IMPORTANT – PLEASE CAREFULLY READ THE TERMS OF THIS END USER LICENSE AGREEMENT ("AGREEMENT") FOR USE OF THE NIAGARA NETWORKS SOFTWARE AND DOCUMENTATION (DEFINED BELOW) PROVIDED WITH OR EMBEDDED IN ACCOMPANYING NIAGARA NETWORKS HARDWARE OR APPROVED THIRD- PARTY HARDWARE. THIS AGREEMENT ALSO CONTAINS AN AGREEMENT TO ARBITRATE IN SECTION 18 BELOW WHICH WILL REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST US TO BINDING AND FINAL ARBITRATION. YOU MUST AGREE TO THE TERMS OF THIS EULA BEFORE USING, DOWNLOADING OR INSTALLING ANY SOFTWARE OR DOCUMENTATION. BY USING, DOWNLOADING OR INSTALLING THE SOFTWARE OR DOCUMENTATION, (1) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW), (2) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW), ON BEHALF OF THE ENTITY OR PERSON IN RESPECT OF WHOM THE NIAGARA NETWORKS SOFTWARE WAS ORDERED AND ISSUED (SUCH ENTITY OR PERSON, "CUSTOMER"), AND TO BIND CUSTOMER TO THE TERMS OF THIS AGREEMENT, AND (3) YOU AGREE THAT CUSTOMER IS ENTERING INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW) WITH NIAGARA NETWORKS, INC., A CALIFORNIA CORPORATION ("NIAGARA NETWORKS"). IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR IF YOU DO NOT HAVE SUCH AUTHORITY, YOU SHOULD DISCONTINUE THE DOWNLOAD OR INSTALLATION OF THE NIAGARA NETWORKS SOFTWARE.

YOUR PURCHASE OF THE PRODCUT 9EXCLUDING THE SOFTWARE) IS GOVERNED BY THE LIMITED WARRANTY PER SUPPORT TERMS AND CONDITIONS. ALL ADDITIONAL GUIDELINES, TERMS, OR RULES INCLUDING THE PRIVACY POLICY, ARE INCORPORATED BY REFERENCE INTO THIS EULA AND YOU ARE AGREEING TO ACCEPT AND ABIDE BY THEM BY USING THE SOFTWARE.

1. Definitions

   1.1. "**Approved Third-Party Hardware**" means third party, non-Niagara Networks, hardware products, which Niagara Networks has approved for use with Niagara Networks Software.

   1.2. "**Authorized Users**" means Customer's employees and contractors authorized to use the Niagara Networks Software, solely for Customer's internal business purposes, in compliance with this Agreement.

   1.3. "**Documentation**" means written or electronic user manuals, "read-me" files, instructions or other documentation made available to Customer by Niagara Networks relating to the Niagara Networks Products, including any and all modifications, updates, and enhancements thereto, that Niagara Networks may provide or make available to Customer or its Authorized Users under this Agreement.

   1.4. "**Feedback**" means any and all suggestions and feedback provided by Customer or its Authorized Users to Niagara Networks regarding the functioning, features and other characteristics of the Niagara Networks Product.

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1.5. "**Niagara Networks Software**" means Niagara Networks' proprietary software programs included with or embedded in the Niagara Networks Hardware, including any and all modifications, updates, and enhancements thereto, that Niagara Networks may provide or make available to Customer or its Authorized Users under this Agreement.

1.6. "**Niagara Networks Hardware**" means Niagara Networks' proprietary hardware products, purchased directly from Niagara Networks or from its authorized reseller by Customer. Niagara Networks Hardware excludes third party hardware, including, without limitation Approved Third-Party Hardware.

1.7. "**Niagara Networks Product**" means the Niagara Networks Software, Niagara Networks Hardware, Documentation and/or any combination thereof.

2. <u>License Grant</u>

2.1. **Production License**. If Customer has paid the applicable fees to purchase a license to the Niagara Networks Software provided with or embedded in Niagara Networks Hardware or Approved Third-Party Hardware ("**Niagara Networks Software Production Versions**"), the license and terms of this Section shall apply. Subject to the terms and conditions of this Agreement, Niagara Networks grants to Customer a nonexclusive, nontransferable (except as otherwise specified in Section 18 below), and non-sublicensable (except to the extent expressly permitted in this Section) license to permit Authorized Users to install, execute and use the Niagara Networks Software Production Versions, solely in executable object code format, for Customer's internal business operations, solely with Niagara Networks Hardware or Approved Third-Party Hardware, as applicable, and in accordance with this Agreement and any and all technical limitations implemented by Niagara Networks in the Niagara Networks Software. Customer shall ensure that its Authorized Users comply with the terms and conditions of this Agreement to the same extent as Customer and furthermore, Customer agrees that any non-compliance with the terms hereof by any Authorized User shall be deemed a breach of this Agreement by Customer.

2.2. <u>Term License Cessation</u> After a software product has been on a continuous term license for a period of **72** months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited. Contractors who do not commercially offer conversions of term licenses to perpetual licenses shall indicate that their term licenses are not eligible for conversion at any time.

2.3. **Trial License**. If Customer has obtained any Niagara Networks Software on an evaluation, trial, beta or pre-release basis (each, a "**Niagara Networks Software Trial Version**"), the license and terms of this Section shall apply. Subject to the terms and conditions of this Agreement, Niagara Networks grants Customer a non- exclusive, nontransferable, (except as otherwise specified in Section 18 below), and

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non-sublicensable license, solely for a thirty (30) day period (or such other period as may be specified in the applicable purchase order or Evaluation Agreement) from the installation of the Niagara Networks Software Trial Version from the date of delivery ("**Evaluation Period**"), to install, execute and use the Niagara Networks Software Trial Version, in executable object code format only, for Customer's internal evaluation purposes, solely with Niagara Networks Hardware or Approved Third-Party Hardware, as applicable, at Customer's own premises, by Authorized Users, and subject to any and all technical limitations implemented by Niagara Networks in the Niagara Networks Software Trial Version. Customer acknowledges and agrees that upon the expiration of the Evaluation Period, Customer shall discontinue all use of the Niagara Networks Software Trial Version unless, prior to such expiration, Customer has purchased a production license (as described in Section 2.1 above) to continue using such Niagara Networks Software. If Customer has not purchased a production license to the Niagara Networks Software prior to the expiration of the Evaluation Period, this Agreement will automatically terminate (that is, without the requirement of providing any termination notice to Customer) and the Niagara Networks Software Trial Version may cease functioning. In addition to the restrictions set forth in Section 3, Customer shall not attempt to circumvent, dismantle or otherwise interfere with any time-control disabling functionality in the Niagara Networks Software Trial Version that causes the Niagara Networks Software Trial Version to cease functioning upon the expiration of the Evaluation Period. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE NIAGARA NETWORKS SOFTWARE TRIAL VERSION IS PROVIDED WITHOUT ANY WARRANTY, SERVICE OR SUPPORT (INCLUDING ANY UPDATES OR UPGRADES). Except to the extent this Section modifies this Agreement, with respect to Niagara Networks Software Trial Versions, all other provisions stand and remain unaltered. Nothing in this Section 2.2 shall apply with respect to Niagara Networks Software Production Versions obtained by Customer.

3. <u>Restrictions</u>.
The rights granted to Customer in this Agreement are subject to the following restrictions:(a) Customer shall not license, sell, rent, lease, transfer, assign, distribute, host, outsource, disclose or otherwise commercially exploit the Niagara Networks Software or Documentation or make the Niagara Networks Software or Documentation available to any third party other than as expressly permitted under Section 2 of this Agreement; (b) Customer shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Niagara Networks Software; (c) Customer shall not access the Niagara Networks Software in order to build a similar or competitive product or service; (d) except as expressly stated herein, no part of the Niagara Networks Software or Documentation may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including electronic, mechanical, photocopying, recording or other means; and (e) any future release, update, or other addition to functionality of the Niagara Networks Software or Documentation shall be subject to the terms of this Agreement, unless Niagara Networks states otherwise in a signed writing by its authorized representative. Neither Niagara Networks nor any of its suppliers is obligated to provide any services (including any updates or upgrades to the Niagara Networks Software) under this Agreement. Customer shall preserve all copyright and other proprietary rights notices in the Niagara Networks Software and all copies thereof.

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4. <u>Third Party Software</u>. The Niagara Networks Software may contain third party software which requires notices and/or may be subject to additional terms and conditions ("Third Party Software"). All such Third Party Software may include software or software components that are derived, in whole or in part, from software that is distributed as free software, open source software or under similar licensing or distribution models ("Open Source Software," together with Third Party Software, "External Software"). By accepting this Agreement, Customer is also accepting such additional terms and conditions, if any, set forth therein. If Customer does not agree to such additional terms and conditions, Customer should not install or use the Niagara Networks Software. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable Customer license for such Open Source Software. In particular, nothing in this Agreement restricts Customer's right to copy, modify, and distribute such Open Source Software that is subject to the terms of the GNU General Public License ("GPL"). FOR THE AVOIDANCE OF DOUBT, NIAGARA NETWORKS PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO SUCH EXTERNAL SOFTWARE, INCLUDING WITH RESPECT TO FUNCTIONALITY OF SUCH EXTERNAL SOFTWARE. Niagara Networks does not provide any warranty, maintenance, technical or other support for any External Software. Accordingly, Niagara Networks is not responsible for Your use of any External Software or any personal injury, death, property damage (including, without limitation, to Your home), or other harm or losses arising from or relating to Your use of any External Software.

5. <u>Customer's Use of Niagara Networks Products</u>. Customer is solely responsible for the management, security, and oversight of its networks and tools, and to provide notices, as necessary, to its Authorized Users that their use of Customer's computers, electronic appliances, and devices (and those of users on Customer's network) may be monitored, inspected, or decrypted.

6. <u>Third Party Hardware</u>. Customer acknowledges and agrees that,if Customer uses any Third Party hardware (including any Approved Third Party Hardware), Niagara Networks makes no endorsements of and provides no warranties or support with respect thereto. Customer assumes all risk related to, as well as all responsibility for, the selection and use of Third Party hardware (including any Approved Third Party Hardware) and should contact the applicable Third Party hardware provider or such third party's agent for support and warranty related information. Niagara Networks will have no responsibility or liability of any kind, whether for breach of warranty or otherwise arising or resulting from the combination or use of Niagara Networks Software with any Third Party hardware (including any Approved Third Party Hardware).

7. <u>Ownership</u>. All rights, title, and interest, including all intellectual property rights, in and to the Niagara Networks Software and Documentation (including any and all copies thereof) shall be owned and retained by Niagara Networks or its suppliers. Any rights not expressly granted by Niagara Networks in this Agreement are reserved. Customer acknowledges that it acquires no ownership interest in the Niagara Networks Software. No implied licenses are granted by Niagara Networks. In addition, Customer hereby licenses Feedback to Niagara Networks on a worldwide, perpetual, irrevocable, non-exclusive, freely-transferable, fully paid, and royalty-free basis, for Niagara Networks to use and exploit in any manner and for any purpose.

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8. Limited Warranty; Disclaimer

8.1. **Limited Warranty**. For a period of twelve (12) months after shipment (or electronic delivery, as applicable) of the Niagara Networks Software Production Version (the "Warranty Period"), Niagara Networks warrants that when used as permitted under this Agreement and in accordance with the applicable Documentation for such Niagara Networks Software, such Niagara Networks Software will perform substantially in accordance with the specifications in such Documentation. Niagara Networks does not warrant that Customer's use of such Niagara Networks Software will be error-free or uninterrupted, or that it will perform in every operating environment, or that every error will be corrected. At its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, Niagara Networks will: (a) at Niagara Networks' option, correct any reproducible errors in such nonconforming Niagara Networks Software so that it conforms to the foregoing warranty or replace such nonconforming Niagara Networks Software with Niagara Networks Software that conforms to the foregoing warranty; or (b) if the options in clause (a) hereof are not commercially reasonable, as determined in Niagara Networks' sole discretion, Niagara Networks will refund to Customer the fees paid to Niagara Networks for such non-conforming Niagara Networks Software, in which case Customer's right to use such Niagara Networks Software will terminate. Any error correction provided to Customer will not extend the original Warranty Period. Notwithstanding anything in this Agreement to the contrary, Niagara Networks will have no responsibility or liability of any kind, whether for breach of warranty or otherwise arising or resulting from: (i) combination of any Niagara Networks Product with products, equipment, software, or data not supplied by Niagara Networks; (ii) any use based on unauthorized distribution or sale of such Niagara Networks Product; (iii) any use of such Niagara Networks Product other than in accordance with this Agreement; (iv) any modification of such Niagara Networks Product by anyone other than Niagara Networks or contractors authorized in writing by Niagara Networks; (v) any such Niagara Networks Product rendered defective or non-conforming, in whole or in part, due to: (1) neglect, misuse, electrical or electromagnetic stress, accident, fire or other hazard, (2) improper testing, handling, storage, transportation, operation, interconnection, or installation by anyone other than Niagara Networks or contractors authorized in writing by Niagara Networks, (3) failure to continually provide a suitable installation or operation environment, or (4) any other cause beyond the range of normal use of such Niagara Networks Product; (vi) any Niagara Networks Software Trial Version.

8.2. **Disclaimer of Warranties**

8.2.1. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8.1 ABOVE, THE NIAGARA NETWORKS SOFTWARE AND DOCUMENTATION ARE PROVIDED TO CUSTOMER ON AN "AS-IS" BASIS. NO WARRANTIES OR REPRESENTATIONS ARE MADE OR GIVEN UNDER THIS AGREEMENT WITH RESPECT TO NIAGARA NETWORKS SOFTWARE, THE DOCUMENTATION, OR NIAGARA NETWORKS HARDWARE. CUSTOMER ASSUMES ALL RESPONSIBILITIES FOR SELECTION OF THE NIAGARA NETWORKS PRODUCTS TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED. NIAGARA NETWORKS DISCLAIMS ALL EXPRESS, IMPLIED AND/OR STATUTORY WARRANTIES RELATING TO THE NIAGARA NETWORKS SOFTWARE AND DOCUMENTATION, INCLUDING MERCHANTABILITY, QUALITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, AND NON-INFRINGEMENT. NIAGARA NETWORKS DOES NOT WARRANT THAT USE OF THE NIAGARA NETWORKS SOFTWARE WILL BE

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SECURE, UNINTERRUPTED, OR ERROR- FREE, OR THAT DEFECTS WILL BE CORRECTED, OR THAT THE NIAGARA NETWORKS SOFTWARE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

8.2.2. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NIAGARA NETWORKS MAKES NO REPRESENTATIONS REGARDING, ARISING FROM, OR RELATED TO THE LEGALITY OF ENCRYPTION OR DECRYPTION OF DATA OR MONITORING OF NETWORKS OR INFORMATION IN ANY PARTICULAR JURISDICTION, AND CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING THAT CUSTOMER'S PROPOSED OR ACTUAL USE OF THE NIAGARA NETWORKS PRODUCTS COMPLIES WITH APPLICABLE LAWS. CUSTOMER ACKNOWLEDGES AND AGREES THAT NIAGARA NETWORKS AND ITS SUPPLIERS WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM: (A) THE USE OF THE NIAGARA NETWORKS SOFTWARE OR DOCUMENTATION BY CUSTOMER OR THIRD PARTIES; (B) SECURITY BREACHES; (C) EAVESDROPPING, INTERCEPTION, FAILURE OF DELIVERY OR LOSS OF DATA SENT, STORED, OR RECEIVED USING THE NIAGARA NETWORKS SOFTWARE; OR (D) ANY THIRD PARTY HARDWARE (INCLUDING ANY APPROVED THIRD PARTY HARDWARE). THESE LIMITATIONS APPLY EVEN IF NIAGARA NETWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. **Limitation of Remedies and Damages**. TO THE MAXIMUM EXTENT PERMITTED BYAPPLICABLE LAW, NEITHER NIAGARA NETWORKS NOR ITS SUPPLIERS SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS OR CONDITIONS RELATED THERETO UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY: (A) FOR LOSS OR INACCURACY OF DATA OR INFORMATION, SECURITY BREACH, BUSINESS INTERRUPTION OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR (B) FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF REVENUES OR LOSS OF PROFITS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NIAGARA NETWORKS' AGGREGATE CUMULATIVE LIABILITY HEREUNDER SHALL NOT EXCEED THE AMOUNT PAID TO NIAGARA NETWORKS FOR THE SPECIFIC NIAGARA NETWORKS SOFTWARE THAT GAVE RISE TO THE LIABILITY. NIAGARA NETWORKS' AFFILIATES AND SUPPLIERS SHALL HAVE NO LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT.

10. **Application of Limitations and Disclaimers to Consumers**. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages with respect to consumers (i.e., a person acquiring goods otherwise than in the course of a business), so the exclusions set forth in Sections 8.2 and 9 above may not apply to Customer if Customer is a consumer. The limitations or exclusions of warranties and liability contained in this Agreement do not affect or prejudice the statutory rights of a consumer. The limitations or exclusions of warranties and remedies contained in this Agreement shall apply to consumer Customers only to the extent such limitations or exclusions and remedies are permitted under the laws of the jurisdiction where such Customer is located.

11. **Basis of Bargain**. The warranty disclaimer and limitation of liability set forth above are fundamental elements of the basis of the agreement between Niagara Networks and Customer. Niagara Networks would

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not be able to provide the Niagara Networks Product on an economic basis without such limitations. The warranty disclaimer and limitation of liability inure to the benefit of Niagara Networks' suppliers.

12. <u>Support</u>. Support services, updates, and maintenance for the Niagara Networks Software ("Niagara Networks Software Support") are described in Niagara Networks' then-current Support Terms and Conditions. All bug fixes, updates, and upgrades provided by Niagara Networks to Customer pursuant to such Niagara Networks Software Support will deemed to be "Niagara Networks Software" and licensed under this Agreement.

13. <u>Publicity</u>. Niagara Networks may refer generally to the existence of this Agreement and use the Customer's name in press releases, on web sites, and other promotional material, but will not reveal any specific terms of this Agreement or any non-public and proprietary information designated "confidential" in writing by the Customer.

14. <u>Term and Termination</u>. This Agreement and the licenses granted hereunder are effective on the earlier of Customer's installation or use of date the Niagara Networks Software is delivered to Customer along with or embedded in the Niagara Networks Hardware or Approved Third-Party Hardware and shall continue unless and until this Agreement is terminated by pursuant to this Section or as elsewhere provided in this Agreement. Niagara Networks may terminate this Agreement immediately upon written notice to Customer if Customer materially breaches any of the terms hereof. Customer may terminate this Agreement at any time by permanently discontinuing all use of the Niagara Networks Software in Customer's or its Authorized Users' possession or by written notice to Niagara Networks. Any such termination will not entitle Customer to a refund. Upon termination, the licenses granted hereunder shall terminate and Customer shall immediately destroy any copies of the Niagara Networks Software in its and in all of its Authorized Users' possession, and, upon Niagara Networks' request, Customer will certify in writing to Niagara Networks that Customer has complied with the foregoing, including, without limitation, that all instances and copies of the Niagara Networks Software, or any portion thereof (other than firmware), have been destroyed or deleted from the Niagara Networks Hardware, Approved Third Party Hardware or any of Customer's and its Authorized Users' devices or storage devices, as applicable. The following provisions of this Agreement shall survive any termination of this Agreement: Sections 1, 3, 4, 5, 6, 7, 8.2, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19 and 20.

15. <u>Export</u>. The Niagara Networks Software and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Customer agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Niagara Networks, or any products utilizing such data, in violation of the United States export laws or regulations. Customer will indemnify and hold Niagara Networks harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney's fees) arising from or relating to any breach by Customer of its obligations under this Section.

16. <u>Government Licenses</u>. The Niagara Networks Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, or any other similar law or regulation in any jurisdiction, as

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applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Niagara Networks Software and Documentation by the United States Government, or any other government entity, shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

17. **Governing Law & Venue**. This Agreement shall be governed by the laws of the State of California, without giving effect to any conflicts of laws principles. The parties consent to the exclusive jurisdiction of, and venue in, the state court of Santa Clara County, California, U.S.A., or the federal court of the Northern District of California, U.S.A., except nothing shall restrict Niagara Networks from seeking relief to protect its intellectual property rights in any court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

18. **Assignment**. Except as expressly set forth herein, neither the rights nor the obligations arising under this Agreement are assignable or transferable by Customer, and any such attempted assignment or transfer shall be void and without effect. Upon written notice to Niagara Networks specifying the assignee's name and address, this Agreement and the Niagara Networks Software may be transferred or assigned only to a party that acquires all or substantially all of Customer's assets and business. Furthermore, the Niagara Networks Software may not be transferred except along with or as embedded in the Niagara Networks Hardware or Approved Third Party Hardware, as applicable. A change of control of Customer is deemed to be an assignment.

19. **Miscellaneous**. Except as expressly set forth in this Agreement, neither the rights nor the obligations arising under this Agreement are assignable by Customer, and any such attempted assignment or transfer shall be void and without effect. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Any notice to Customer may be provided by email to the last known email address provided to Niagara Networks by Customer. This Agreement constitutes the entire agreement between the parties pertaining to Niagara Networks Software and Documentation, and any and all written or oral agreements previously existing between the parties with respect to the subject matter hereof are expressly canceled. Except as otherwise expressly provided in this Agreement, any modifications of this Agreement must be in writing and agreed to by both parties. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to." Customer agrees that this Agreement will not be construed against Niagara Networks by virtue of having drafted them. The official text of this Agreement (and any Exhibit hereof or notice submitted hereunder) will be in English. The parties acknowledge that they require that this Agreement be drawn up in the English language only. In the event of any dispute concerning the construction or meaning of this Agreement, reference will be made only to this Agreement as written in English and not to any translation into another language. Any delay in the performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, telecommunications or Internet failure, or any other event beyond the reasonable control of such party.

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Any notices to Niagara Networks relating to this Agreement should be sent via certified mail to:

Niagara Networks, Inc.
Attention: Sales Admin Legal
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USA

or by email to

legal@niagaranetworks.com

20. Questions or Additional Information. If Customer has questions regarding this Agreement, please send an e-mail to legal@niagaranetworks.com

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