THIS END CUSTOMER AGREEMENT (THIS "**AGREEMENT**") FORMS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND SMC NETWORKS DBA IGNITENET AND GOVERNS YOUR ACQUISITION AND USE OF SMC NETWORKS SOFTWARE. PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT GOVERNS THE TERMS UNDER WHICH YOU MAY USE SMC NETWORK'S SOFTWARE OBTAINED FROM US OR OUR AUTHORIZED RESELLERS. BY USING OUR SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THIS AGREEMENT AND TO USE OUR SOFTWARE IN COMPLIANCE WITH THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE DO NOT USE OUR SOFTWARE.

The terms "**Customer**," "**you**," "**your**," and "**yours**" refer to you, the end customer and user of the Software, whether obtained directly from SMC Networks or through one of our authorized resellers. The terms "SMC Networks" "we," "us," and "our" refer to SMC Networks. We may periodically make changes to this Agreement. It is your responsibility to review the most recent version of this Agreement frequently and remain informed of any changes to it. You agree that your continued use of the Software after such changes have been published to our website at http:// www.ignitenet.com will constitute your acceptance of such revised Agreement. For any material modifications to this Agreement, such modifications will automatically be effective 30 days after they are initially posted on or through our website. In the event that such modifications materially alter your rights or obligations hereunder, such modifications will become effective upon the earlier of (i) your continued use of the Software with actual knowledge of such modifications, or (ii) 30 days from publication of such modifications on or through our website.

ARTICLE 1 DEFINITIONS.

For purposes of this Agreement, the following terms have the corresponding definitions listed below.

"Documentation" means any user instructions, manuals, Specifications, or other documentation provided by SMC Networks related to the Software, including any Modifications.

"End Users" means those persons who use the Software through access to your Network. **"Feedback"** has the meaning given to it in Section 5.1, below.

"Intellectual Property Rights" means all (a) rights associated with works of authorship throughout the world, including but not limited to copyrights and moral rights, (b) trademarks, service marks, trade name and logo rights, and similar rights, (c) trade secret rights and other rights in inventions, know-how and confidential or proprietary information,

(d) patent rights, (e) domain names and Internet keywords, (f) other intellectual property or other proprietary rights, whether arising by operation of law, contract, license, or otherwise, and (g) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

"Licenses" means, the Software License. **"Modification"** or **"Modifications"** means all changes incorporated into or used with the

Software or Documentation, including enhancements, standard releases, and patches.

"Order" means a purchase order submitted by you either directly to SMC Networks or to one of our authorized resellers with respect to the licensing the Software.

"Purchase Price" means the aggregate License fee paid for the Software as listed on the applicable Order.

 "Service Level Agreement" means the Service Level Agreement which may be executed separately between SMC Networks and End User.

"Software" means, the web-based application(s) hosted by SMC Networks that allows End User to remotely manage and configure Hardware Products purchased from SMC Networks or SMC Networks' distributor.

"Term" means the term of the Software License(s) indicated on the Order or as subsequently modified in connection with the purchase of additional Software Licenses.

ARTICLE 2 SERVICES

2.1. SMC Networks Responsibilities. Subject to your payment of the Purchase Price to SMC Networks or our authorized reseller, as applicable, we provide you with the Software set forth on the Order and/or accessed by you by means of our website.

2.2. Customer Responsibilities. Other than our responsibilities set forth in Section 2.1 above, you are responsible for your use of the Software in full compliance with this Agreement and for all activities engaged in by you and your End Users while using your Network, including without limitation: (i) using commercially reasonable efforts to prevent unauthorized access to, or use of, the Software, and notifying SMC Networks promptly of such unauthorized access or use; (ii) being responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all activities of your End Users and providing any support services your End Users may need; (iii) being responsible for obtaining and maintaining all Hardware and other communications equipment needed to access the Software and for paying all third-party access charges incurred while using the Software;

(iv) being responsible for, and assuming the risk of, any problems resulting from the content, completeness, accuracy, and consistency of any and all content you use with the Software; and (v) complying with all applicable local, state, federal, and foreign laws in using the Software.

ARTICLE 3 LICENSES.

3.1. Software License. Subject to the terms and conditions of this Agreement and your submission of a properly completed Order and full payment of the applicable Software License fee, SMC Networks grants you an individual, personal, non-sublicensable, non-transferable and non-exclusive license, for the duration of the Term, to use the Software only for internal business purposes.

3.3. Modifications. If, during the Term, SMC Networks integrates any Modifications into the Software, each such Modification and all related Documentation, will be deemed to be part of the Software made available to you only under the terms of the Software.

3.4 Use of Data. SMC Networks may use and disclose, in an aggregated format only, any and all data that is derived or collected from your use of the Products for the purpose of generally improving the Products and to otherwise operate, manage, maintain, improve, or promote SMC Networks' products and services, provided that such aggregated data will not reasonably be identifiable as originating with or associated with you or any End User.

3.5 Restrictions In exchange for the grant of the applicable license or licenses set forth above, you agree you will not, and will not permit others to, whether directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; (ii) modify, translate, or create derivative works based on the Software; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Software; (iv) remove any proprietary notices or labels on the Software.

ARTICLE 4 HARDWARE.

Any Hardware required to utilize the Software may be purchased from SMC Networks or SMC Networks' distributors.

ARTICLE 5 OWNERSHIP.

5.1. SMC Networks Property. SMC Networks owns (i) all right, title, and interest, including all Intellectual Property Rights therein, in and to the Software and Documentation. Nothing in this Agreement will be construed as transferring our Intellectual Property Rights in any respect. In addition, we will own any and all right, title, and interest in and to any

feedback, suggestions, information, or materials you convey to us related to the Software in connection with your use of the Products ("Feedback"). You hereby assign to SMC Networks all right, title, and interest in such Feedback and will execute any documents and take any additional actions SMC Networks deems necessary to evidence, record, or perfect the foregoing assignment.

5.2. Reservation of Rights. Other than the rights expressly granted to you in this Agreement, we reserve all rights with respect to the Software and any and all related rights, including any derivative works and any media, mode, or method of distribution or transmission of the Software, whether available now or developed in the future.

5.3. Privacy and Data Collection. You agree that SMC Networks may collect customer data and traffic information for the purposes of support, Software improvements and analytical analysis. Any external use of this data or the resulting analysis thereof will be in compilation form and no individual End User will be identified. You hereby consent to our collection, use, and disclosure of such information.

5.4. Publicity. Neither we, nor you, will use the other's name, trademark, or trade name without the prior written consent of the other party, except that we may use your name and logo as part of a customer list on our website or in connection with our other customer listings.

ARTICLE 6 TERM AND TERMINATION. 6.1. Term. This Agreement will be effective with respect to your use of the Software until

the expiration of the Software License(s), unless earlier terminated under Section 6.2.

6.2. Termination. Either party may terminate this Agreement for any reason effective upon 30 days prior written notice. SMC Networks may immediately suspend your use of the Products at any time if SMC Networks reasonably believes that you have breached the terms of this Agreement. If such breach by you remains uncured for five days following receipt of notice from SMC Networks, then SMC Networks may terminate this Agreement effective immediately. You may terminate this Agreement for cause if we breach any material obligation of ours under this Agreement and fail to cure such breach within 10 business days of our receipt of written notice from you of such breach. If SMC Networks terminates this Agreement for convenience, or if you terminate this Agreement for cause you will receive a refund of the amount you paid for the Software License allocable to the remaining portion of the Term.

6.3. Effect of Termination. Upon the termination of this Agreement for any reason, your access to and right to use the Software will terminate upon the expiration of the Software License Term. Upon termination of this Agreement, each party will return (or destroy) any

Confidential Information of the other party in its possession. The following provisions of this Agreement will survive any termination of the Agreement: Article 3 until the License expires, Sections 5.1, 5.2, 5.3, 6.3, 7.5, 7.6, and Article 9.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES; DISCLAIMER; REMEDIES.

7.1. Mutual Warranties. Each party hereby represents and warrants to the other that it has all necessary corporate power and authority to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement constitutes legal, valid, and binding obligations of the warranting party enforceable against the non-warranting party in accordance with its terms.

7.2. Service Warranties. SMC Networks will make reasonable efforts to provide the Software available in accordance with its Documentation. SMC Networks may, but is not required to unless a Service Level Agreement is executed, correct defects that may occur. The remedy set forth in the Service Level Agreement is your sole and exclusive remedy with respect to Software defects and our sole and exclusive liability, in contract, tort, or otherwise, for any Software defect.

7.3. Exclusions. SMC Networks has no obligation with respect to defects caused by or resulting from any of the following: (i) installation or use of third party software with the Software; (ii) modifications or corrections to the Software made by you or any third party; (iii) damage or defects resulting from misuse, accident, neglect, abuse, failure of electrical power, adverse environmental conditions, unusual electrical or physical stress, catastrophe, negligence, improper testing, or connection, or other improper treatment; (iv) your use or operation of the Software other than as detailed in the Specifications; (v) misconfiguration of the Software; or (vi) any other causes beyond SMC Networks' reasonable control.

7.4. Disclaimer of Warranties. EXCEPT AS SET FORTH IN SECTIONS 7.1 AND 7.2, SMC NETWORKS DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE, AND CUSTOMER UNDERSTANDS AND AGREES THAT THE SOFTWARE IS PROVIDED "AS IS." SMC NETWORKS MAKES NO WARRANTY THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; NOR DOES SMC NETWORKS MAKE ANY WARRANTY AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED BY MEANS OF THE SOFTWARE, OR THAT ANY DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHER, SMC NETWORKS DOES NOT WARRANT THAT THE SOFTWARE OR THE SMC NETWORKS SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. SMC NETWORKS ALSO ASSUMES NO RESPONSIBILITY, AND IS NOT LIABLE FOR ANY DAMAGES TO, OR VIRUSES THAT MAY INFECT, CUSTOMER'S

HARDWARE, SOFTWARE, OR OTHER MATERIALS.

7.5. Exclusion and Limitation of Liability. IN NO EVENT WILL SMC NETWORKS OR ITS SUPPLIERS OR DISTRIBUTORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES OF ANY NATURE (INCLUDING LOST PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING FROM OR RELATING TO CUSTOMER'S USE OF THE SOFTWARE OR USE OF THE SOFTWARE THROUGH CUSTOMER'S ACCOUNT BY ANYONE ELSE, EVEN IF SMC NETWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SMC NETWORKS' TOTAL CUMULATIVE LIABILITY TO CUSTOMER AND ANYONE WHO USES THE SERVICE THROUGH CUSTOMER'S ACCOUNT, FOR ANY AND ALL CLAIMS UNDER ANY THEORY OF LAW OR EQUITY, EXCEED THE AGGREGATE PURCHASE PRICE ACROSS ALL ORDERS SUBMITTED BY CUSTOMER. CUSTOMER UNDERSTANDS THAT THESE LIMITATIONS OF SMC NETWORKS' AND SMC NETWORKS' SUPPLIERS' AND DISTRIBUTORS' LIABILITY ARE A FUNDAMENTAL PART OF THIS AGREEMENT. The provisions of this Section 7.5 allocate risks under this Agreement between SMC Networks and Customer. SMC Networks' pricing of the Products reflects this allocation of risks and limitation of liability. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Customer, in which case SMC Networks' liabilities will be limited to the maximum extent allowed by law.

ARTICLE 8 INDEMNITY.

Customer will defend, indemnify, and hold SMC Networks, its affiliates, and their employees, officers, directors, successors, assigns, agents, and customers harmless from and against any and all liabilities, damages, losses, costs, and expenses, including reasonable attorneys' fees arising out of or in connection with any and all claims, demands, actions, or

proceedings brought by a third party to the extent based upon: (i) any grossly negligent, reckless, or intentionally wrongful act of Customer or Customer's assistants, employees, agents, or End Users; (ii) Customer's or its End Users' misuse of the Software or breach of this Agreement; or (iii) Customer's unauthorized modification or alteration of the Software, including any modification or alteration in violation of Sections 3.6 and 4.2, above; (iv) Customer's combination of the Software with other products, software, or services not supplied or specified by SMC Networks; and (v) Customer's continued use of the Software without implementation within a reasonable time period of modifications provided by SMC Networks.

ARTICLE 9 MISCELLANEOUS.

9.1. Confidentiality. Except as described in Section 5.4, any and all information provided directly or indirectly by one party (the "Disclosing Party") to the other party (the "Receiving Party"), including, but not limited to, any software, hardware, inventions, processes, designs, drawings, specifications, blueprints, technical information, know-how, trade secrets, product, marketing, business, or financial information related to the Disclosing Party (collectively, "Confidential Information"), will be kept confidential by the Receiving Party and may not be used, communicated, disclosed, or divulged, except as necessary in the performance of the Receiving Party's obligations under this Agreement or otherwise in connection with the deployment, operation, and maintenance of the Software. The Receiving Party agrees to limit access to the Confidential Information to those of its employees or contractors as are reasonably required for the purpose of performing the Receiving Party's obligations under this Agreement or otherwise in connection with the deployment, operation, and maintenance of the Software. Prior to disclosing any Confidential Information to any of its employees or contractors, the Receiving Party will obtain from each such employee or contractor an agreement substantially as protective of the Disclosing Party's Confidential Information as the provisions hereof and each employee or contractor agrees not to use such information except in the performance of obligations hereunder. Notwithstanding the foregoing, Confidential Information does not include any information that the Receiving Party can verify based on its written records was (a) already lawfully in the Receiving Party's possession without confidentiality obligations prior to receiving it from the Disclosing Party, (b) independently received from a third party without an accompanying duty of confidentiality and without breach of such third party's obligations of confidentiality, (c) becomes available in the public domain through no action or inaction of the Receiving Party, or (d) developed independently by the Receiving Party without use of or reference to Disclosing Party's Confidential Information. If Receiving Party becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Receiving Party will provide Disclosing Party prompt written notice, if legally permissible, and will use its best efforts to assist Disclosing Party in seeking a protective order or another appropriate remedy.

9.2. Entire Agreement. This Agreement and any Service Level Agreement constitute the entire agreement between SMC Networks and Customer with respect to the subject matter supersede all prior agreements, understandings, and arrangements, oral or written, between SMC Networks and Customer. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter herein have been made either by SMC Networks or Customer which is not expressly set forth in these Agreements.

9.3. Force Majeure. Neither you nor SMC Networks will be liable under this Agreement by reason of any failure or delay in the performance of its obligations (except for payment obligations) on account of strikes (other than strikes of a party's own employees), shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war,

governmental action, labor conditions (other than with respect to a party's own employees), earthquakes, material shortages or any other causes that are beyond the reasonable control of such party so long as the parties will use commercially reasonable efforts, including the implementation of business continuity measures, to mitigate the effects of such force majeure.

9.4. Independent Contractors. You and SMC Networks are independent contractors. Neither of you, nor SMC Networks, nor any of your or our respective employees, customers or agents, will be deemed to be the representative, agent, or employee of the other for any purpose whatsoever, and none of them have the right or authority to assume or create an obligation of any kind or nature, express or implied, on behalf of the other, or to accept service of any legal claims or notices addressed to or intended for the other.

9.5. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California. Customer submits to the jurisdiction in the federal or state courts of or located in Santa Clara County, California, with respect to any action or proceeding arising out of this Agreement.

9.6. Consent to Electronic Communications; Notice. By using the Software, you consent to receiving electronic communications from us. These communications may include notices about your account and information concerning or related to the Software. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. Any notice that you provide to us under this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to SMC Networks at the address set forth above and with the appropriate postage affixed.

9.7. Export Control. Customer will comply fully with all United States and any other country's export laws and regulations and ensure that none of the Products are directly or indirectly exported or re-exported to any country, person, entity, or End User in violation of, or for any use prohibited by, such export laws and regulations.

9.8. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, then such portion will be deemed to be of no force or effect, and this Agreement will be construed as if such portion had not been included herein. If the deletion of such provision materially impairs the commercial value of this Agreement, then SMC Networks and Customer will attempt to renegotiate such provision in good faith.

9.9. Waiver. No failure or delay by you or by us to exercise any right under this Agreement will constitute a waiver of that right.

9.10. Legal Fees. In any dispute relating to any portion of this Agreement, the prevailing party shall be entitled to collect all attorneys' fees and any other expenses required to settle such dispute.

9.11. Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either party, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, SMC Networks may assign or otherwise transfer this Agreement without the consent of Customer to any of its affiliates. Any attempted assignment in violation of this Section 9.10 will be void and without effect. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.