

3COM END USER SOFTWARE LICENSE AGREEMENT TERMS AND CONDITIONS AND LIMITED WARRANTY

READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE USING THE 3Com PRODUCT ACCOMPANYING THIS AGREEMENT (THE "PRODUCT"). BY USING THE PRODUCT YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE NOT WILLING TO BE BOUND BY THE TERMS OF THIS AGREEMENT, YOU SHOULD PROMPTLY RETURN THE UNUSED PRODUCT AND PACKAGING TO THE DEALER THAT SOLD THE PRODUCT TO YOU, AND YOU WILL RECEIVE A REFUND OF THE PURCHASE PRICE. THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT CONCERNING THE PRODUCT BETWEEN YOU AND 3Com CORPORATION ("3Com"), AND IT SUPERSEDES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING CONCERNING THE PRODUCT BETWEEN YOU AND 3Com.

3Com and you, the purchaser, agree that the following terms and conditions (sometimes referred to herein as this "Agreement") shall govern your purchase of the Product from an authorized 3Com dealer. The term "Product" includes (i) the equipment accompanying these terms and conditions and (ii) the software included in such equipment or otherwise furnished to you in connection with your purchase and/or use of such equipment (the "Software"). This Agreement covers Products for use only in the United States and Canada.

1 Software License.

- (a) License Grant. Subject to the terms and conditions contained herein, 3Com grants you a personal, non-transferable and non-exclusive license to use the Software, in object code form only, for your internal business needs on a single Product in accordance with the accompanying system documentation (the "Documentation"). This license grant shall be limited to use with the equipment for which the Software was obtained, or, on a temporary basis, on back-up equipment when the original equipment is inoperable. Use of the Software on multiple processors is prohibited unless otherwise agreed to in writing by 3Com.
- (b) Restrictions. Except as expressly authorized by this Agreement or under applicable law, you are not permitted to copy or use the Software in any manner. Without limiting the generality of the foregoing, you agree that you will not do any of the following: (i) decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form; (ii) transfer the Software from one computer to another, including other servers and/or other storage devices; (iii) transfer the Software to any other party, except when transferring it with the Product in accordance with the terms of this Agreement; or (iv) modify, adapt, translate, rent, sublicense, lease, loan, resell for profit, distribute, network or create derivative works based upon the Software or any part thereof.
- (c) Ownership of Software. Title to and ownership of the Software shall remain with 3Com and its suppliers. This license is not a sale of the Software or any copy.
- (d) Third-Party Applications. Any third-party supplier of computer programs included in the Software is a third-party beneficiary of the provisions of this Section 1, and such third party may protect its rights in the Software against violations of this license.
- (e) Confidentiality. You agree to maintain the Software in confidence and to not disclose the Software to any third party without the express written consent of 3Com. You further agree to take all reasonable precautions to preclude access of unauthorized persons to the Software.
- (f) Termination. 3Com may terminate this Section 1 and the licenses granted hereby upon the breach by you of any the provisions of this Section 1. Upon such termination, you agree to return the Product, including the Software and all copies and portions thereof, to 3Com.

- 2 Limited Warranty. If the Product does not operate in accordance with 3Com's standard specifications or Documentation during the Warranty Period, you must promptly notify the authorized 3Com dealer from whom you purchased the Product. You must provide your authorized 3Com dealer with proof of purchase price and dated invoice. During the Warranty Period, upon being contacted, your authorized 3Com dealer (or another authorized 3Com dealer designated by 3Com) will, at its option, either repair or replace the Product, provided it is delivered at your expense to an authorized 3Com service facility designated by 3Com or your authorized 3Com dealer. Your authorized 3Com dealer (or another authorized 3Com dealer designated by 3Com) will provide you with a replacement Product if either the NCP (Network Call Processor) fails and/or if 25% of the system (lines and/or stations) becomes inoperable at any time during the Warranty Period. You have the right, as your exclusive remedy, to return the Product to your authorized 3Com dealer (or another authorized 3Com dealer designated by 3Com) for a refund of the purchase price from such authorized 3Com dealer if such authorized 3Com dealer is unable to repair or replace the Product pursuant to the terms of this warranty. You shall bear all shipping, packing, and insurance costs and all other costs, excluding labor and parts, necessary to effectuate repair, replacement or refund under this warranty.

The "Warranty Period" shall commence on the date that the Product was purchased by the authorized 3Com dealer from whom you purchased the Product and shall expire on the second anniversary thereof. At the time of purchase, your authorized 3Com dealer will notify you in writing of the commencement date and the expiration date of the Warranty Period.

Purchased or replacement parts and products may be new, remanufactured or refurbished. Any removed parts and/or Products shall become the property of 3Com.

Coverage under this warranty program shall require the authorized 3Com dealer to contact the 3Com Customer Service Department to generate a Return Merchandise Authorization (RMA) Number for any Product(s) the 3Com Service Representative deems defective.

- 3** Warranty Exclusions. EXCEPT AS STATED IN SECTION 2 HEREOF, 3Com AND ITS AFFILIATES, DISTRIBUTORS, DEALERS AND SUPPLIERS, MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, 3Com DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IF IMPLIED WARRANTIES MAY NOT BE DISCLAIMED UNDER APPLICABLE LAW, THEN ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO 90 (NINETY) DAYS AFTER DELIVERY OF THE PRODUCT TO YOU. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

THE WARRANTY SET FORTH IN SECTION 2 HEREOF, DOES NOT EXTEND TO ANY PRODUCT WHICH HAS BEEN DAMAGED AS A RESULT OF (1) ACCIDENT, MISUSE OR ABUSE; (2) YOUR FAILURE TO FOLLOW 3Com'S INSTALLATION, OPERATION OR MAINTENANCE INSTRUCTIONS; OR (3) UNAUTHORIZED SERVICE OR PARTS.

- 4** Post-Warranty Service. 3Com highly recommends purchasing an extended warranty for all 3Com Products to significantly reduce unexpected repair costs after the Warranty Period. You can purchase a post-warranty service contract from your authorized 3Com dealer. Please contact your authorized 3Com dealer for post-warranty service on all 3Com Products.
- 5** Infringement. 3Com shall defend you, at 3Com's expense, from and against any claim brought by a third party alleging that the Product infringes any: (i) United States patent issued on or before the commencement date of the Warranty Period; (ii) United States trademark issued on or before the commencement date of the Warranty Period; (iii) copyright, or (iv) trade secret, and shall indemnify you against all damages and costs assessed against you that are payable as part of a final judgment or settlement. The indemnification obligation of this Section 5 shall not apply to any claim arising out of (i) the combination of the Product with other products not claimed to be owned or developed by or on behalf of 3Com; (ii) the modification of the Product, or any part thereof, unless such modification was made by or on behalf of 3Com; (iii) any software or other technology not claimed to be owned by 3Com; or (iv) any infringement caused by your action.

If you seek indemnification pursuant to this Section 5 from or against the assertion of any claim by a third person (a "Third Person Assertion"), you shall give prompt notice to 3Com. Within twenty (20) business days of receipt of notice from you pursuant to this Section 5, 3Com shall have the right exercisable by written notice to you, to assume the defense of a Third Person Assertion. If 3Com assumes such defense, 3Com may select counsel. If 3Com controls the defense of a Third Person Assertion, 3Com shall have the right to consent to the entry of judgment with respect to, or otherwise settle, such Third Person Assertion with your prior written consent, which consent shall not be unreasonably withheld. You shall reasonably cooperate in the defense of any Third Person Assertion.

- 6** Exclusive Remedies and Limitations of Liability. THE ENTIRE LIABILITY OF 3Com AND ITS AFFILIATES, DISTRIBUTORS, DEALERS AND SUPPLIERS (AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES OF ALL OF THEM) AND YOUR EXCLUSIVE REMEDIES FOR ANY DAMAGES SHALL BE (1) FOR FAILURE OF PRODUCTS DURING THE WARRANTY PERIOD, THE REMEDIES STATED IN SECTION 2 HEREOF; (2) FOR INFRINGEMENT, THE REMEDIES STATED IN SECTION 5 HEREOF; AND (3) FOR CLAIMS OTHER THAN SET FORTH ABOVE, 3Com LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE ORIGINAL DISCOUNTED PURCHASE PRICE OF THE PRODUCT.

3Com SHALL IN NO EVENT BE LIABLE FOR THE FOLLOWING TYPES OF DAMAGES: (1) INCIDENTAL DAMAGES; (2) SPECIAL OR CONSEQUENTIAL DAMAGES; (3) LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOSS OF DATA, MESSAGES, OR TELEPHONE CALLS; AND (4) CHARGES FOR COMMON CARRIER TELECOMMUNICATIONS SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO PRODUCTS. TO THE EXTENT PERMITTED BY LAW, SUCH DAMAGES ARE HEREBY EXCLUDED BOTH FOR PROPERTY DAMAGE, AND TO THE EXTENT NOT UNCONSCIONABLE, FOR PERSONAL INJURY DAMAGE.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

- 7** Third-Party Products. The decision to acquire hardware, software (in any form), supplies or service (other than the Product accompanying this Agreement) from parties other than 3Com ("Third Party Products") is yours, even if 3Com helps you identify, evaluate or select them. EXCEPT AS SPECIFICALLY AGREED TO IN WRITING, 3Com IS NOT RESPONSIBLE FOR, AND EXPRESSLY DISCLAIMS LIABILITY FOR, PERFORMANCE OR QUALITY OF THIRD PARTY PRODUCTS OR THEIR SUPPLIERS; any claim that you have in connection with the Third Party Products and any remedies for such claim will be against the supplier of such Third Party Products.
- 8** Assignment. You may not assign this Agreement (including the licenses granted hereby), either in whole

or in part, whether by operation of law or otherwise, without the prior written consent of 3Com. Any attempt to assign your rights, duties or obligations under this Agreement without such consent shall be null and void. Subject to the foregoing, the rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.

9 General. You acknowledge that you have read this Agreement, understand it, and that by using the Product you agree to be bound by the terms and conditions of this Agreement. You assume full responsibility for the use of the Software and agree to use the Software legally and responsibly. This Agreement shall be governed by the substantive laws of the State of California, without regard to conflicts of law principles, except as to copyright matters, which are governed, by federal law. This Agreement is deemed entered into, by both parties, in Santa Clara, California. In the event that any provision of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be enforced to the maximum extent permissible and the remaining provisions of this Agreement shall remain in full force and effect. All rights in the Software not specifically granted in this Agreement are reserved by 3Com, and, except for the express licenses granted herein, no other licenses are granted by 3Com by implication, estoppel or otherwise. You agree not to export the Product, without the express written consent of 3Com.

Should you have any questions concerning this Agreement, you may contact 3Com at the address set forth below.

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