



General Sales Agreement

This General Sales Agreement, Contract Number **AN00**_____, (the "Agreement"), effective, 20_____ ("Effective Date"), is made between APERTO NETWORKS, INC. ("Aperto"), a California corporation with its principal offices at 1637 South Main Street, Milpitas, California 95035 and _____, a _____ corporation with its principal offices at _____ ("Customer") (hereinafter collectively the "Parties").

DEFINITIONS

"Confidential Information" means any oral, written, graphic or machine-readable information including, but not limited to, that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, trade secrets, agreements with third parties, services, customers, marketing or finances of the disclosing Party, that relates to the relationship contemplated herein or that, although not related to such purpose, is nevertheless disclosed as a result of the Parties' discussions in that regard, and that should reasonably have been understood by the recipient, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to the owner, or to a third party. The terms and conditions of this Agreement, but not its existence, is Confidential Information of both Parties.

"Customer Information Document" means the document identifying all Aperto Equipment and/or Software owned or licensed by Customer from Aperto, to be completed and returned to Aperto simultaneously with or shortly following execution of this Agreement.

"Delivery" means Aperto's tender of delivery to the common carrier or Customer's designee F.O.B. Aperto's shipping facility. Title to Products only, and risk of loss to Products and Licensed Materials, shall pass to Customer upon Delivery. All Products or Licensed Materials shall be deemed accepted by Customer upon Delivery.

"Licensed Materials" means Software and related user and technical documentation.

"Order" means a written (paper or electronic) purchase order issued by Customer to Aperto, which specifies (i) the quantity and type of Products, Licensed Materials and Services being ordered and their applicable prices, charges or fees; (ii) accurate "ship to" and "bill to" addresses; (iii) the requested Delivery date consistent with Aperto's standard interval between acceptance of an Order and Delivery; and (iv) if Aperto is installing, the requested date of installation consistent with Aperto's standard intervals. An electronic Order shall be effective despite the absence of Customer's signature.

"Product" means equipment, hardware, and parts thereof, but does not include Software whether or not such Software is part of firmware.

"Services" means engineering, installation, consulting, training or other services relating to the establishment of Customer's operation or the installation of additional equipment, as well as the technical Support and Software Maintenance and Customer Support Services for the Products and Software.

"Site Location" means a physical location associated with a single address and includes the floors of a single building or adjoining buildings.

"Software" means a computer program, in machine-readable or object-code form, consisting of a set of logical instructions and tables of information that guide the functioning of a processor. Such program may be contained in any medium whatsoever, including firmware, representing such program, but does not include such medium.

"Software Update" means a formal software release issued and classified by Aperto as a "major" or "minor" release and which either (a) incorporates material functionality modifications or improvements to the Software (and is not deemed a new product by Aperto in its sole discretion), or (b) constitutes a maintenance release to correct deficiencies and/or bugs affecting performance to Aperto published specifications.

“Specifications” means Aperto’s or its vendor’s written technical specifications for a particular Product or Software furnished under this Agreement.

“Warranty Period” means the applicable period of time that a particular Product, Software, or Service is warranted as shown in this Agreement (or, if not specified in the Agreement, Aperto’s standard period of time). For a Product or Software, the Warranty Period begins on the date of Delivery. The Warranty Period for Services begins on the date Aperto completes the Services.

AGREEMENT

In consideration of their mutual promises and undertakings, the Parties agree as follows:

1. **SCOPE:** This Agreement describes the terms and conditions under which Aperto shall sell, and Customer shall purchase, Products, Software and Services and the right to use Licensed Materials during the Term. The Parties shall enter into one or more addenda (“Addenda”) to supplement or modify this Agreement for specific Products, Services, or Licensed Materials described in the respective Addendum. All references to the “Agreement” shall be deemed to include this document and its exhibits together with any and all Addenda and their attachments. All Products, Licensed Materials, and Services furnished by Aperto to Customer under this Agreement shall be for Customer’s own internal use, and not as inventory for resale to any third party. Exhibit B attached hereto governs technical Support and Software Maintenance and Customer Support Services for the Products and Software.
2. **TERM:** This Agreement shall begin on the Effective Date and shall continue for a period of three (3) years (“Term”), unless earlier terminated as provided in the “Termination” section or as mutually agreed in writing. Termination or expiration of this Agreement shall not excuse a Party from performing any obligations that have not been fully performed for any accepted Order.
3. **OPTION TO EXTEND:** Customer shall have the right to extend the period specified in Section 2 for up to twelve (12) months by giving Aperto written notice at least sixty (60) days prior to the expiration. Within thirty (30) days of the date of Customer’s notice to extend the period, Aperto shall notify Customer in writing whether Aperto proposes to revise any term(s) under this Agreement. If the Parties fail to agree on any revised term(s) within thirty (30) days after the date of Aperto’s notice, Customer’s notice of extension shall be considered withdrawn and all terms for outstanding Orders placed during the term of this Agreement shall not be revised. Any subsequent renewal will be upon mutual written agreement of the Parties.
4. **ORDERS:** All purchases under this Agreement shall be made by Orders issued by Customer through individual written purchase orders sent to Aperto’s principal business address. Orders will be accepted or rejected by Aperto in writing. Each Order shall be subject only to the terms and conditions of this Agreement. Terms and conditions on an Order that are in addition to or different from the terms and conditions of this Agreement, and/or any pre-printed terms and conditions on an Order shall be ineffective and void.
5. **CHANGES TO ORDERS:** Customer may request changes to an Order that Aperto has previously accepted (“Change Request”). In response to a Change Request, Aperto will provide to Customer written quotations, including but not limited to any change to prices, license fees, shipment or completion dates. A Change Request will be treated as a separate Order subject to Aperto’s change order process.
6. **CANCELLATION; RESCHEDULING.** Orders must be cancelled in writing. Order cancellations received 30 to 60 days prior to scheduled delivery date shall be subject to a 15% cancellation charge (based on Customer’s purchase price for cancelled order). Charges for cancellations received less than 30 days prior to scheduled delivery date shall be 50% of Customer’s purchase price for cancelled order or actual costs incurred by Aperto which are not recoverable by shipment to other Customers within 45 days of cancellation, which ever is higher. Upon request, Aperto shall furnish to Customer evidence of such charges. Customer shall pay transportation costs for cancelled Products. Upon written notice to Customer, Aperto may reschedule shipment or delivery dates set forth in any Product purchase order hereunder due to conditions beyond the reasonable control of Aperto. In rescheduling any order, Aperto shall use best efforts to manufacture and deliver Products within a reasonable time.
7. **CHANGES IN PRODUCTS OR LICENSED MATERIALS:** At any time prior to Delivery, Aperto may make changes to Products or Licensed Materials. Aperto may modify the drawings, documentation or Specifications for Products or Software, or substitute Products or Software of later design. For significant changes that affect form, fit, or function, Aperto shall notify Customer at least thirty (30) days prior to the date that the changes take effect. Customer may reject the changes within thirty (30) days of this notice. On receipt of Customer’s written notice of rejection, Aperto, at its option, shall either cancel any Orders in process, or fulfill the Orders with unmodified Products.

8. **PRICES AND TAXES:** The applicable prices and charges for each Order shall be set forth in the appropriate Addendum or in a firm price quotation made by Aperto. All firm price quotes shall be deemed to incorporate this Agreement. Provided that the firm price quote is signed by an authorized representative of Aperto and Customer, any provisions of a firm price quote which conflict with this Agreement shall supersede the comparable provisions of this Agreement with respect to the Products, Licensed Materials and Services described in such quote. Aperto may adjust its prices and charges (other than those subject to a firm price quote) upon thirty (30) days written notice to Customer. Except for taxes on Aperto's income, Customer shall pay all applicable taxes and related charges, including interest and penalties, that any governmental or taxing authority may impose upon the purchase, license, ownership, possession, use, operation or relocation of any Products, Software or Services that Aperto furnishes under this Agreement.
9. **TERMS OF PAYMENT:** Except for Maintenance Services, which shall be invoiced and paid as set forth in Exhibit B, Aperto shall invoice Customer for fifty percent (50%) of the amounts due (including transportation charges and taxes as applicable) for Products and Licensed Materials upon acceptance of the Customer Order and fifty percent (50%) of the amount due upon Delivery and shall invoice Customer all amounts due for Services upon completion of Services or as soon as practical thereafter. Aperto shall issue periodic invoices for recurring services as those Services are performed. Customer shall pay such invoiced amounts for receipt by Aperto with terms agreed upon by both parties. Customer will advise Aperto of any billing discrepancies or disputes about an invoice within ten (10) days of receiving the invoice. Overdue payments shall be subject to a late payment charge of one and one-half percent (1.5%) per month of the overdue amount (but not to exceed the maximum lawful rate). Customer will reimburse Aperto for reasonable attorneys' fees and other costs associated with collecting delinquent payments.
10. **TITLE AND RISK OF LOSS:** The Products and Licensed Materials shall be shipped F.O.B. Aperto's shipping facility. Title to Products only, and risk of loss to Products and Licensed Materials, shall pass to Customer upon Aperto's tender of delivery to the common carrier or Customer's designee ("Delivery"). Customer shall accept partial shipments. All Products or Licensed Materials shall be deemed accepted by Customer upon Delivery. Aperto retains title to all Licensed Materials and all copies thereof. Aperto reserves a purchase money security interest in all Products and Licensed Materials until Customer pays all prices and charges due Aperto under this Agreement. Customer will cooperate with Aperto in perfecting Aperto's purchase money security interest and will promptly execute all documents and take all actions reasonably required by Aperto to do so.
11. **PACKAGING:** Aperto will package the Products in accordance with accepted standard commercial practices for normal shipment considering the type of Product(s) involved and the normal risks encountered in shipments.
12. **INTELLECTUAL PROPERTY RIGHTS:** Aperto shall retain all right, title and interest in and to all patents, copyrights, trade secrets, trademarks, and other intellectual property rights in the Products. All Licensed Material provided in connection with this Agreement is subject to the End User Software License Agreement (attached hereto as Exhibit A).
13. **SERVICE FOR PRODUCTS AND SOFTWARE:** During the annual term of any Service period or the annual renewal thereof, Aperto will provide Customer with the Services (and, if applicable, Software Updates) set forth on Exhibits B and C with respect to covered Equipment and Software as set forth in Section 13(b) below. The Services selected by Customer with respect to each Customer Site Location shall be the same for all Equipment and Software at such Site Location. In addition, the Services selected by Customer must apply to entire systems and not individual components thereof. The parties may at any time amend Exhibit C to provide for different or additional Services, so long as such Amendment is in a writing executed by both parties. Aperto may, at its option, designate a third party contractor to provide Services to Customer; provided that such designation shall not relieve Aperto of its obligations hereunder. Should Aperto in its discretion determine that certain Services have become impracticable for Aperto to perform, then Aperto may perform alternative services provided such alternative services do not reduce the overall level and quality of the services for which Customer has contracted under this Agreement.
 - a Customer Information Document. Simultaneous with the execution of this Agreement or as soon as practicable thereafter, Customer shall complete and deliver to Aperto the Customer Information Document setting forth, among other things, the Equipment and/or Software owned and/or licensed by Customer to be subject to this Agreement. Upon receipt by Aperto, the Customer Information Document shall be incorporated into and considered part of this Agreement. The Service Fees due Aperto shall be based upon the information provided by Customer in the Customer Information Document and the fee schedule set forth on Exhibit D. Customer represents and warrants that the information set forth on the Customer Information Document shall be true and correct.
 - b Covered Equipment and Software. The Services shall apply only to Equipment and Software identified on the Customer Information Document, subject to the following: (a) the Software must be the most current version or next to current version of the applicable Software, (b) the Equipment must contain the most current version or next to current version of Aperto Software and/or firmware and must be installed in an operating environment which

complies with the specifications set forth in the Equipment's manual and (c) the Equipment and/or Software shall not have been modified without Aperto's prior written approval. In the event Customer wishes to update any Software or firmware in order to qualify for coverage under this Agreement, then Customer shall send written notice to Aperto requesting such upgrade. Any upgrades shall be at Customer's sole cost and expense.

- c Added Equipment and Software. If, during the term of this Agreement, Customer purchases additional Equipment or Software, the Customer shall notify Aperto and pay Aperto a pro-rata amount of the Service Fee applicable to the type and nature of such Equipment or Software based on the fees set forth on Exhibit B. In the event the purchased Equipment or Software is of a type and nature not set forth on Exhibit B, then the pro-rata Service Fee shall be at Aperto's then standard market rates.
- d Customer Responsibilities. Each time Services are requested by Customer or deemed appropriate by Aperto then, upon Aperto's request, Customer shall provide Aperto with the following: (a) the contract number set forth on the contract certificate which Aperto is providing to Customer simultaneously upon execution of this Agreement; (b) unit serial numbers; (c) any other documentation reasonably requested by Aperto; and (d) access to the Equipment and any diagnostics programs, operating systems, utilities or application programs (either via remote access or physical access to the sites). In the event Customer fails to provide any of the foregoing upon Aperto's request, then Aperto shall be relieved of its obligation to provide the requested Services to the extent such Services require the requested information or access.

14. WARRANTIES:

- a Hardware. Aperto warrants to Customer that the Product will conform in all material respects to the specifications and will be free from defects in workmanship and materials, under normal use and service, for a period of 1 year from the date of original shipment by Aperto. The foregoing warranty will not apply if the identified defects were caused by accident, abuse, neglect, alteration or use inconsistent with the specifications provided with the hardware. Aperto's sole obligation under this limited warranty shall be, at Aperto's option, to repair the defective product or part, deliver to the client an equivalent product or part to replace the defective item, or if neither of the two foregoing options is reasonably possible, a refund will be provided to the client for the purchase price paid for the defective product. All products that are replaced will become the property of Aperto. Replacement products may be new or reconditioned. Aperto's obligations hereunder are conditioned upon the returned of affected articles in accordance with Aperto's Return Material Authorization (RMA) procedures. The above warranty will apply to any replaced or repaired product, or part for 90 days from shipment or the remainder of the initial warranty period, whichever is longer.
- b Software. Aperto warrants to Customer that each Software program licensed from it will perform substantial conformance to its published specifications, for a period of ninety 90 days after original shipment by Aperto. Aperto warrants the media on which the software is furnished will be free of defects in materials and workmanship under normal use during the warranty period. This limited warranty extends only to the original licensee of the software. Client's sole and exclusive remedy and the entire liability of Aperto and its suppliers under this limited warranty will be at Aperto's option, to repair or replace the software. Aperto does not warrant that the software is error free, that the client will be able to operate the software without problems or interruptions or that the software or any equipment, system or network on which the software is used will be free of vulnerability to intrusion or attack.
- c Obtaining Warranty Service. Customer must contact Aperto to obtain warranty service authorization. Date of proof of purchase from Aperto will be required. Products returned to Aperto must be pre-authorized by Aperto with a Return Material Authorization (RMA) number and sent prepaid and packaged appropriately for safe shipment. Risk of loss in return shipment will be borne by Customer, and it is recommended that returned goods be insured and/or sent by a method that provides for tracking of the package. Responsibility for loss or damage does not transfer to Aperto until Aperto receives the returned item. Provided that Aperto determines that the item is actually defective, the repaired or replaced item will be shipped to Customer, at Aperto's expense, (1) not later than thirty (30) days after Aperto receives the defective product or (2) to the terms of a separate written agreement with Aperto.
- d Dead- or Defective-on-Arrival. In the event a Product becomes entirely inoperable within the first forty-eight (48) hours of the initial installation of the Product, and such installation takes place within ninety (90) days after the date of purchase from Aperto, upon verification of the condition by Aperto, it will be considered dead- or defective-on-arrival (DOA) and a replacement shall be provided by advance replacement. The replacement Product will be shipped within five (5) business days after Aperto's verification of the DOA product, subject to availability and other shipping restrictions. The shipment of advance replacement Products is subject to local legal requirements and may not be available in all locations. When an advance replacement is provided and Customer fails to return the original product to Aperto within thirty (30) days after shipment of the replacement, Aperto will invoice Customer for the replacement Product, at list price.

- e If, under normal and proper use, a defect or non-conformity appears in a warranted Product or Software during the applicable Warranty Period and Customer promptly notifies Aperto in writing of such defect or non-conformance and follows Aperto's instructions regarding return of such Product or Software, then Aperto's sole obligation and Customer's sole and exclusive remedy is, at no charge to Customer, to either, (i) repair, replace or correct the same at its manufacturing or repair facility, or (ii) provide a credit based on the original purchase price or license fee. If Services prove not to be performed as warranted during the applicable Warranty Period, Aperto may, at its option, correct or re-perform the Services or render a credit for the defective or non-conforming portion of the Services.
 - f Aperto makes no warranty with respect to (i) any third party Software or hardware, whether or not such third party Software or hardware is provided by Aperto, and Customer agrees to any additional terms and conditions relating to the third party Software or hardware which are specific to Aperto's suppliers as described in the supporting documentation, which are incorporated by reference herein; or (ii) defective conditions or non-conformities resulting from any of the following: modifications, misuse, neglect, accident or abuse by Customer or a third-party; improper wiring, repairing, alteration, installation, storage or maintenance not performed by Aperto; use in a manner not in accordance with Aperto's or its vendor's Specifications or operating instructions; failure of Customer to apply previously applicable Aperto modifications or corrections; or items not manufactured by Aperto or purchased by Aperto pursuant to its procurement specifications. In addition, Aperto makes no warranty with respect to Products which have had their serial numbers or date of manufacture removed or altered; or with respect to expendable items, including, without limitation, fuses, light bulbs, motor brushes, and the like; or with respect to defects related to Customer's data base errors. No warranty is made that Software will run uninterrupted or error free.
 - g Limited Warranties for Services. Aperto warrants that the Services will be performed in a professional manner consistent with the quality of Aperto's performance of services for similar types of agreements. Customer's sole and exclusive remedy and Aperto's sole and exclusive liability for Services shall be for Aperto to re-perform the Services. This sole and exclusive remedy is available only if Aperto is notified in writing within reasonable time to re-perform the services prior to the expiration or termination of the then-current Service Agreement term.
 - h WARRANTIES EXCLUSIVE. THE FOREGOING WARRANTY CONSTITUTES APERTO'S EXCLUSIVE LIABILITY, AND THE EXCLUSIVE REMEDY OF CUSTOMER, FOR ANY BREACH OF WARRANTY OR OTHER NONCONFORMITY OF GOODS. THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES. APERTO MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THIS WARRANTY SHALL BE AS EXPRESSLY PROVIDED HEREIN. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN ANY OTHER DOCUMENT CLIENT'S EXCLUSIVE REMEDY FOR ANY CLAIMS RELATED TO PRODUCTS PURCHASED FROM THE COMPANY SHALL BE AS SET FORTH IN THE ABOVE WARRANTY. THE COMPANY SHALL NOT BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES.
15. INDEMNIFICATION: Aperto will defend or settle at its option and expense any legal proceeding brought against Customer, to the extent that it is based on a claim that the use of the Product or Licensed Material provided to Customer by Aperto (a) infringes on a third-party trade secret, copyright, trademark, or U.S. patent or (b) resulted in personal injury or death or any tangible property damage proximately caused by Aperto's gross negligence or intentional misconduct. Aperto will pay all damages and costs awarded by a court of final appeal attributable to any such claim, provided that Customer: (i) gives written notice of the claim promptly to Aperto; (ii) gives Aperto sole control of the defense and settlement of the claim; (iii) provides to Aperto all available information and assistance; and (iv) has not compromised or settled such claim. If any Product or Licensed Material are found to infringe or in Aperto's opinion may become the subject of an infringement claim, Aperto may, at its option: (i) obtain for Customer the right to use such Product or Licensed Material; (ii) replace or modify such Product or Licensed Material so that they become non-infringing; or (iii) accept return of such Product or Licensed Material and provide Customer with a credit based on the net book value for the Product or Licensed Material. Aperto has no obligation under this section for any claim that results from: (i) use of Materials in combination with any equipment, Software or data not provided by Aperto; (ii) Aperto's compliance with designs or specifications of Customer; (iii) modification of Materials other than at Aperto's directions; (iv) use of an allegedly infringing version of any Product of Licensed Material, if the alleged infringement could be avoided by the use of a different version made available to Customer; or (v) any claim that arises from the negligence of the Customer.
16. CUSTOMER'S RESPONSIBILITIES: Customer will prepare all sites where Products and Software will be delivered and installed and where Services will be performed according to Aperto's site requirements. Customer shall allow service personnel, designated by Aperto, access to the sites and to the Products and Software as necessary for Aperto to perform its obligations hereunder. The designated personnel shall comply with Customer's reasonable site and security regulations and procedures of which Aperto has received written notice prior to arrival at the site. Customer will

provide Aperto with such technical information, data, technical support and assistance as reasonably required by Aperto. Customer will obtain all necessary and applicable governmental permits for installation, operation and maintenance of Products and Software furnished hereunder. Customer will fulfill the foregoing obligations without charge to Aperto. If Customer fails to fulfill the foregoing obligations, Aperto will be excused from performing its obligations until Customer fulfills those obligations. Customer shall reimburse Aperto for any costs and expenses incurred due to Customer's failure to fulfill these obligations.

17. **CONFIDENTIAL INFORMATION:** Each Party shall hold the other Party's Confidential Information in confidence. The recipient may not disclose such Confidential Information, may use it only for purposes specifically contemplated in this Agreement, and must treat it with the same degree of care as it does its own similar information, but with no less than reasonable care. These obligations do not apply to information which: a) is or becomes known by recipient without an obligation to maintain its confidentiality; b) is or becomes generally known to the public through no act or omission of recipient, c) is independently developed by recipient without use of confidential or proprietary information; or (d) is required to be disclosed pursuant to any subpoena or other similar order of a court of competent jurisdiction, provided however, that in the event either Party receives such subpoena or order, that such Party shall so inform the other Party in writing and provide a copy of the order promptly upon receipt of such order, and shall only disclose that Confidential Information as necessary to comply with such subpoena or order. This section will not affect any other confidentiality or nondisclosure agreement between the Parties.
18. **EXPORT:** Customer acknowledges that the transfer and use of Products, Licensed Materials, and technical information and the performance of Services outside the United States are subject to U.S. export laws and regulations. Customer shall not use, distribute, transfer, or transmit the Products, Licensed Materials, or technical information (even if incorporated into other products) except in compliance with U.S. export laws and regulations.
19. **PUBLICITY:** Neither Party shall release or publish news releases, announcements, advertising or other publicity relating to the Products, Licensed Materials or Services under this Agreement or mentioning or implying the name, trademarks, logos, service marks or other identification of the other Party or its affiliates or their respective personnel without the prior review and written consent of the other Party.
20. **LIMITATION OF LIABILITY:** TO THE FULL EXTENT ALLOWED BY LAW, APERTO ALSO EXCLUDES FOR ITSELF ANY LIABILITY, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE, OR INTERRUPTION OF ITS PRODUCTS, ACCOMPANYING SOFTWARE, AND DOCUMENTATION, EVEN IF APERTO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND LIMITS ITS LIABILITY TO REPAIR OR REPLACEMENT AT APERTO'S OPTION. APERTO FURTHER DISCLAIMS ALL LIABILITY FOR PERSONAL INJURY OR DEATH, OR PROPERTY DAMAGE ARISING FROM CUSTOMER'S NEGLIGENT USE OF THE PRODUCTS OR THEIR COMPONENTS, INCLUDING BUT NOT LIMITED TO CUSTOMER'S FAILURE TO PROPERLY INSTALL THE PRODUCTS OR THEIR COMPONENTS. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.
21. **TERMINATION:** If either Party is in material breach of any term of this Agreement and such breach continues for thirty (30) days after receiving notice from the other Party, then the non-breaching Party may terminate this Agreement without any further obligation or liability except for Products or Licensed Materials already shipped and Services already performed. Upon termination or expiration of this Agreement, the other Party shall promptly (and in no event later than five (5) days thereafter) return all Confidential Information, and certify in writing that all such Confidential Information has been returned. Sections 11, 15-19 (inclusive), 21-25(inclusive) of this Agreement, as well as any accrued but unpaid payment obligations as of the date of termination or expiration, shall survive the termination or expiration of this Agreement for any reason.
22. **FORCE MAJEURE:** Except for payment obligations, neither Party shall be responsible for any delay or failure in performance to the extent such delay or failure is caused by fire, strike, embargo, explosion, earthquake, flood, war, water, the elements, labor dispute, government requirements, acts of God, inability to secure raw materials or transportation facilities, acts or omissions of carriers or suppliers, or other causes beyond a Party's control.
23. **ASSIGNMENT:** Neither this Agreement nor any licenses, rights or obligations hereunder shall be assignable or transferable (in insolvency proceedings, by mergers, by operation of law, by purchase or otherwise) by Customer without the prior written consent of Aperto. Any such purported assignment or transfer shall be void without such written consent. Notwithstanding the foregoing, Aperto may assign this Agreement or assign its rights or delegate its duties under it, in whole or in part, at any time and without Customer's consent, to any present or future affiliate, Aperto may assign its rights to receive payments; and Aperto may assign this Agreement to any successor to substantially all

of its business or assets, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the respective successors and assigns of the Party. Aperto shall give Customer prompt written notice of the assignment. Nothing shall preclude a Party from employing a subcontractor in carrying out its obligations under this Agreement. A Party's use of such subcontractor shall not release the Party from its obligations under this Agreement.

24. **NOTICES:** Any notice required or permitted under this Agreement shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed fax addressed to the respective Party as follows:

To Aperto: Aperto Networks, Inc. 1637 South Main Street Milpitas, California 95035 Attention: Contract Manager Fax: 408-729-9970	To Customer: Attention: Fax:
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A notice shall be effective when received as shown on the delivery receipt or on the fax confirmation. A Party may change its designated representative or address by giving notice to the other as provided above.

25. **SOLICITATION OF EMPLOYEES:** During the term of this Agreement and for a period of one (1) year after termination of this Agreement, neither party will employ, offer employment to, or engage as a contractor, or otherwise obtain the service or skills of, any individual who is or was engaged by the other party as an employee at any time during the term of this Agreement. This paragraph does not apply to general solicitations such as advertising, and applications for employment or offers of employment made in response to any such general solicitation.
26. **GENERAL:** Each Party is an independent contractor and nothing in this Agreement is intended to create any agency, partnership or joint venture relationship between them. If any portion of this Agreement is found to be invalid or unenforceable, the remaining portions shall remain in effect. If either Party fails to enforce any right or remedy available under this Agreement that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the other Party.
27. **CHOICE OF LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to California's rules on conflicts of law or the United Nations Convention on the International Sale of Goods. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of the Superior Court of the State of California for Santa Clara County and/or the United States District Court for the Northern District of California, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.
28. **ENGLISH LANGUAGE:** Customer agrees that the original of this Agreement will be written in the English language and waives any rights it may have under the laws of its country of residence to have such Agreement written in its local language. If a local language version is provided, it is for the convenience only and the English language version shall be the binding document.

29. ENTIRE AGREEMENT: This Agreement and its Exhibits constitute the entire agreement, and supersede all prior oral and written understandings between the parties regarding the subject matter hereof. Any modification or addition to this Agreement or its Exhibits shall be in writing and signed by authorized representatives of both Parties. In case of any conflict between the provisions of this Agreement (including the Exhibits) and of any Addendum (including an addendum to any Exhibit), the provisions of the Addendum shall take precedence.

In witness whereof, each Party has caused its authorized representative to sign this Agreement as of the Effective Date.

Aperto Networks Inc.

[Customer]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A

End User Software License Agreement

Please read these terms and conditions carefully before using the Software. By using the Software, you ("Customer") agree to be bound by the terms and conditions of this license agreement ("License Agreement"). If you do not agree with the terms of this License Agreement, promptly return the unused Software, its documentation, and related equipment and hardware to the place of purchase for a full refund.

1. Grant of License. Subject to the terms and conditions of this Agreement, Aperto and its licensors grant to Customer a non-exclusive and non-transferable license to use the Aperto software ("Software") in object code form solely on a single server and/or Aperto network device ("Platform") owned or leased by Customer. Customer shall have no rights to any source code for the Software. Aperto and its licensors reserve all rights not otherwise expressly granted herein.
2. Copies. Customer may make one (1) copy of the Software for archival purposes or when copying is an essential step in the authorized use of the Software on a backup Platform, provided (i) that copies are used in no other manner, (ii) that further use of the Software on the backup Platform is discontinued when the original or a replacement Platform becomes operable and (iii) that Customer affixes to such copy all copyright, confidentiality, and proprietary notices that appear on the original.
3. Restrictions on Use of Software. Customer shall not copy, in whole or in part, the Software, except as provided in Section 2 hereof, or the documentation; nor modify the Software; nor reverse compile or reverse assemble all or any portion of the Software or otherwise attempt to gain access to the source code of the Software; nor rent, lease, distribute, sell, or create derivative works of the Software; nor remove any copyright, confidentiality, and proprietary notice on the Software; nor make any unauthorized use thereof.
4. Confidentiality and Title. Customer agrees that the aspects of the Software, including the specific design and structure of individual programs, constitute trade secrets and copyright material of Aperto and its licensors. Customer agrees not to disclose, provide or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of Aperto. Customer agrees to implement reasonable security measures to protect such trade secrets and copyrighted material at least to the extent that Customer protects its own information of a similar nature. Title to the Software and related documentation shall remain with Aperto and its licensors.
5. Term and Termination. This License Agreement is effective until terminated. Customer may terminate this license at any time by destroying all copies of the Software including any documentation. This License Agreement will terminate immediately without notice from Aperto if Customer fails to comply with any provision contained herein. Upon termination, Customer must destroy all copies of the Software. Sections 3, 4, and 8 of this License Agreement shall survive any termination.
6. U.S. Government Restricted Rights and Export Law. The Software is provided to non-Department of Defense agencies with restricted rights, and its supporting documentation is provided with limited rights. Use, duplicating, or disclosure by the U.S. government is subject to the restrictions as set forth in subparagraph C of the Commercial Computer Software-Restricted Rights clause at 52.227-19. If the sale is to a Department of Defense, the U.S. government's rights in Software, supporting documentation, and technical data are governed by the restrictions in the technical data commercial items clause at DFARS 252.227-7015, and DFARS 227.7202. This Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that they have the responsibility to obtain licenses to export, re-export, or import Software.
7. Miscellaneous. This is the entire agreement between the parties relating to the subject matter hereof and no waiver or modification of the License Agreement shall be valid unless signed by each party. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any other term or breach hereof. If any provision of this License Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this License Agreement shall remain in full force and effect. This License Agreement is governed by the laws of the State of California without reference to its conflict of laws principles or the United Nations Convention on the International Sale of Goods. All disputes arising out of this License Agreement shall be subject to the exclusive jurisdiction of the Superior Court of the State of California for Alameda County and/or the United States District Court for the Northern District of California, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts. Should you have any questions about this License Agreement, or if you desire to contact Aperto, please write: Aperto Networks, Inc., 1637 South Main Street, Milpitas, California 95035 USA.

8. Warranty Disclaimer. THROUGH THIS END USER SOFTWARE LICENSE AGREEMENT, APERTO MAKES NO WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE LICENSED MATERIALS OR ANY OTHER ACCOMPANYING MATERIAL, AND APERTO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

Exhibit B

Aperto Technical Support And Software Maintenance Services Schedule

A. Ordering Technical Support and Software Maintenance Services

Customer must order an appropriate level of annual Technical Support and Software Maintenance services ("Maintenance Services") for Aperto Products and Software in accordance with the technical support and software maintenance services policies in effect on the date such services are ordered by paying the annual technical support and software maintenance fee ("Maintenance Fee") in advance. Customer's chosen level of service as well as any Advance Hardware Replacement or Extended Warranty, and the relevant fees are set forth on Exhibits C and D, respectively. The term of such Maintenance Services shall be for one (1) year beginning on the Effective Date of the Agreement ("Initial Term"). Thereafter, Maintenance Services shall automatically renew each year for successive one (1) year terms at the same service level, unless either party gives written notice of its intent not to renew at least thirty (30) days prior to the end of the then current term. Customer may change its service level by notifying Aperto of such intent at least thirty (30) days prior to the end of the then current term.

Maintenance Fees. Upon the Effective Date of this Agreement, Customer shall pay Aperto the Maintenance Fees set forth on Exhibit D for Services during the Initial Term. In the event this Agreement is renewed following the Initial Term, then, within thirty (30) days of such renewal date, Customer shall pay Aperto Maintenance Fees for Maintenance Services during the renewal term in an amount to be agreed upon by the parties or, in the absence of such agreement, based on the rates set forth on Exhibit D. In addition, Provider shall pay applicable Maintenance Fees for any Equipment and/or Software purchased during the term of this Agreement.

Past Due Maintenance Payments. Without waiving or prejudicing any other rights or remedies, in the event Customer fails to pay the Maintenance Fees within thirty (30) days of the applicable due date, then, in addition to any other remedies it may have in equity or law, Aperto may (a) suspend performance of Maintenance Services; (b) terminate this Agreement; and/or (c) charge Customer interest on such past due amounts at the lower of one and one-half percent (1.5%) per month or the maximum rate permitted by law.

B. Description of Services

Software. Aperto Software Maintenance Service includes regular updates providing advance notification of future software releases and detailed feature information to assist with network software planning; all major, minor and maintenance releases for products covered under the service agreement; the choice to receive software on CD or electronically via the Aperto web site.

Remote Technical Support. Remote Technical Support Services entitle Customer to unlimited technical phone and email support incidents per year. The service is provided for single site installations, multi-sites in the same country or over several country boundaries. Authorized callers of the client are entitled to technical phone and email support for an unlimited number of incidents. Technical telephone support will include assistance in the use of supported equipment and software. Such assistance may include configuration, identification of equipment /software problems and work-arounds when possible. Assistance may also include logging into Customer's systems via remote access for diagnosis of problems. Aperto will provide quality technical support in accordance with generally recognized business practices and standards. Aperto will respond to Customer requests for technical telephone support within four hours of the initial contact. Telephone support excludes program coding, system design, applications development, project management, facilities management, and support for incompatible products or third-party products. No software updates, on-site assistance or hardware replacement is provided. Telephone support does not include step-by-step installation instructions.

C. Termination of Support

Aperto shall have no obligation to provide Technical Support or Software Maintenance Services as set forth in this Section: (a) if Customer does not elect to order such services or fails to renew such services, or fails to pay for such services; (b) if Customer modifies the Products or Software without authorization; or (c) in the event of problems due to Customer's negligence, third party hardware or software not provided by Aperto or other causes not within Aperto control. Reinstatement of lapsed annual Technical Services and Maintenance Services will be subject to the then-current reinstatement policy and payment of a reinstatement fee which shall not be less than the amount of the lapsed Maintenance Fees and which may include a penalty up to twenty five percent (25%) of the lapsed fees.

D. Technical Support Escalation Program

Provided that Customer is under a current Technical Support and Software Maintenance Services program, Aperto shall provide -customer support as follows:

1. PROBLEM PRIORITY DEFINITIONS

<p>Priority 1: An existing network is inoperable or there is a situation that causes critical impact to the customer's business operation. Aperto® will commit all resources necessary to resolve the situation.</p> <p>Priority 1 problems are given the highest level of attention and are immediately addressed by the Aperto® Technical Assistance Center. Aperto®'s Engineering team will become engaged as necessary at the request of Aperto®'s Technical Assistance Center technical support team.</p> <p>Aperto® Resolution Time (time from Aperto® being notified):</p>	
• Workaround to restore operations. May be hardware, software, or operations related	48 hours
• Software fix, if software related	30 days
• Inclusion of software fix in next release	6 months
<p>Priority 2: The operation of an existing network is severely degraded, or significant aspects of the Customer's business operation are being negatively impacted by unacceptable hardware or software performance. Aperto® will make every reasonable effort to resolve the situation.</p> <p>Aperto® Resolution Time (time from Aperto® being notified):</p>	
• Workaround to restore operations. May be hardware, software, or operations related	120 hours
• Software fix, if software related	90 days
• Inclusion of software fix in next release	10 months
<p>Priority 3: Non-critical loss of functionality or performance impairs some operations. Aperto® will commit resources during Standard Business Hours to restore service to satisfactory levels.</p> <p>Aperto® Resolution Time (time from Aperto® being notified):</p>	
• Workaround to restore operations. May be hardware, software, or operations related	14 days
• Software fix, if software related	90 days
• Inclusion of software fix in next release	10 months
<p>Priority 4: Information or assistance is required on Aperto® product capabilities, installation, enhancement requests or configuration. There is clearly little or no impact to the Customer's business operation. Aperto® is willing to provide resources during Standard Business Hours to provide information or assistance as requested. Aperto® commits to consider workarounds and future product developments to resolve requests for improvement by the Customer. The resolution may be a technical assistance service, a work-around, a resolution through a new feature included in a future release, revised documentation or a statement that Aperto® will not be modifying the product as suggested.</p>	

2. ESCALATION MANAGEMENT PROCESS

The following table outlines Aperto®'s Escalation Management Process of **severity 1** problem. It is expected of the Customer to be available and to provide round-the-clock participation in problem diagnostics, troubleshooting and testing of workarounds as necessary to resolve the problem.

Time	Handled by	Resolution Activity	Next Escalation
High Severity Problem Reported	Tier 1, 2 Support Engineer	Log problem and attempt to resolve with Tier 2 resources.	Aperto®'s TAC
Up to 2 hours – Initial Response	Aperto®'s TAC	On duty Service Engineer calls back, logs problem, gets information from Tier 2	Customer Support Engineer
Up to 6 hours – Investigation	Customer Support Engineer	Support Engineer investigates the problem, remote login (or travel to site), and attempts to restore service.	Director of Customer Support
Up to 8 hours – Extended Investigation	Director of Customer Support	Adds additional resources from CS & Sustaining Engineering to address the problem	VP Customer Service & Sales Director
After Up to 24 hours – Extended Investigation	VP Customer Service	Ensues all proper steps and avenues are explored to solve the problem	Aperto®'s Executive Team
After 24 hours	Aperto®'s Executive Team	Gather all possible resources at Aperto® to solve the problem	

Severity 2 problems not resolved within the target of 120 hours will be escalated to Severity 1 problem if all the following conditions apply:

- When traffic transmission is affected and the customer has specific needs for the resolution of the problem in an expedited manner
- Tier 2 and Tier 1 are willing to provide round-the-clock participation as necessary

3. REQUESTING TECHNICAL SUPPORT FROM APERTO

The following procedures should be used when requesting warranty, contracted, and billable services from Aperto®:

Step 1: If you have a problem with your Aperto Product, you can send an email to support@apertonet.com or call the Technical Assistance Center (TAC) at

- Business Hours: 08:00am – 18:00pm PST at 408 719-9977
- Off Hours: U.S. and Canada at 800 339-1563 or 225 757-3012 in all other areas

Step 2: Be prepared to give the following information:

- *If you are a maintenance customer, a Aperto® maintenance contract number for the site of the problem is required.* Also have available your company name, contact name, physical equipment location, telephone number, e-mail address (if available), serial number (if available), and model number of the unit that is experiencing the problem.
- *If you are a warranty customer, serial number is required.* Also have available your company name, contact name, physical equipment location, telephone number, e-mail, and model number of the unit that is experiencing the problem. During the first 90 days of the warranty period, Aperto® customers can receive phone support during Aperto® normal business hours as refer to in step 1.

- *If you are a non-contract customer, purchase order number is required.* Also have available your company name, contact name, physical equipment location, telephone number, e-mail, and model number of the unit that is experiencing the problem.
Note: If you purchased your product through a reseller or partner, your first line of support should be through them.

Step 3: Provide an accurate description and priority level of the problem to the Technical Assistance Center Engineer. Reference the Aperto® Problem Priority Definition included in this guide.

Step 4: The Technical Assistance Center Engineer will assign a case number to your call. Please record this number for any future reference to this case.

Step 5: Depending on the type of call and priority level (maintenance customer only), your call will be routed to a Customer Engineer for resolution.

Step 6: After the service has been delivered, the Customer Engineer will confirm with you that the problem is resolved and close the case.

Exhibit C

DESCRIPTION OF SERVICES (INCLUDING ANY SOFTWARE UPDATES)

[Aperto account manager to copy here the 1-page description of the applicable service package selected by Customer]

EXHIBIT D

SERVICE FEES

[To be filled in by Aperto account manager]