

## SOW RESALE TERMS AND CONDITIONS

If the Partner (as defined in the attached Defined Terms Appendix) purchases Services directly from Cisco for Resale to an End User pursuant to a SOW and if Partner's Systems Integrator Agreement, Indirect Channel Partner Agreement or other applicable resale agreement with Cisco ("Agreement") does not contain terms and conditions for the purchase of these Services, then Cisco and Partner agree that any such SOW will be governed by the Agreement and these SOW Resale Terms and Conditions ("SOW Resale Terms"), which are incorporated into the SOW by this reference.

The SOW, including the SOW Resale Terms, is limited to the scope of that particular SOW and is not applicable to any other SOWs or agreements that may be executed between the parties. To the extent there is a conflict between the terms of the SOW, SOW Resale Terms and/or Agreement, then the terms of the SOW Resale Terms followed by the Agreement control with respect to such conflict unless explicitly stated otherwise in the SOW.

1. **Definitions.** The capitalized terms used herein are defined in one of the following: (a) the Defined Terms Appendix attached as Appendix A, (b) the SOW, or (c) the Agreement.
  2. **Performance of Services.**
    - a. Cisco may use subcontractors to perform some or all of the Services.
    - b. Cisco is not responsible for providing any Services to End User beyond those expressly set forth in the SOW.
  3. **Pricing.**
    - a. All prices are set forth in the SOW and are exclusive of any taxes, fees, duties or other similar charges. Applicable taxes, if any, are billed as a separate item on the invoice. Partner shall pay all taxes related to the Services (other than taxes based on Cisco's net income) or present Cisco with an exemption certificate acceptable to the taxing authorities. Cisco reserves the right to increase the Service fee in the event it is determined any Partner withholding tax obligation prevents Cisco from receiving the specified prices for such Services.
    - b. Unless expressly set forth in the SOW, prices for the Services are not subject to any discount.
  4. **Payment and Invoicing.**
    - a. **Payment.** All Purchase Orders are subject to credit approval. Payment terms are net thirty (30) days from the date of invoice. Unless expressly agreed in writing by Cisco, Partner must make all payments in the currency specified in the SOW. For any sum not paid by Partner when due, Partner will pay interest from the due date until paid at a rate of ten (10) percent per annum, or the maximum rate permitted by law, whichever is less. If the SOW is with Cisco Solutions LLC, Cisco reserves the right to apply interest at a rate of twice the official Central Bank of Russia refinance rate. Interest will be calculated on a daily basis and accrue both before and after any judgment.
    - b. **Invoicing.** Cisco will invoice Partner upon completion of each Milestone listed in the SOW's Milestone Invoice Schedule. Invoices may contain multiple Milestones. The SOW Milestone Invoice Schedule supersedes any Milestones identified in a Purchase Order. Partner shall not delegate to End User (or any other third party) or otherwise assign the task of accepting or assessing completion of Milestones; any language to the contrary in the SOW is void and of no effect.
    - c. If the SOW is with Cisco Solutions LLC (Russia), the following also applies:
      - (i) Cisco shall issue two Acts of Acceptance to Partner ("Act of Acceptance"). The Act of Acceptance need not be issued at the same time as the relevant invoice. Partner shall, within five (5) Business Days of Cisco sending the Act of Acceptance, either (i) sign and return one copy of the Act of Acceptance to Cisco or (ii) provide detailed comments to Cisco disputing the rendering of Services. If Partner fails to do either within the indicated time frame, the Act of Acceptance will be deemed signed and Services deemed accepted as described in the Act of Acceptance.
      - (ii) Within approximately five (5) Business Days after Cisco (i) issues the Act of Acceptance to Partner or (ii) receives advance payment from Partner, Cisco shall send a VAT invoice to Partner.
      - (iii) The parties may use a Unified Transfer Document ("UTD") and/or VAT invoice as supporting primary documentation (in place of a consignment note and/or transportation waybill). UTD, consignment notes, transportation waybills and Acts of Acceptance may be made in electronic format using electronic signatures.
  - d. If Cisco China Company, Limited (思科(中国)有限公司), Cisco (China) Innovation Technology Co., Ltd. (思科(中国)创新科技有限公司) or Cisco Systems (China) Information Technology Services Limited (思科系统(中)信息技术服务有限公司) is a party to the SOW, and if the Partner requests that Cisco issue a credit memo and a red letter VAT invoice because of product return, price adjustment, service cancellation, or another similar reason, then Partner must sign a Product Return Agreement, Price Adjustment Agreement, Service Cancellation Agreement, or other applicable agreement, as necessary or as requested by Cisco. Within two Business Days after Cisco issues a written notification to Partner that Cisco accepts Partner's request for the credit memo and red-letter VAT invoice, Partner must provide to Cisco the red-letter VAT invoice information notice verified by a competent tax authority.
5. **Termination.**
  - a. The SOW, and any Services performed under the SOW, may be terminated immediately by either party upon written notice for the following reasons:
    - (i) If the other party breaches any material provision of the SOW, the SOW Resale Terms or the Agreement, and (a) the breach is not capable of being cured, or (b) the other party fails to cure such breach within thirty (30) days after receiving

written notice from the non-breaching party requiring such breach to be cured;

- (ii) If the other party: (a) ceases or threatens to cease carrying on the business as a going concern, (b) becomes or may become the object of a voluntary or involuntary proceedings in bankruptcy or liquidation, (c) has a receiver or similar officer appointed with respect to all or a substantial part of its assets, or (d) has an event occur similar to any of the foregoing under applicable law; or
- (iii) If, except as provided below, either party assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under the SOW, without the prior written consent of the other party, or in the event of a sale of all or substantially all of such party's assets, or transfer of a controlling interest in such party to an unaffiliated third party. Notwithstanding the foregoing: (a) Cisco reserves the right to subcontract Services, either in whole or in part, to any Affiliate or third party, and (b) Cisco may assign the SOW, or all or any portion of its rights and obligations in the SOW and the SOW Resale Terms, to any Affiliate of Cisco.

- b. If Partner has not paid Cisco the Services fees when due and Cisco has not received payment within thirty (30) days after Cisco provides notice of such past due payment, Cisco may (i) withhold the provision of further Services until all amounts past due are paid in full, and/or (ii) immediately terminate the SOW.
- c. Upon termination of the SOW, Partner shall pay Cisco for all Services Cisco has performed up to the effective date of termination at the prices, fees and expense reimbursement rates documented in the SOW.

#### 6. Partner's Rights and Obligations.

- a. After both parties fully execute the SOW:
  - (i) Partner is authorized, on a non-exclusive basis, to Resell the Services to the End User subject to the provisions of the SOW, the SOW Resale Terms and the Agreement.
  - (ii) Prior to Partner accepting a Purchase Order from End User for the Services, Partner must either:
    - (a) Ensure that, for each Service purchased, End User understands Cisco's obligations to Partner and End User responsibilities and obligations under the applicable SOW; or
    - (b) Include the project scope and Service responsibilities and obligations of each party as set forth in the SOW in its separate contract(s) with End User for each Service resold by Partner pursuant to the SOW, and disclose that Partner has contracted with Cisco for the provision of such Services.
  - (iii) Partner shall provide to Cisco the End User's applicable workplace policies and security regulations. Cisco shall make commercially reasonable efforts to comply with such policies and regulations during Cisco's activities at End User sites or in connection with End User systems. Cisco's personnel and, if applicable, Cisco's subcontractor's personnel, shall not be required to sign individual agreements with End

User or Partner or waive any personal rights such personnel may have.

- b. Partner acknowledges that the SOW does not create any rights and obligations between Cisco and the End User. Partner remains responsible for ensuring the End User provides reasonable cooperation and access necessary for Cisco to provide the Services as set forth in the SOW.

#### 7. Warranty.

- a. CISCO SHALL PERFORM THE SERVICES IN A WORKMANLIKE MANNER. PARTNER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY WILL BE, AT CISCO'S OPTION:
  - (i) RE-PERFORMANCE OF THE SERVICES; OR
  - (ii) TERMINATION OF THE SOW OR THE APPLICABLE SERVICES AND REIMBURSEMENT BY CISCO TO PARTNER OF THE PORTION OF THE SERVICE FEES PAID TO CISCO BY PARTNER FOR SUCH NON-CONFORMING SERVICES.
- b. THE WARRANTY SET OUT ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, EXPRESS OR IMPLIED, ALL OF WHICH ARE EXCLUDED, INCLUDING WITHOUT LIMITATION, THOSE OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, NON-INFRINGEMENT, TITLE, OR REASONABLE CARE AND SKILL.

#### 8. Limitation of Liability and Consequential Damages Waiver.

- a. NOTHING IN THE SOW, SOW RESALE TERMS OR AGREEMENT LIMITS OR EXCLUDES THE LIABILITY OF:
  - (i) EITHER PARTY TO THE OTHER PARTY FOR (A) BODILY INJURY OR DEATH RESULTING DIRECTLY FROM THE NEGLIGENCE OF THE OTHER PARTY; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW;
  - (ii) PARTNER TO CISCO ARISING OUT OF: (A) PARTNER'S BREACH OF SECTION 9 (LICENSE); (B) THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN THE AGREEMENT, OR (C) FAILURE TO PAY ANY AMOUNTS DUE TO CISCO UNDER THE SOW.
- b. SUBJECT TO SECTION 8(a) ABOVE, AND NOTWITHSTANDING ANYTHING ELSE IN THE SOW, SOW RESALE TERMS AND AGREEMENT TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE FOR ANY:
  - (i) SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES;
  - (ii) LOSS OF ANY OF THE FOLLOWING: PROFITS, REVENUE, BUSINESS, ANTICIPATED SAVINGS, USE OF ANY PRODUCT OR SERVICE, OPPORTUNITY, GOODWILL OR REPUTATION; OR
  - (iii) LOST OR DAMAGED DATA.
- c. SUBJECT TO SECTION 8(a) AND 8(b), EACH PARTY'S TOTAL AGGREGATE LIABILITY IS LIMITED TO THE AMOUNT PAID BY PARTNER TO

CISCO UNDER THE SOW DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT OR CIRCUMSTANCE THAT FIRST GAVE RISE TO SUCH LIABILITY.

- d. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).
- e. REFERENCES IN THIS SECTION 8 TO (i) A "PARTY" INCLUDES A PARTY'S AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS, AND (ii) "LIABILITY" INCLUDES LIABILITY ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER ANY INDEMNITY, STRICT LIABILITY, OR OTHERWISE, IN EACH CASE EVEN IF A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF THAT LIABILITY.

#### 9. License.

- a. Nothing in the SOW amends or modifies the licenses provided with any Cisco hardware or software products. End User's Intellectual Property license rights provided hereunder, if any, are set forth in Appendix B. The provisions in Appendix B apply only to those Services, Deliverables and other Intellectual Property detailed in the SOW.
- b. Partner must provide a copy of the terms and conditions in Appendix B (or materially equivalent terms and conditions) to End User and have End User agree to be bound by such terms and conditions pursuant to a legally enforceable written agreement. To the fullest extent applicable, Partner is bound by the terms and conditions in Appendix B. Partner will be liable to Cisco for any breach of such terms and conditions by End User.
- c. Except to the extent as otherwise expressly set forth in the SOW and subject to the terms and conditions of the SOW, SOW Resale Terms and Agreement, Cisco grants Partner a limited, non-exclusive, non-transferable right (without right to sublicense) to use, copy and distribute to End User: (i) Software provided with or as a result of the Services, solely in object code, if any, (ii) the Deliverables specified in the SOW, if any, and (iii) Data Collection Tools, if any, solely for the purpose of fulfilling Partner obligations to End User as explicitly set forth in an applicable SOW, if any.

#### 10. Ownership.

- a. Cisco owns and will continue to own all right, title, and interest in and to all Cisco Intellectual Property.
- b. Each party will retain the exclusive ownership of all of its Pre-Existing Technology.
- c. Except for any Partner Pre-Existing Technology, to the extent Partner provides any Partner Intellectual

Property developed by Partner (or by a third party acting on Partner's behalf) that is incorporated into any Services, Products, Deliverables, Data Collection Tools, Reports and/or Scripts provided to an End User pursuant to the SOW, Partner hereby irrevocably transfers, conveys and assigns, and agrees to transfer, convey, and assign, to Cisco all of its right, title, and interest therein. Partner shall execute such documents, render such assistance, and take such other action as Cisco may reasonably request, at Cisco's expense, to apply for, register, perfect, confirm, and protect Cisco's rights to such Cisco Intellectual Property, Services, Products, Deliverables, Data Collection Tools, Reports and/or Scripts and any derivatives, improvements or modifications thereof, and all Intellectual Property rights therein.

- d. To the extent Partner provides any Partner Pre-Existing Technology that is incorporated into any Cisco Intellectual Property, Services, Products, Deliverables, Data Collection Tools, Reports and/or Scripts provided to an End User pursuant to the SOW, Partner hereby grants to Cisco a perpetual, irrevocable, royalty free, worldwide right and license under all Intellectual Property in and to such Partner Pre-Existing Technology to use, make, have made, offer to sell, sell, copy, distribute, and create derivative works of such Partner Pre-Existing Technology as incorporated into such Cisco Intellectual Property, Services, Products, Deliverables, Data Collection Tools, Reports, Scripts and/or Cisco Pre-Existing Technology.
- e. Third Party Products will at all times be owned by the applicable third party, and will be subject to any applicable third party license, warranty and other applicable terms.

**11. Contracting with U.S. Federal Government.** To the extent Service engagements relate to a U.S. Federal Government contract, Cisco's Services offerings are "commercial item" as that term is defined under FAR 2.101. Cisco offers and/or provides these Services upon a competitive basis and in substantial quantities in the commercial marketplace based upon established market prices for specific tasks performed under standard commercial terms and conditions.

**12. Survival.** Sections 4 (Payment and Invoicing), 5 (Termination), 7 (Warranty), 8 (Limitation of Liability and Consequential Damages Waiver), 9 (License), 10 (Ownership), 12 (Survival), Appendix A, (Defined Terms Appendix) and Appendix B (End User License Rights Appendix) survive the termination or expiration of the SOW.

*[Appendix A, Defined Terms Appendix and Appendix B, End User License Rights, follows]*

## APPENDIX A

### DEFINED TERMS APPENDIX

This Defined Terms Appendix should be read in conjunction with the Glossary of Terms located at [http://www.cisco.com/c/dam/en\\_us/about/doing\\_business/legal/service\\_descriptions/docs/terms.pdf](http://www.cisco.com/c/dam/en_us/about/doing_business/legal/service_descriptions/docs/terms.pdf) and otherwise accessible at [www.cisco.com/go/service-descriptions](http://www.cisco.com/go/service-descriptions) ("Glossary of Terms"). To the extent there is a conflict between the terms of the SOW, SOW Resale Terms (including this Defined Terms Appendix) or the Glossary of Terms, then the SOW, followed by the SOW Resale Terms, takes precedence with respect to such conflict.

**Affiliate** with respect to a party, means any corporation, firm, partnership, limited liability company or other entity, whether *de jure* or *de facto*, that directly or indirectly owns, is owned by, or is under common ownership with such party to the extent of at least fifty percent (50%) of the equity having the power to vote on or direct the affairs of such party, and any person, firm, partnership, corporation, limited liability company or other entity actually controlled by, controlling, or under common control with such party.

**Cisco Intellectual Property** means the Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by Cisco (or a third party acting on Cisco's behalf) pursuant to the SOW, including modifications, enhancements, improvements

or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing.

**Milestone** means a specific goal, objective or event pertaining to Services described under the terms of the SOW, as applicable.

**Partner** means the Cisco Authorized Channel partner or reseller that has executed the SOW that incorporates the SOW Resale Terms. Partner may also be referred to as "Integrator" in the SOW and the Agreement.

**Pre-Existing Technology** means pre-existing Intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to commencement of any Services hereunder, or that are otherwise developed by or for such party outside the scope of the SOW.

**Statement of Work or SOW** means the documents agreed upon by the parties, which incorporate the SOW Resale Terms, and define the Services and Deliverables, if any, to be provided thereunder.

**Services** means the Services sold under the SOW. The Services hereunder are also deemed to be "Services" as defined under the terms of the Agreement.

**APPENDIX B  
END USER LICENSE RIGHTS**

- a. The terms and conditions provided with the Software, or in the absence of such terms the license posted at [www.cisco.com/go/eula](http://www.cisco.com/go/eula) ("End User License Agreement"), are hereby incorporated into these terms by this reference. To the extent there is a conflict between the terms of the End User License Agreement and the terms of the End User License Rights, the terms of the End User License Agreement shall apply, unless explicitly stated otherwise herein. The provisions herein apply only to those Services and Deliverables and other Intellectual Property provided by Cisco to End User. Nothing in the SOW alters or affects the Intellectual Property rights and/or licenses provided with any Cisco Products.
- b. Subject to End User's compliance with the End User License Agreement, Cisco grants to End User a worldwide, non-exclusive and non-transferable license to use for End User's internal business use only: (i) Software provided as a result of the Services, if any, solely in object code form; (ii) other Deliverables specified in the SOW, if any, and (iii) Data Collection Tools, if any (collectively and individually, the "Licensed Materials"). If Cisco grants End User a right to modify and create derivative works of any Cisco-provided Scripts, the grant is limited solely for End User's internal business use. These license grants do not include the right to sublicense; provided that End User may permit its suppliers, subcontractors and other formally authorized third parties to use the Licensed Materials solely on End User's behalf for End User's benefit, provided that End User ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of Cisco's rights in such Licensed Materials as are specified herein.
- c. End User will use Software solely on Cisco Hardware, except as otherwise permitted herein; provided that End User may also use Application Software on third party hardware or as otherwise expressly authorized in the Software Documentation. In the case of Data Collection Tools that include Hardware, End User will use any Software included with such Data Collection Tools solely on the Hardware provided with such Data Collection Tools. In the case of Data Collection Tools that consist of Software only, End User may use such Data Collection Tools on Hardware or third party hardware, unless otherwise set forth in the SOW.
- d. Except for the Data Collection Tools, the license rights granted herein are perpetual, provided End User is not in breach of the End User License Agreement, the End User License Rights and any other applicable terms. The license for Data Collection Tools will terminate upon the earlier of: (i) the expiration or termination of the Services pursuant to which the Data Collection Tools were provided; or (ii) Cisco's request to End User that the Data Collection Tool(s) be returned to Cisco.
- e. Neither End User nor Partner shall (nor permit a third party to): download more than one copy of the Software; copy, in whole or in part, any Software, Deliverable or Data Collection Tool; make error corrections or derivative works of, or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Software, Deliverable or Data Collection Tool to human-readable form; or transfer, sublicense, rent, lease, distribute, or sell any Software, Deliverables or Data Collection Tools. There are no implied licenses under this Agreement, and all rights not expressly granted herein are reserved to Cisco.
- f. When End User updates or upgrades a copy of Software to a new release, End User shall not use the new Software release and the corresponding copy of the previous Software release concurrently (except for a limited period of parallel testing). Under no circumstances may the previous release be re-used or transferred to any other device(s), or otherwise hosted for potential later reuse.
- g. End User hereby grants to Cisco a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the End User Feedback (as defined below) to use and incorporate End User Feedback into any Cisco Intellectual Property, Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute, and create derivative works of such End User Feedback for any and all purposes whatsoever, and End User acknowledges and agrees that it will obtain no rights in or to any Cisco Intellectual Property, Services, Products, Deliverables, Data Collection Tools, Reports, Scripts and Cisco Pre-Existing Technology as a result of Cisco's use of any such End User Feedback. For purposes of these terms, "End User Feedback" means all oral or written communications regarding improvements or changes to any Cisco Intellectual Property, Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology that End User provides to Cisco.
- h. U.S. Government End User Purchasers. The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212, FAR 52.227-19 Commercial Computer Software—Restricted Rights and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the SOW may be incorporated, Partner may provide to Government end user or, if the SOW is direct, Government end user will acquire the Software and Documentation with only those rights set forth in the SOW. Use of either the Software or Documentation or both constitutes agreement by the Government that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.