

PART 1 SERVICE OFFERING**SUMMARY****Services Provided**

Software Upgrade Service entitles Customer to:

> Software Upgrades

Support is provided for Equipment and to those Site Locations listed on the Contract Equipment Listing accompanying this Agreement. Software Upgrade Service does not include separately orderable Software releases.

Geographic Limitation

The services will only be provided on 3Com Equipment purchased and deployed within Europe, Middle East and Africa. Service provision is subject to some geographic limitations.

Agreement Term

The term of this Agreement is one (1) year or as stated on the Contract Equipment Listing and may be extended for additional one (1) year terms by mutual agreement subject to Clause 2.1 of the terms and conditions, which form PART 2 of this Agreement.

Product Obsolescence

Any Equipment or Software registered for inclusion in the Agreement is subject to 3Com's product obsolescence practices. Obsolete parts will only be accepted onto the Support Base at 3Com's sole discretion. For the purposes of this section, 3Com defines the products as obsolete as of the date the product can no longer be ordered from 3Com or is removed from the published price list (whichever is the sooner).

For information - Factory repairs are provided for five (5) years after product obsolescence. Engineering expertise to develop code fixes and assist with complex problem isolation will be provided for ninety (90) days after product obsolescence. Fixes may or may not be developed, depending on the severity level and availability of alternate solutions. The obsolescence notice for a given product will indicate any deviations from this standard. If resources are available beyond the periods indicated, 3Com will continue to provide specific services on a case-by-case basis as long as it is commercially reasonable to do so.

Acceptance

Customer accepts that 3Com Software Upgrade Service will be governed by this Agreement in its entirety.

SOFTWARE UPGRADES

Customer is entitled to access Software Upgrades (including related documentation) that are made available for the Equipment during the term of this Agreement; however, 3Com does not guarantee the frequency or quantity of such Software Upgrades. Software Upgrades are defined as formal software releases that may include new features and functionality, and that are not considered a new product or a chargeable upgrade by 3Com, for which there will be a separate cost.

Any software provided hereunder will be governed by the license agreement accompanying the original Equipment purchased by Customer. Customer has the right to duplicate both the software and documentation for its own internal use, provided that all copyright, trademark, and other proprietary rights notices are also reproduced in the same form and manner as on the original media.

3Com may issue a Software Upgrade that also requires a hardware upgrade in order to utilise new functionality of the Software. Any such hardware upgrade is not covered. Customer may purchase the hardware upgrade at the price set forth in the then-current 3Com Price List, less applicable discount (if any).

Software Upgrades for Network Management applications, Advanced Features and those requiring specific Software license keys are not included as part of this Service.

This Service does not entitle Customer to telephone or email technical support from 3Com.

RESPONSIBILITIES

Responsibilities of 3Com at Service Start Date

- > Provide Customer with a Welcome Pack containing instructions on how to access Software Upgrades.
- > Provide Customer with a Contract Equipment Listing detailing master contract number, support validity dates, Site Location, service level, 3Com Equipment covered by Service and Software Upgrade password.

Responsibilities of 3Com during the Service Period

- > Update the Contract Equipment Listing in accordance with instructions received from Customer.

Responsibilities of Customer

- > Provide full details of all Site Locations which require support, along with the Equipment to be supported.
- > Notify 3Com when site/contact information is changed.

LIMITATIONS

- > Service may not be available in all locations. Availability of Software Upgrades may be restricted to some countries due to export or other regulations. This may occur where a Software Upgrade contains third party code, which has export restrictions to certain countries. Where export restrictions occur the Software Upgrade will not be supplied to the particular Site Location

SERVICE CHARGE

Support Base

For the purposes of this Agreement and any associated Service Charge calculations, Customer and 3Com agree that the Support Base will be defined as all 3Com Equipment and Software nominated by Customer for inclusion in this Agreement. Customer may add products to the Support Base at any time during the term of the Agreement. Customer is responsible for notifying 3Com of any additions.

Service Charge

The Service Charge will be determined by multiplying the list price of all maintainable Equipment on the Support Base by three per cent (3%) per annum. Additions to the Support Base will be charged on a pro rata basis for the remaining term of the Agreement. The list price used to calculate the Service Charge will be the list price of the product at the time the product is added to the Agreement. Contract and site minimums may apply. A Service Charge of three per cent (3%) per annum of the list price of all maintainable Equipment on the Support Base will apply should the Term of the Agreement be extended.

PART 2

3COM SERVICE AGREEMENT TERMS AND CONDITIONS

1.0 DEFINITIONS

Capitalised expressions not otherwise defined in this 3Com Service Agreement are defined hereafter in this Clause 1.0.

- 1.1 "Agreement" means the Service Offering(s) ordered by Customer, these Terms and Conditions (PART 2), the Contract Equipment Listing, and all attached exhibits.
- 1.2 "Authorised Caller" means an employee of the Customer who is entitled to access 3Com's technical support group and who must be 3Com product qualified.
- 1.3 "Contract Equipment Listing" means document or electronic transmission validated by 3Com and provided to Customer upon registration of the Service provision, which includes the master contract number, Service level, Service validity dates, list of 3Com Equipment and/or 3Com Software including site contact information.
- 1.4 "Customer" means a company or organisation using 3Com Equipment which is receiving support either from 3Com per the terms hereof or from a company or organisation re-selling 3Com Service.
- 1.5 "Effective Date" means the contract commencement date as specified on the Contract Equipment Listing.
- 1.6 "Equipment" means the 3Com hardware products identified in the Contract Equipment Listing and any new or relocated 3Com hardware products added during the term hereof.
- 1.7 "Product Obsolescence" means the date the Equipment can no longer be ordered from 3Com's European distribution organisation or is removed from 3Com's published price list (whichever is the sooner).
- 1.8 "Service(s)" means the services as defined in the Service Offering for the Equipment and/or Software purchased by Customer as identified in the Contract Equipment Listing.
- 1.9 "Service Charge(s)" means the fee for the Services as described in the Service Offering(s) due by Customer hereunder.
- 1.10 "Service Offering" means the description of the Services detailed in PART 1 of this Agreement. 3Com reserves the right to amend, modify or withdraw any such Service Offerings at any time without any notice, provided such changes shall not reduce the level of the Service for which Customer has contracted and pays all due Service Charges until the end of the specific service term.
- 1.11 "Site Location" means a physical location associated with a single address and includes the floors of a single building or adjoining buildings when linked together by 3Com Equipment into a functionally integrated networking system.
- 1.12 "Software" means those computer programs, which the Customer has licensed from 3Com as identified in the Contract Equipment Listing and any Software Upgrade related thereto (excluding source code).
- 1.13 "Software Upgrade" are defined as formal software releases that include new features and functionality, and that are not considered a new product or a chargeable upgrade by 3Com, for which there will be a separate cost.
- 1.14 "3Com" means 3Com Europe Limited.

2.0 TERM AND TERMINATION

- 2.1 **Term.** The Term of this Agreement begins on the commencement date specified on the Contract Equipment Listing for the first Service order and shall continue for the later of (i) one (1) year or three (3) years as detailed on the Contract Equipment Listing or (ii) upon expiration of any Services ordered prior to the expiration date as specified on the Contract Equipment Listing, unless terminated earlier as provided herein. This Agreement can be extended for additional one (1) year terms thereafter, by mutual agreement and provided Customer issues a purchase order.
- 2.2 **Termination For Cause.** Either party may terminate this Agreement for cause if the other party: (a) fails to perform any material term or condition of this Agreement, and does not remedy the failure within thirty (30) days after receipt of written notice of such default, or (b) becomes insolvent, files or has filed against it a petition under applicable bankruptcy or insolvency laws which is not dismissed within ninety (90) days, or makes any other or similar arrangements for the benefit of its creditors or takes any similar actions. Notwithstanding the above, breach of any obligation under Section 11 shall be cause for immediate termination by 3Com.

2.3 Termination for Convenience. Either party may terminate this Agreement by giving three (3) months prior written notice to the other.

3.0 ELIGIBILITY FOR SUPPORT

3.1 Eligibility for Support. To be eligible for Service Offering(s) the Equipment must contain the most current, or previous to current revision of 3Com Software and/or firmware. The Equipment must be installed and remain in an operating environment which is in accordance with the specifications set forth in the manual furnished with the Equipment. Equipment or Software which has been modified without 3Com's prior written approval is not eligible for Services.

3.2 Same Product Coverage. A Customer must have both the chassis and all associated cards covered under Service and at the same Service level. Customer shall notify 3Com in writing if additional same type product unit(s) are purchased or licensed during the term of this Agreement and shall pay a pro-rated Service Charge for such additional Equipment or Software.

3.3 Extent of Entitlement. Customer is entitled to receive support on Equipment only if Customer has paid Service Charges due for such Equipment and has registered such Equipment's serial number with 3Com. If there is any indication that support is being received on Equipment which is not covered by this Agreement, 3Com reserves the right, upon reasonable advance notice, to perform an audit during normal business hours of Customer's Product and records at any location. If 3Com determines that unauthorised support is occurring, 3Com may charge the appropriate support fee as well as audit fees.

3.4 Hardware Upgrades. Customer shall notify 3Com in writing of any hardware upgrades purchased during the term of this Agreement.

4.0 RIGHTS AND OBLIGATIONS

4.1 Customer Requirements. Customer shall provide 3Com with the contract number as specified in the Contract Equipment Listing, and upon request by 3Com, shall provide Equipment serial numbers when requesting Services under this Agreement.

4.2 3Com Access. Customer shall cooperate with 3Com and provide access to all documentation, diagnostics programs, operating systems, utilities, application programs and, as deemed necessary by 3Com, access to the Equipment (either via modem or physical access to the sites).

4.3 Third Party. 3Com may, at its option, designate a third party contractor to provide Services to Customer hereunder on behalf of 3Com. The appointment by 3Com of such an authorised representative shall not relieve 3Com of its obligations hereunder nor be considered an "assignment" under Clause 12.7 of this Agreement. For the purposes of this Agreement, "third party contractor" shall also mean the personnel of 3Com's affiliates.

5.0 SERVICE EXCLUSIONS

The services in this Clause 5.0 are specifically excluded from the Services provided under this Agreement; however, they may be provided by 3Com at the written request of Customer for an additional charge. To the extent 3Com provides these services to Customer, the standard 3Com terms and conditions for such services in effect from time to time and available from 3Com upon written request, shall exclusively govern the provision of such services.

5.1 Any work at Customer site, other than as specified in the Service Offering.

5.2 Any services, including replacement of parts or repair of damage, necessitated by any repair or attempt to repair or modification carried out to the Equipment or the Software by any person other than an authorised representative of 3Com.

5.3 Any services, including replacement of parts or repair of damage, which in the reasonable opinion of 3Com are necessitated by the unit or subassembly having been misused or used in a negligent manner or used for other than its intended use or outside the environmental range specified by 3Com.

5.4 Any changes to the performance of the Equipment or the Software beyond those required to make them comply with their specifications.

5.5 Cleaning, painting or refinishing the Equipment.

5.6 Any services in connection with or arising out of relocation of the Equipment or the addition, removal, or maintenance of any third party equipment, accessories, attachments or other devices not originally forming part of the Equipment or the Software. Any electrical work external to Equipment.

- 5.7** Any services to the Equipment or the Software resulting from unusual external causes such as, but not limited to, power failure, power surges, air conditioning failure, humidity, improper input/output signals to 3Com's connections or Customer's other software not previously approved by 3Com, accident, fire, explosion or Act of God.
- 5.8** Any services for Equipment or Software which has been obsolete for a period longer than two (2) years, unless 3Com in its sole discretion elects otherwise.
- 5.9** Any Software Upgrade that is considered a new product or a chargeable upgrade by 3Com, for which there will be a separate cost.

6.0 LIMITATIONS

- 6.1** Service may not be available in all Site Locations. 3Com will notify the Customer if a requested site/location is not available at the requested service level.
- 6.2** Customer must notify 3Com of an AHR requirement within a maximum of three (3) days of the original product failure. 3Com reserves the right to refuse or part fulfill requests for the replacement of item(s) arising from a failure on the part of Customer to notify 3Com within the three (3) days.
- 6.3** Once a Product has been added to the Agreement in accordance with the provisions set forth herein, it may take 3Com up to twenty (20) working days for the relevant spare parts to be positioned in the appropriate 3Com inventory location. During this 'set-up' period 3Com shall use reasonable endeavors to meet the requested service level.
- 6.4** The distribution of Software Upgrades may be restricted to some countries due to export or other regulations. This may, without limitation hereto, occur where a Software Upgrade contains a third party code, which has export restrictions to certain countries. Where export restrictions occur the Software Upgrade will not be supplied to that particular Site Location.
- 6.5** Bug fixes will only be produced for a period of (ninety) 90 days following Product Obsolescence. Bug fixes may or may not be developed depending on the severity level and the availability of alternative solutions.
- 6.6** Technical support provided by 3Com to Customer shall not include step-by-step installation instructions.
- 6.7** Defective products may not be added to this Agreement.

7.0 PAYMENT TERMS

- 7.1 Service Charges.** Where applicable Service Charges will be the amount specified on the formal quotation. Service Charges will be payable annually in advance, unless otherwise specified in PART 1 of this Agreement. Payment is due within thirty (30) days from the date of invoice. All payments will be in the currency of the quotation relating to this Agreement.
- 7.2 Price Changes.** 3Com may change the Service Charges upon thirty (30) days prior written notice prior to the expiration of the current term. As new or relocated Equipment or Software is added, the Services provided for such additional Equipment or Software will be at the then-current 3Com list price, less applicable discounts, if any.
- 7.3 Taxes.** Charges stated herein are exclusive of all federal, state, municipal or other government excise, sales, use, occupational or like taxes now in force or enacted in the future. Except for taxes based on 3Com's income, such additional charges, if any, shall be paid by Customer.

If applicable law requires Customer to withhold any income taxes levied by the authorities of the jurisdiction in which the Customer is resident on payments to be made pursuant to this Agreement ("Withholding Tax"), Customer shall take advantage of any reduced Withholding Tax provided for by the tax treaty between the Customer's resident jurisdiction and the United Kingdom then in force and shall be entitled to deduct such Withholding Tax from the payments due to 3Com hereunder. Customer shall promptly effect payment of the Withholding Tax to the appropriate tax authorities sufficient to enable 3Com to support a claim for tax credits in the United Kingdom. Customer further agrees to assist 3Com, upon request, if 3Com contests, by appropriate legal or administrative proceedings, the validity or amount of the Withholding Tax. In the event 3Com does not receive official tax receipts or other evidence within thirty (30) days, 3Com shall have the right to invoice Customer for such Withholding Tax and Customer agrees to pay such amounts upon receipt of the invoice.

Customer is responsible for obtaining import licenses, paying import license or permit fees, duties and customs fees (including without limitation government, import, excise, sales, use, value-added and other taxes or fees), and preparing and submitting all required documentation in connection with importing the 3Com Product.

7.4 Delinquent Payments. 3Com may suspend its performance or terminate this Agreement, without limiting any other rights it may have, if Customer becomes delinquent in the payment of any undisputed invoice from 3Com for a period in excess of thirty (30) days. 3Com reserves the right to charge Customer interest on any delinquent balance. This interest is computed on a daily basis for each day that the payment is delinquent at the lesser of eighteen percent (18%) per year or the maximum rate permitted by law.

7.5 Services Outside this Agreement. If Customer requests that services be performed outside the scope of this Agreement or outside the normal period of coverage under this Agreement, such services may be furnished on a time and materials basis at 3Com's then-current rates, subject to availability of 3Com's service personnel. At 3Com's discretion an additional Purchase Order may be required before such services are rendered.

8.0 CONFIDENTIAL INFORMATION

8.1 Either party may provide to the other certain information, which is confidential in nature in connection with the Services and this Agreement. All such information shall be marked as confidential in order to be protected hereunder. Confidential information shall not be divulged to any third party without the prior written consent of the disclosing party for a period of three (3) years following receipt.

This obligation shall not apply to information which:

- (i) now or hereafter, through no unauthorized act or failure to act on recipient's part, becomes generally known or available;
- (ii) is lawfully known to the recipient without an obligation of confidentiality at the time recipient receives the same from the disclosing party, as evidenced by written records;
- (iii) is hereafter lawfully furnished to the recipient by a third party without restriction on disclosure;
- (iv) is furnished to others by the disclosing party without restriction on disclosure;
- (v) is independently developed by the recipient without use of the disclosing party's confidential information; or
- (vi) is required to be disclosed pursuant to a requirement of a governmental agency or law, so long as the recipient provides prompt notice to the disclosing party of such requirement prior to any such disclosure.

9.0 LIMITED WARRANTY

9.1 3Com warrants that the replacement hardware subassembly or unit will be free from defects in material and workmanship for the later of a period of ninety (90) days from the date of shipment to Customer, until the Services covering such subassembly or unit expires or is terminated, or the expiration of the applicable warranty period for the initial purchase of the subassembly or unit.

9.2 3Com's sole obligation under this limited warranty shall be, at 3Com's option, to repair or replace any replacement hardware unit or subassembly found to be defective during the warranty period, at no additional cost to Customer.

9.3 Customer must notify 3Com of any defect, or present the defective unit or subassembly to an authorized representative of 3Com during the warranty period.

9.4 Software Upgrades are covered by the limited warranty accompanying those Upgrades, if applicable, or the warranty accompanying the original version of the Software.

9.5 TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SATISFACTORY QUALITY. 3COM'S WARRANTIES CONTAINED HEREIN RUN ONLY TO CUSTOMER, AND ARE NOT EXTENDED TO ANY THIRD PARTIES. 3COM NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT. 3COM SHALL NOT BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED

DEFECT IN THE EQUIPMENT OR SOFTWARE DOES NOT EXIST OR WAS CAUSED BY CUSTOMERS OR ANY THIRD PERSON'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORISED ATTEMPTS TO REPAIR OR MODIFY, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING OR OTHER HAZARD.

10.0 LIMITATION OF LIABILITY AND INDEMNITY

- 10.1** 3Com's liabilities or obligations under or pursuant to this Agreement are expressly limited to the provision of the Services for the Equipment and the Software. In no event shall 3Com's liability exceed an amount equal to the consideration of the Services provided hereunder.
- 10.2** 3Com shall not be liable for any damages arising from performance or non-performance of the Equipment or Software during a testing period or for any damages caused by the failure of Customer to perform its responsibilities.
- 10.3** 3Com shall not be responsible for any software, firmware, information or memory data of Customer contained in, stored on, or integrated with any Equipment or Software returned to 3Com under this Agreement.
- 10.4** 3Com shall, at its own expense, defend or settle any suit or proceeding that is instituted against Customer by a third party to the extent such suit or proceeding alleges personal injury, death, or damage to tangible property directly caused by any 3Com Product provided under this Agreement or through the negligence or intentional wrongful acts or omissions when there is a duty to act on 3Com, 3Com's subcontractors or any person for whose actions 3Com is legally liable. 3Com shall pay all damages awarded therein against Customer or agreed upon in settlement by 3Com, provided that Customer gives 3Com prompt notice in writing of any such suit, proceeding, or threat thereof, and permits 3Com, through counsel of its choice, to answer the charges and defend and/or settle such suit, and Customer gives 3Com all the needed information, assistance and authority, at 3Com's expense, to enable 3Com to defend or settle such suit.
- 10.5** TO THE FULL EXTENT ALLOWED BY LAW THE PARTIES EXCLUDE 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 PERFORMANCE OF SERVICES UNDER THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THE DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.

11.0 EXPORT LAW REGULATIONS

- 11.1 General.** Customer acknowledges that all Service Offerings, Equipment, spares, technical data, computer software, documentation or other materials (collectively "Technical Data") supplied hereunder are subject to all pertinent import and export laws, rules and regulations of the United States, the United Kingdom and the Territory, specifically including the provisions of the U.S. Export Administration Regulations ("EAR"). This Agreement is also specifically subject to U.S. Department of Commerce regulations relating to restrictive trade practices or boycotts. In no event shall 3Com be bound by any terms and conditions that contravene such pertinent laws. Customer agrees to comply with all such laws and regulations applicable to the Technical Data and, without limiting the generality of the foregoing, Customer agrees that, without prior written authorisation of the U.S. Department of Commerce and the export authorities of the UK and the Territory, it shall not knowingly export, re-export, directly or indirectly, any of the Technical Data or the direct product or any process or service which is the direct product of the Technical Data to: (i) any destination specified by applicable law as may be changed from time to time; (ii) any national or resident of any such destination; or, (iii) any person or firm on the "Denied Parties List" published by the U.S. Department of Commerce or to any person or firm on the "Specially Designated Nationals" list published by the U.S. Department of the Treasury. Customer is responsible for knowing to which countries re-export is prohibited, although 3Com will make reasonable efforts to assist Customer to obtain such information.

- 11.2 Encrypted Products.** Certain Products and Technical Data provided by 3Com under this agreement may require Customer to report all sales, transfers, exports and re-exports to the Bureau of Export Administration, U.S. Department of Commerce, Washington D.C., USA, identifying end-users name, address, country and the quantities of products prior to any sale of those products. Additional requirements may also be imposed under the conditions of 3Com's export license with the U.S. government. In such even, NO purchases by Customer shall be allowed until such time as Customer has fully complied with all such requirements and has, in writing assured 3Com of it's continued compliance with those requirments.
- 11.3 Responsibility for Export Licensing.** 3Com agrees to use commercially reasonable steps to obtain, at 3Com's expense, all documentation required by the United States Office of Export Administration and/or other US or UK authorities to permit the exportation of Technical Data to Customer. Customer shall take all actions and provide all information reasonably requested by 3Com in order for 3Com to obtain such export licenses. 3Com shall have no liability or obligation to Customer if the responsible government authorities decline to issue any such export licenses. ALL ORDERS ISSUED PURSUANT TO THIS AGREEMENT ARE SUBJECT TO THE OBTAINING OF SAID LICENSES.
- 11.4 Import/Export Certificates.** Customer will do such acts (including the execution of documentation) as 3Com may request in order to ensure compliance (by either party) with the provisions of this Section 11. Such documentation may include, but not be limited to, an annual Letter of Assurance and end-user details.

12.0 GENERAL

- 12.1 Relationship of the Parties.** Each party is an independent contractor, and not an agent or employee of the other party.
- 12.2 Entire Agreement.** This Agreement is intended as the complete statement of the terms of the agreement between the parties relating to subject matter hereof. This Agreement supersedes all previous proposals, oral and written, and all negotiations, conversations or discussions heretofore had between the parties relating to this Agreement. The terms and conditions of this Agreement shall prevail notwithstanding any conflict with the terms and conditions of any purchase order or other instrument submitted by Customer or 3Com.
- 12.3 Force Majeure.** If either party is prevented from carrying out any of its obligations under this Agreement due to any circumstance beyond its reasonable control including, without limitation, act of government or God, interruption of power supplies, interference by a third party, industrial disputes, earthquake or other natural disaster, the party affected shall be excused from performance of such obligation for the duration and to the extent of such preventing circumstance, provided that such circumstance is notified to the other party in writing within seven (7) days. In the event that any such event should prevent either party from performing its obligations under this Agreement for more than thirty (30) days the non-defaulting party may, by notifying the other party in writing, terminate this Agreement.
- 12.4 Waiver.** A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition.
- 12.5 Amendments.** This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by written amendment signed by the parties hereto.
- 12.6 Severability.** If any court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby. The offending provision or part shall be interpreted to whatever extent possible to give effect to its stated intent.
- 12.7 Assignment.** Neither this Agreement nor any of the rights or obligations of either party shall be assigned or transferred without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, 3Com shall have the right (i) to assign all of its rights and obligations in the case of merger, consolidation or sale of assets involving substantially all its assets or substantially all the assets of a particular product line or business which is included within the terms of this agreement, and (ii) to assign the right to receive payment.
- 12.8 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 convenience only and the English language version shall be the binding document.

- 12.9 Notices.** Any notice regarding non-performance, breach, termination, or renewal required or permitted to be given under this Agreement shall be given in writing and shall be hand delivered or deposited, postage prepaid, registered or certified mail or sent by express delivery, addressed to Customer or 3Com, as the case may be, at the address first stated in this Agreement or at such other address as shall be given by either one to the other in writing. All other notices may be sent by regular mail or facsimile. All notices shall be deemed to have been given and received on the earlier of actual delivery or three (3) days from the date of postmark.
- 12.10 Dispute Resolution.** The parties will attempt in good faith to promptly resolve any dispute, controversy, or claim ("Dispute") arising out of or relating to this Agreement through negotiations between the parties before resorting to other remedies available to them. Any such Dispute shall be referred to appropriate senior executives (e.g. director or V.P. level) of each party who shall have the authority to resolve the matter. Discussions and correspondence relating to trying to resolve such Dispute shall be treated as confidential information developed for the purpose of settlement and shall be exempt from discovery or production and shall not be admissible in subsequent mediation, other alternate dispute resolution ("ADR"), or litigation. If the senior executives are unable to resolve the Dispute within thirty (30) days from the date of the written communication requesting referral to the executives, and either party wishes to pursue its rights relating to such Dispute, then the Dispute will be mediated by a mutually acceptable mediator appointed within thirty (30) days after written notice by one party to the other demanding non-binding mediation. Neither party may unreasonably withhold consent to the selection of a mediator or the location of the mediation. Both parties will share the costs of the mediation equally, except that each party shall bear its own costs and expenses, including attorney's fees, witness fees, travel expenses, and preparation costs. The parties may also agree to replace mediation with some other form of non-binding or binding ADR. If the parties agree upon binding arbitration, the arbitrator(s) shall be prohibited from awarding damages or remedies in excess of those allowed by the provisions of this Agreement. Any Dispute which the parties cannot resolve through mediation within two (2) months of the date of the initial demand for it by one of the parties may then be submitted to a court for resolution. The use of any ADR procedures will not be construed under the doctrine of laches, waiver or estoppel to adversely affect the rights of either party.
- 12.11 Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND ALL DISPUTES HEREUNDER SHALL BE GOVERNED BY THE LAWS OF ENGLAND EXCLUDING ITS CONFLICT OF LAWS PRINCIPLES AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. The Courts of England shall have exclusive jurisdiction to hear all disputes between the parties arising out of or in connection with this Agreement.
- 12.12 Fees.** In any legal action to enforce, or arising out of a sale subject to, this Agreement, the prevailing party shall be awarded arbitration costs, court costs and reasonable attorney's fees incurred as a court or arbitrator shall determine.
- 12.13 Survival.** The termination or expiration of this Agreement shall in no way relieve either party from its obligations to pay the other party any sums accrued hereunder prior to such termination or expiration or affect the provisions of Clause 10.0, "Limitation of Liability and Indemnity," above. The provisions of this Clause 12.0, "General" shall survive for a period of five (5) years from the termination or expiration of this Agreement. All warranties and confidentiality provisions shall remain in effect for their stated duration.
- 12.14 Acceptance.** Following Customer's order for Services to 3Com Reseller, 3Com has prepared the 3Com Software Upgrade Service Agreement for, and delivered it to, Customer. Customer accepts that the Software Upgrade Service Agreement is governed by the terms and conditions herein contained.



Visit www.3com.com for more information about 3Com secure converged network solutions.

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