Gigamon Terms and Conditions

[Web version 2-6-20]

PLEASE READ CAREFULLY: THE INDIVIDUAL ASSENTING TO THESE TERMS AND CONDITIONS ON BEHALF OF A CUSTOMER REPRESENTS AND WARRANTS THAT HE OR SHE HAS FULL AUTHORITY TO BIND THE CUSTOMER TO THESE TERMS AND CONDITIONS (THE "AGREEMENT").   THIS AGREEMENT GOVERNS CUSTOMER'S RIGHT TO ACTIVATE A SOFTWARE LICENSE, AND/OR DOWNLOAD, INSTALL AND USE THE GIGAMON PRODUCTS. BY ASSENTING TO THIS AGREEMENT (EITHER BY CLICKING "ACCEPT", CHECKING A BOX, SUBMITTING A PURCHASE ORDER OR DOWNLOADING, INSTALLING, ACCESSING OR USING A GIGAMON PRODUCT), THE CUSTOMER ASSENTS TO THIS AGREEMENT, WHICH WILL BE DEEMED A BINDING CONTRACT BETWEEN CUSTOMER AND GIGAMON WITH A PRINCIPAL PLACE OF BUSINESS AT 3300 OLCOTT ST., SANTA CLARA, CA 95054, UNLESS CUSTOMER HAS ANOTHER VALID CONTRACT FOR THE PURCHASE AND USE OF GIGAMON'S PRODUCTS AND SERVICES. IF THE CUSTOMER DOES NOT AGREE TO OR CANNOT COMPLY WITH THIS AGREEMENT OR IF THE INDIVIDUAL DOES NOT HAVE AUTHORITY TO BIND THE CUSTOMER, THEN DO NOT ASSENT AND THE CUSTOMER WILL NOT BE AUTHORIZED TO DOWNLOAD, INSTALL OR USE THE PRODUCTS.

These Gigamon Terms and Conditions (the "Agreement") are a master agreement that covers all Gigamon products, but provisions regarding specific products apply only to the extent the Customer has purchased or used such products.

1. **Definitions**.
   a. "**Affiliate**" means a direct or indirect wholly-owned subsidiary of Customer.
   b. "**Authorized Channel Partner**" means any channel partner authorized by Gigamon.
   c. "**Authorized Contractor**" means any individual or entity (other than a Gigamon competitor) that has a written agreement to provide Customer services and is subject to confidentiality obligations covering Gigamon's Confidential Information and that Customer authorizes to have access or use of a Product solely on behalf of and for Customer's Internal Use.
   d. "**Documentation**" means the technical end-user documentation published by Gigamon for the applicable Product.
   e. "**Gigamon Hardware**" means any Gigamon-branded hardware product that is purchased by Customer directly from Gigamon or through an Authorized Channel Partner. For clarity, Software may be included with or embedded in Gigamon Hardware (but is not included within the scope of Gigamon Hardware).
   f. "**Perpetual License**" means a license (other than a Term License) granted by Gigamon to Customer for commercially released Software under a purchase order accepted by Gigamon.
   g. "**Pre-Release Software** means any Software that is designated by Gigamon as any pre-commercial release Software (indicated by terms such as "alpha," "beta," "trial," "draft" or the like).
   h. "**Products**" means, collectively, Software, Gigamon Hardware, and/or any combination thereof.
   i. "**Software**" means any object or binary code or firmware, any accompanying Documentation, and any upgrades or updates therefor, that are provided by Gigamon or an Authorized Channel Partner on Gigamon's behalf and that are either (i) included with or embedded in the Gigamon Hardware, or (ii) provided as a separate software product.
   j. "**Supported Virtualization Environment**" means any virtual computing environment supported by the applicable Software, as specifically set forth in the applicable Documentation.
   k. "**Term License**" means a license granted by Gigamon to Customer for Software in which the license is limited in duration. The duration of the Term License will be the time period set forth in the applicable purchase order accepted by Gigamon. If any Software is licensed under a Term License, then the limited license granted in

Section 2(a) will commence on the date the license key associated with the Software is issued (or as otherwise set forth on the purchase order) and will expire on the last day of the Term License. When a Term License expires, the corresponding Software may no longer function and in any event Customer shall not continue to access or use the Software (and underlying Hardware, if applicable) unless a new Term License is purchased and a new license key is installed, if applicable).

2. **License Grant**. Software is made available by Gigamon as Pre-Release Software or commercially released Software (either with a Term License or Perpetual License). Subject to and conditioned upon Customer's compliance with the restrictions and terms set forth in this Agreement and full payment of applicable fees to Gigamon, the following license terms apply. Except as set forth in this Section 2, no other licenses are granted by implication, estoppel or otherwise.

   a. <u>Commercial Software License</u>. Gigamon hereby grants Customer a non-exclusive, worldwide, non-sublicensable (except as expressly set forth in Section 2(b)), non-transferable (except as specified in Section 3(d)) worldwide Perpetual License or Term License, as applicable, to use the Software in object code format only for Customer's internal information security purposes ("**Internal Use**") solely with Gigamon Hardware, and/or a Supported Virtualization Environment.

   b. <u>Sublicense Rights</u>. Gigamon further grants Customer the right to sublicense Customer's rights under Section 2(a) to Customer's Authorized Contractors without further sublicense rights; provided that: (i) such sublicensed rights are for the sole purpose of providing services to Customer for its Internal Use and are subject to all of the limitations set forth in this Agreement; (ii) Customer's Authorized Contractors are subject to the terms and conditions herein, and (iii) Customer will be liable for any actions of, or failure to act by, the Authorized Contractors as if such actions or inactions were Customer's, and any breach by any such Authorized Contractor of the terms or conditions herein is a breach by Customer.

   c. <u>Pre-Release Software</u>. If the Software provided under this Agreement is Pre-Release Software, Gigamon hereby grants Customer a limited, non-exclusive, worldwide, non-sublicensable, non-transferable, worldwide license to download and install such Pre-Release Software for its internal, non-production use and evaluation. Customer acknowledges that the Pre-Release Software is Gigamon confidential information and may not operate correctly, may be substantially modified prior to first commercial shipment, or may be withdrawn completely. Customer's use of the Pre-Release Software is at Customer's sole risk and expense, and Gigamon will have no liability in connection with any Pre-Release Software. The limited license granted in this Section 2(c) expires 30 days after download unless mutually agreed upon in writing by the parties.

   d. <u>Affiliates</u>. Any Affiliate may purchase Products hereunder provided that it shall be bound by and comply with all the terms and conditions of this Agreement applicable to Customer, and Customer shall remain responsible for Affiliate's acts and omissions unless Affiliate and Gigamon have entered into separate terms and conditions.

3. **Restrictions.** Customer is not licensed to and Customer will not, nor will it allow or authorize or permit any third party to:

   a. license, copy, duplicate, disclose, distribute, modify, exploit or create derivative works of the Products;

   b. sublicense the Software (except as expressly in accordance Section 2(b));

   c. use, transfer, or distribute the Software in competition with Gigamon;

   d. otherwise transfer any Software, unless such Software (i) is licensed under Section 2(a); (ii) is incorporated in Gigamon Hardware; and (iii) is being transferred in connection with the sale of such Gigamon Hardware, and such sale is in compliance with Gigamon's then-current hardware transfer policy.

   e. decompile, reverse translate, disassemble, or reverse engineer any Software (except and only to the extent permissible by applicable law despite this prohibition) or cause any Software to be subject to any open source obligations;

   f. remove any proprietary markings or copyright notices from any Gigamon Hardware or Software, or translate any Software into any other format or language without Gigamon's prior written consent;

g.   publicly display, transmit or use Documentation for any other purpose other than to support Customer's authorized use of the Products for its internal business purposes; or

h.   reproduce, modify, disclose, distribute, sublicense, license or otherwise transfer any implementation of Gigamon's application programming interfaces (APIs) except to support Customer's Internal Use.

4.   **Ownership; Hardware Title**. The license(s) granted in this Agreement is/are not a transfer or sale of Gigamon's or its licensors' ownership rights in the Software (including any copies) or in any of their respective intellectual property. Except for the license(s) specifically granted in this Agreement, Gigamon and its licensors retain all right, title, and interest in and to the Software, the related source code and intellectual property therein, and any and all modifications or derivatives thereof. If Customer is purchasing Hardware directly from Gigamon (and not from Authorized Channel Partner), Gigamon shall deliver all purchased Hardware to Customer FCA (carrier) (Incoterms 2020) via Gigamon's designated carrier. Title and risk of loss for the Hardware shall pass from Gigamon to Customer upon delivery of the Hardware to Gigamon's designated carrier. As between Gigamon and Customer, Customer shall be responsible for all shipping-related expenses associated with purchases of Products.

5.   **Open Source Software**. The Software may include components subject to the terms and conditions of open source software licenses (such components, the "**Open Source Code**"). To the extent applicable, Gigamon will identify Open Source Code included with Software in or through the applicable Product itself. Some of these licenses require Gigamon to provide the Open Source Code on the terms of the open source license instead of the terms of this Agreement. In that case, the terms of the open source license will apply, and Customer will have the rights granted in such licenses to the open source software itself, such as access to source code, right to make modifications, and right to reverse engineer. Notwithstanding the foregoing, if Customer is using the Software in the form provided, in accordance with Customer's permitted scope of use, with no distribution to third parties, then none of these open source licenses impose any obligations on Customer beyond what is stated in the Agreement. If, and to the extent required by the applicable open source license, Gigamon will make available the required source code for the Open Source Code in response to Customer's request emailed to legal@gigamon.com.

6.   **Technical Support, Limited Warranty**. Gigamon offers a Limited Hardware and Software Warranty for its Products. Details and current documentation for both are found at https://www.gigamon.com/content/dam/resource-library/english/user---support-documentation/MS-Gigamon-Limited-Warranty_Hardware-and-Software-170801-7176.pdf. All other Product maintenance and support is provided to Customer separately and for a fee, subject to the terms set forth at http://www.gigamon.com/content/dam/resource-library/english/user---support-documentation/ms-product-support-and-software-maintenance-agreement-7074.pdf.

7.   **Customer Use of Products**. Customer has the sole obligation to manage, secure, and oversee its network and tools in compliance with applicable law, and to provide notices and obtain consents, as necessary, to its users that their use of Customer's computers, electronic appliances, and devices (and those of users on Customer's network) may be monitored, inspected, or decrypted by Customer.

8.   **Confidentiality.**
a.   **Definition**. "Confidential Information" means non-public information provided by one party ("Discloser") to the other ("Recipient") that is designated as confidential or reasonably should be considered as such, excluding information that is (i) in or becomes part of the public domain (other than by disclosure by Recipient in violation of this Agreement); (ii) previously known to Recipient without an obligation of confidentiality and demonstrable by the Recipient; (iii) independently developed by Recipient without use of Discloser's Confidential Information; or (iv) rightfully obtained by Recipient from third parties without an obligation of confidentiality.

b.   **Restrictions on Use**. Recipient shall (i) only use Discloser's Confidential Information to exercise its rights and/or to perform under this Agreement, (ii) use the same degree of care to prevent unauthorized use and disclosure of Discloser's Confidential Information as it does for its own confidential information, but in no event less than reasonable care, and (iii) with respect to Recipient's employees and Authorized Contractors, limit access only to

those employees and Authorized Contractors who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified herein.

c. **Exceptions**. Recipient may disclose Discloser's Confidential Information to the extent required by any court, governmental or regulatory body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to Discloser of such disclosure.

d. **Destruction**. Upon written request of Discloser, Recipient shall return or destroy Discloser's Confidential Information, provided that Recipient may retain Discloser's Confidential Information that (A) it is required to keep for compliance purposes under applicable law, professional standards, a court or regulatory agency, or (B) was created electronically pursuant to automatic or ordinary course archiving, back-up, security or disaster recovery systems or procedures, provided that any such retained information shall remain subject to this Agreement. Upon Discloser's request, Recipient will provide Discloser with written confirmation of destruction in compliance with this provision.

9. **Warranty Disclaimers and Exclusions**

    a. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS ARE PROVIDED ON AN "AS IS"AND "AS AVAILABLE" BASIS AND GIGAMON AND ITS LICENSORS DISCLAIM ALL WARRANTIES RELATING TO THE PRODUCTS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. THE PRODUCTS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. THE PRODUCTS ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, CRITICAL COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT SYSTEMS, AIR TRAFFIC CONTROL, OR ANY OTHER APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, SEVERE PHYSICAL INJURY, OR PROPERTY DAMAGE.

    b. THESE LIMITATIONS APPLY EVEN IF GIGAMON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. **Term and Termination**. This Agreement is effective as of the date of Customer's assent as set forth in the first paragraph and shall continue until terminated. A party may terminate this Agreement for cause upon written notice for the other party's uncured material breach of the Agreement which remains uncured 30 days after receipt of written (including by email) notice thereof. Customer may transfer or sell to a third party the Gigamon Hardware containing the Software. Any such transfers or sales must be in compliance with Gigamon's then-current applicable relicensing/transfer policy. Any such termination will not entitle Customer to a refund. Upon the termination of this Agreement, all definitions and Sections 1, 3, 4, 8, 9, 10, 11, 13, 14, 15, 17, 18 and 19 shall survive termination for any reason and all other licenses and obligations shall terminate. Nothing contained herein shall limit any other remedies that either party may have for the default of the other party under this Agreement nor relieve either party of any of its obligations incurred prior to any expiration or termination of this Agreement.Upon termination of this Agreement, Customer will stop using equipment with embedded Software and destroy or delete all copies of downloaded Software from any of its devices or storage devices.

11. **Limitation of Liability**. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR: (A) PERSONAL INJURY, DEATH OR TANGIBLE PROPERTY DAMAGE; (B) MISUSE OR VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS BY THE OTHER PARTY; (C) PAYMENT OBLIGATIONS FOR PRODUCTS; (D) GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD BY A PARTY, ITS EMPLOYEES OR AGENTS AND/OR (E) AMOUNTS PAYABLE TO THIRD PARTIES UNDER SECTION 14 ("INTELLECTUAL PROPERTY INDEMNIFICATION"):

    (I): UNDER NO CIRCUMSTANCES WILL GIGAMON OR ITS LICENSORS OR CUSTOMER BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING,

WITHOUT LIMITATION, LOSS OF PROFITS, DATA OR INFORMATION, OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND

(II) IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER FOR PRODUCTS IN THE TWELVE (12) MONTHS PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY.

THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THIS AGREEMENT. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.

12. **Usage Reporting**. Customer will provide information regarding Product usage and/or licenses activated or deployed to Gigamon within five business days of any written request, so long as Gigamon does not make more than one request during any 12-month period. If Customer has used the Software in excess of the number of devices permitted on the applicable purchase order, Customer will (i) promptly comply with this Agreement, and (ii) pay the additional fees (at Gigamon's then-current list price) due.

13. **Intellectual Property**. Gigamon, its logo, and all other names, logos, or icons identifying Gigamon and its programs, products, and services are proprietary, without Gigamon's express written permission is strictly prohibited. If Customer in its discretion provides any feedback to Gigamon concerning the functionality and performance of the Products (e.g., identifying potential errors, enhancements and improvements) ("Feedback"), Gigamon shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to Customer and/or its representatives.

14. **Intellectual Property Indemnification**.
Gigamon will, at its cost and expense, (i) defend or settle any claim brought against Customer by an unaffiliated third party alleging that the Product infringes such third party's copyright, patent or trademark rights, and (ii) pay any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim. Gigamon's obligations above are conditioned on Customer notifying Gigamon promptly in writing of the claim or threat thereof and giving Gigamon sole control and authority over, and information for and assistance with, the defense and settlement thereof. Gigamon will have no liability for any claim based upon (1) the combination, operation or use of any Product supplied hereunder with equipment, devices or software not supplied by Gigamon; (2) alteration or modification of any Products; (3) the failure to install any update or revision made available by Gigamon; or (4) Gigamon's compliance with Customer's specifications, designs, or instructions. Customer may participate in the defense or settlement of any claim at its cost. If an injunction or order is obtained against Customer's use of any Product by reason of such allegations of infringement, Gigamon will, (or if in Gigamon's reasonable opinion the Product is likely to become the subject of a claim of infringement, Gigamon may), at its expense: (i) procure the right to allow Customer to continue to use the applicable Product; (ii) replace the applicable Product with non-infringing functionally equivalent product at no cost to Customer, (iii) modify the applicable Product or take other action so that the applicable Product becomes non-infringing; or (iii) if none of the foregoing remedies are commercially practical, terminate this Agreement, and refund the applicable fees for such Product received by Gigamon subject to straight-line depreciation over a five (5) year period from purchase. THE FOREGOING STATES THE ENTIRE OBLIGATION OF GIGAMON WITH RESPECT TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

15. **Compliance with Laws and Export Restrictions**. Each party shall comply with all U.S. federal, state and local, as well as all non-U.S., laws and regulations that apply to its performance of the Agreement or use of the Products. The Products and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer acknowledges and agrees the Products and Documentation shall not be used, transferred, or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). Customer represents and warrants that Customer is not located in, or is under the control of, or a national or resident of, an Embargoed Country or Designated National.

16. **Third Party Agreements**. Customer is responsible for obtaining and maintaining all telecommunications, broadband, computer equipment, and services needed to access and use the Products and for paying all charges related thereto. Products may contain features designed to interface with applications or services provided or made available by third parties ("**Third-Party Services**"). In order to use a feature in connection with a Third-Party Service or the Third-Party Service, Customer must have an agreement with the provider of the relevant Third-Party Service. If the Third-Party Services are no longer available or if the applicable third-party provider no longer allows the Third-Party Services to interface with a Product, then such features will no longer be available or function with a Product. Gigamon and the provider of the applicable Third-Party Service disclaim all warranties, indemnities, obligations, and other liabilities in connection with any interface or integration with the Third-Party Service. Further, Gigamon disclaims all warranties, indemnities, obligations, and other liabilities in connection with any Third-Party Service.

17. **US Government Rights.** The Products and Documentation are "commercial items," as that term is defined in FAR (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in FAR 12.211and 12.212. Consistent with FAR 12.211 and 12.212 and DFARS (48 C.F.R.) 227.7202 -1 through 227.7202-4, the Products and Documentation are being licensed to U.S. government end users under the license(s) customarily provided to the public as forth in this Agreement. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Products and return such Products and any other software or technical data delivered as part of the Products, unused, to Gigamon. In addition, DFARS 252.227-7015 {Technical Data - Commercial Items) applies to technical data acquired by Department of Defense agencies. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

18. **Equitable Relief**. Customer acknowledges and agrees that Software is confidential and proprietary to Gigamon and its licensors and contains valuable trade secrets and any breach of this Agreement affecting intellectual property rights may cause irreparable injury for which monetary damages would be an inadequate remedy and Gigamon will be entitled to seek equitable relief (without a requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.

19. **General**. Except as set forth on Exhibit A (if applicable), this Agreement is governed by the laws of the State of California, without reference to its conflict of laws principles. Except as set forth above, any dispute regarding this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County,

California, U.S.A. The United Nations Convention on the International Sale of Goods shall not apply. Notwithstanding the foregoing, each party reserves the right to file a suit or action in any court of competent jurisdiction as such party deems necessary to protect its intellectual property rights and, in Gigamon's case, to recoup any payments due. This Agreement is the entire agreement between Customer and Gigamon and supersedes any other communications with respect to the subject matter of this Agreement. Additional or conflicting terms on any purchase order or other document issued by Customer or any Authorized Channel Partner will have no force or effect. If any provision of this Agreement is held invalid or unenforceable, such provision will be deemed replaced by the provision permitted by law that most closely effectuates the parties' original intent as documented hereunder, and the remainder of this Agreement will continue in full. No waiver by either party of any rights under the Agreement will be effective unless such waiver is in a writing signed by the party against whom enforcement is sought. Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement (other than its payment obligations) as a result of a cause beyond its control, including but not limited to, act of God or public enemy, act of terrorism, act of any military, civil or regulatory authority, change in any law or regulations, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power, utility, labor problem or any other cause, whether similar or dissimilar to any of the foregoing, that could not have been prevented with reasonable care. Any notices relating to this Agreement should be sent via receipted delivery to Gigamon Inc., Attention: Legal Department, 3300 Olcott Street, Santa Clara, CA 95054 or by email to legal@gigamon.com.

EXHIBIT A
DISPUTE RESOLUTION OUTSIDE THE UNITED STATES

If Customer's principal office is located outside the United States as indicated in the Agreement, the terms and conditions of this Exhibit will apply to all disputes arising out of or relating to this Agreement (excluding disputes regarding the actual or alleged violation of Gigamon's intellectual property rights or the collection of overdue invoices, which shall be governed by California law and which may be brought in the state or federal courts located in California).

1. For **all** principal offices outside the United States:
    a. **Choice of Law**. This Agreement, and the rights and duties of the parties arising from this Agreement, shall be governed by, construed and enforced with the laws of the State of New York, excluding its conflicts-of-law principles. The Uniform Computer Information Transactions Act and the United Nations convention on the International Sale of Goods will not apply.
    b. **Arbitration**. Any dispute, claim or controversy arising out of or relating to this Agreement or the existence, breach, termination, enforcement, interpretation or validity of the Agreement, including the termination of the scope or applicability of arbitration hereunder (each a "Dispute") shall be referred to and finally resolved by arbitration under the rules and at the location identified below. The arbitral panel shall consist of three (3) arbitrators, selected as follows: each party shall appoint one (1) arbitrator, and those two (2) arbitrators shall discuss and select a third arbitrator. If the two party-appointed arbitrators do not agree on a third arbitrator, the third arbitrator shall be selected in accordance with the applicable rules of the arbitration body. Each arbitrator shall be independent of each of the parties and shall have suitable experience and knowledge in the subject matter of the Dispute. The arbitrators shall have the authority to grant specific performance and to allocate between the parties the costs of arbitration (including service fees, arbitrator fees and all other fees related to the arbitration) in such equitable manner as the arbitrators may determine. Judgment upon the award so rendered may be entered in a court having jurisdiction, or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, either party shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator, provided that a permanent injunction and damages shall only be awarded by the arbitrator. The language to be used in the arbitral proceedings shall be English.

2. Additional terms **only** for principal offices within Europe, the Middle East or Africa: Any Dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules in force on the date when the notice of arbitration is submitted in accordance with such Rules (which Rules are deemed to be incorporated by reference into this clause) on the basis that the governing law is as follows: (a) if Customer brings an action against Gigamon, the governing law is the State of New York, USA, and (b) if Gigamon brings an action against Customer, then the governing law is the laws of England and Wales. The seat, or legal place, of arbitration shall be London, England.

3. Additional terms **only** for principal offices within Asia Pacific (including India), Australia and New Zealand: Any Dispute shall be referred to and finally resolved by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in force on the date when the notice of arbitration is submitted in accordance with such Rules (which Rules are deemed to be incorporated by reference into this clause) on the basis that the governing law is as follows: (a) if Customer brings an action against Gigamon, the governing law is the State of New York, USA, and (b) if Gigamon brings an action against Customer, then the governing law is as

follows: (A) for Customers with principal offices in (1) Asia Pacific (including India): the laws of England and Wales, or (B) for Customers with principal offices in Australia or New Zealand: the laws of the State of New South Wales, Australia. In all cases, the seat, or legal place, of arbitration shall be Singapore.

4. Additional terms **only** for principal offices within the Americas, excluding the United States: Any Dispute shall be referred to and finally resolved by arbitration under International Dispute Resolution Procedures of the American Arbitration Association in force on the date when the notice of arbitration is submitted in accordance with such Procedures (which Procedures are deemed to be incorporated by reference into this clause) on the basis that the governing law is the law of the State of New York, USA.   The seat, or legal place, of arbitration shall be New York, NY, USA.