



**CISCO SYSTEMS, INC.
EQUIPMENT DONATION AGREEMENT**

This is an Equipment Donation Agreement (the "Agreement") by and between Cisco Systems, Inc., organized under the laws of California, having its principal place of business at 300 East Tasman Drive, San Jose, California 95134 ("Cisco") and City and County of San Francisco, acting through its Department of Technology, with a business address at One South Van Ness Avenue, San Francisco, CA 94102 ("City" or "Recipient"). This Agreement sets forth the terms under which Cisco agrees to donate certain equipment and grant related rights to Recipient.

In furtherance of the goals of the donation, described below, and in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

1. Scope and Purpose of this Donation.

1.1 This Agreement sets forth the terms and conditions governing Cisco's donation to Recipient of Cisco equipment (identified in Exhibit A) and the grant to Recipient of the right to use Cisco software and documentation as a part of Recipient's use of the Equipment (collectively the "Equipment"), solely for the public interest and benefit, and to further the goals of the Recipient. The parties value the Equipment at \$270,000.00 (Two hundred seventy thousand US Dollars).

1.2 Cisco has no expectation of obtaining or retaining business or securing any improper competitive advantage with Recipient as a result of such donation. It is likewise not Recipient's intent to, nor shall Recipient, influence, offer or provide any business or other competitive advantage to Cisco on account of this donation.

2. No Sale. This Agreement does not consist of a "sale" of the Equipment by Cisco to Recipient, but instead is intended as a gift.

3. No Resale of the Equipment. Recipient agrees that it will use the Equipment for its own internal use and not for resale, remarketing or distribution, rent, lease or for other use that would be inconsistent with the stated purpose of this donation.

4. Limited Warranty.

Cisco represents and warrants that it has full title to, or the right to convey title to, the Equipment, free from any liens or security interests.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE EQUIPMENT IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED, SUCH IMPLIED WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD FOR THIS EQUIPMENT.

5. Software License. Cisco grants to Recipient a license to use any identified Cisco software provided with the Equipment (in object code) ("Software") per Cisco's End User Software License Agreement ("EULA") at

<http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN.html>.

6. Documentation.

Cisco grants Recipient a perpetual fully paid, non-exclusive license to reproduce in its entirety or incorporate sections of Documentation that are delivered with Equipment. All such reproductions will include the following copyright notice at the title page or section page of the Cisco material: "These materials have been reproduced for internal use only with the permission of Cisco Systems, Inc. COPYRIGHT © 2007 CISCO SYSTEMS, INC. ALL RIGHTS RESERVED." This license is granted only for the purposes of operating and maintaining the Equipment for internal use and does not allow distribution to third parties or resale. Recipient shall be solely responsible for the accuracy of all of its modifications and any resultant damages from modified Documentation.

7. Export, Re-export, Transfer & Use Controls.

7.1 The parties recognize that the City intends to use the Equipment donated by Cisco for its own purposes only. Nonetheless, should City subsequently decide to export the Equipment, the City agrees to comply with all applicable U.S. laws and/or regulations governing the export, re-export, transfer and use of the Equipment and will obtain all required U.S. and local authorizations, permits, or licenses.

7.2 Cisco and Recipient agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses.

7.3 Recipient shall not transfer, divert or otherwise make available any of the Equipment, or any direct product thereof, to any person or firm that is: (a) engaged, directly or indirectly in the design, development, production, stockpiling, testing or use of any nuclear, chemical, biological weapons or missiles; or (b) is listed on any U.S. Government list of prohibited and restricted parties. Information regarding compliance with U.S. export, re-export, transfer and use laws may be located at: http://www.cisco.com/www/export/compliance_provision.html.

8. Compliance with Laws.

8.1 Recipient shall comply with Recipient's applicable national, state or local laws and regulations, including, without limitation, those related to public donations and anti-corruption.

8.2 City shall submit to the Board of Supervisors ("Board") legislation authorizing City to accept the Equipment. Notwithstanding anything herein to the contrary, Cisco understands and agrees that no officer or employee of City has authority to commit City to this Agreement unless and until the Board shall have duly approved the acceptance of the Equipment in accordance with all applicable laws. The Board may approve or reject the acceptance of Equipment in its sole discretion. Therefore, any obligations of City hereunder are contingent upon such approval by the Board, and this Agreement shall not be effective unless and until such Board approval is final.

8.3 The parties recognize that the City intends to use the Equipment donated by Cisco for its own purposes only. Nonetheless, should City subsequently decide to transfer the Equipment, City shall obtain any government-required licenses, permits or approvals that may be required for City's importation, exportation, use, and distribution of the Equipment where the Equipment will be used or deployed.

8.4 City shall be solely responsible for payment of any international, federal, state and local sales taxes, use, value-added and excise taxes, any other taxes or duties of any nature whatsoever that may be assessed upon or with respect to Equipment donated to and used by the City under this Agreement. Cisco shall have no liability relating to any taxes which may be levied on the donation of goods, which taxes will be at Recipient's cost.

9. Business Integrity.

9.1 Cisco strives to maintain the highest standards of business integrity; All Cisco employees are required to follow Cisco's Code of Business Conduct (<http://investor.cisco.com/documentdisplay.cfm?DocumentID=3263>), which prohibits Cisco employees from offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality thereof in order to assist Cisco in obtaining or retaining business. Cisco also expects its business partners to act consistently with Cisco's Global Anti-Corruption Policy at http://www.cisco.com/legal/anti_corruption.html.

9.2 Cisco encourages the reporting of any concerns to 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.

9.3 Through its execution of this Agreement, Cisco acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Cisco becomes aware of any such fact during the term of this Agreement Cisco shall immediately notify the City.

10. Confidential Information.

10.1 In connection with receiving and using the donated Equipment, Recipient may obtain information relating to the Equipment, and/or Cisco, which is of a confidential and/or proprietary nature to Cisco ("Confidential Information"). Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, Software source documents, data, or information posted on Cisco.com.

10.2 If Cisco identifies in writing that information provided to Recipient is Confidential Information as that term is used herein, Recipient shall keep in trust and confidence all such Confidential Information for a period of at least three years after the receipt of such information, and shall not use such Confidential Information other than as expressly authorized by Cisco; nor shall Recipient disclose any such Confidential Information to third parties without Cisco's prior written consent.

10.3 The obligations of confidentiality herein shall not apply to information which: (a) has entered the public domain except where such entry is the result of Recipient's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in Recipient's possession; (c) subsequent to disclosure hereunder is obtained by Recipient on a non-confidential basis from a third party who has the right to disclose such information to Recipient; or (d) Recipient is required to produce per a court order, administrative subpoena or lawful request under the California Public Records Act or San Francisco Sunshine Ordinance, provided that Recipient shall notify Cisco of its receipt of such order, subpoena, or request prior to disclosure and provide Cisco an opportunity to protect its interest in the confidentiality of the information to be produced in response.

11. Limitation of Liability.

11.1 Notwithstanding anything else in this Agreement or otherwise, but subject to clause 11.3 below, in no event shall Cisco, its affiliates, officers, directors, employees, agents or suppliers be liable for any special, indirect, consequential, incidental, or exemplary damages, or for damages for loss of business, profits, business interruptions, or for loss of or damaged data, whether arising in contract, tort (including negligence) or otherwise, even if Cisco has been informed of the possibility of such damages.

11.2 Notwithstanding anything else in this Agreement or otherwise, but subject to clause 11.3, all liability of Cisco, its affiliates, officers, directors, employees, agents and suppliers collectively for claims under this Agreement or otherwise howsoever arising shall be limited to ten thousand dollars (USD\$10,000). This limitation of liability is cumulative and not per incident (i.e., the existence of two or more claims will not enlarge this limit).

11.3 Nothing in this Agreement shall limit either party's liability: (a) for personal injury or death caused by its negligence; (b) in the tort of deceit; or (c) for any liability which cannot be excluded under applicable law.

12. **Equipment De-installation.** Cisco has provided Recipient with information concerning the location of the Equipment that was installed by Cisco for America's Cup 2013. Recipient has already de-installed and is in possession of the Equipment. Recipient received the Equipment from Cisco in "as is" condition and accepts responsibility for storing and maintaining the Equipment while in Recipient's possession prior to the Effective Date.

13. **Support Services.** Recipient may procure Support Services to assist with any technical support

issues in connection with the Equipment. Such support services ("Services"), are described http://www.cisco.com/web/about/doing_business/legal/service_descriptions/index.html.

14. General.

14.1. **Notices.** Any notice to be given under this Agreement will be in writing and addressed to the party at the addresses set forth in the first paragraph of the Agreement. For Cisco, notices should be sent to the attention of General Counsel Office, Legal Department, at address set forth on page 1 of this Agreement; for Recipient, notices should be sent to the attention of: Miguel Gamino, Chief Operating Officer, City and County of San Francisco Department of Technology 1 South Van Ness Avenue, 2nd Floor, San Francisco, CA 94103. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal, or (iv) if sent by certified or registered mail, within five days of deposit in the mail.

14.2 **No Waiver.** The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.

14.3 **Assignment.** Recipient may not assign any of its rights or delegate any of its obligations under this Agreement without Cisco's prior written consent. Any attempted assignment or delegation without Cisco's prior written consent, which Cisco will not unreasonably withhold, will be voidable by Cisco.

14.4 **Severability.** If any court of competent jurisdiction holds that any provision of this Agreement is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected or impaired, and all remaining terms of this Agreement remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.

14.5 **No Agency.** This Agreement does not create any agency, partnership, joint venture or other relationship. Each party remains independent. 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.

14.6 **Effective Date.** In the event the Board of Supervisors authorizes City to accept the equipment, the effective date of the legislation shall be the

effective date of this Agreement ("Effective Date"). In the event the Board does not approve the acceptance of the Equipment, then: (a) this Agreement shall terminate and shall be of no force and effect whatsoever; and (b) Recipient shall return the Equipment to Cisco in the condition received.

14.7 Entire Agreement. This Agreement is the complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. Any URLs cited

herein are incorporated into this Agreement. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Agreement may be only modified by a written document executed by the parties.

14.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.