties. However, Escrow Agent shall have no obligation in performing this Escrow Agreement to recognize any successor or assign of Supplier or Cisco unless Escrow Agent receives clear, authoritative and conclusive written evidence of the change of parties.

22.0 Counterparts.

This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

23.0 Modification.

No modifications to this Escrow Agreement, nor any waiver of any rights, shall be effective unless assented to in writing by the party to be charged and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Escrow Agreement as of the date set forth above.

CISCO SYSTEMS INC.

"Supplier"

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

"Escrow Agent"

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT A

ESCROW MATERIALS

Item	Description
BOM *	Detailed Bill of Materials
AVL *	Approved Vendor List for all Product components and raw materials
Software Source Materials (if applicable) *	(i) Documented source and object code including make files, header files and code libraries, (ii) A complete description of all relevant hardware and operating environments, (iii) A complete listing including supplier name, software name and revision level for all commercial software tools, libraries, compilers, linkers, assemblers and any other software as required to produce and use object code, (iv) All non-commercial software tools developed by or for Supplier that are required to produce and use object code from source.
Drawings, designs, schematics, and specifications *	All of these as are necessary to independently manufacture the Product
Manufacturing Processes *	Detailed description of the process used by Supplier to manufacture the Products
Tools and custom Equipment *	All of these as are necessary to independently manufacture the Product
Test Procedures and Test Equipment	Full documentation of all test procedures and detailed description of all required test equipment, including equipment manufacturer and model number.

* All such items shall be appropriate for a manufacturer familiar with the Product industry sector to obtain parts/raw materials and fully duplicate the procedures and results of Supplier's manufacturing process.

ATTACHMENT B

DESIGNATED CONTACTS

Account Number _____

Notices, deposit material returns and communications to Supplier should be addressed to:

Invoices to Supplier, if any, should be addressed to:

Company Name: _____
Address: _____

Designated Contact: _____
Verification Contact: _____

Contact: _____
P.O.#, if required: _____

Notices and communications to Cisco should be addressed to:

Invoices to Cisco should be addressed to:

Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134
Attn: VP, Supply Chain Operations

Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134
Contact: Accounts Payable
P.O.#, if required: _____

Requests to change the designated contact should be given in writing by the designated contact or an authorized representative of Cisco or Supplier.

Contracts, Deposit Materials and notices to Escrow Agent should be addressed to:

Invoice inquiries and fee remittances to Escrow Agent should be addressed to:

Escrow Agent

Address: _____

Telephone: _____
Facsimile: _____

Escrow Agent

Address: _____

Contact: _____
P.O.#, if required: _____