



TERMS OF SALE AND SOFTWARE LICENSE AGREEMENT

These Terms of Sale and Software License Agreement (“**Terms of Sale**”) are entered into by and between Cisco Systems Canada Co., a Nova Scotia unlimited liability company having its principal place of business at 88 Queens Quay West, Suite 2900, Toronto, Ontario, M5J 0B8, Canada (“**Cisco**”) and you (“**Customer**”), for Products and Services, unless Cisco and Customer enter into or have entered into another agreement (including but not limited to a written, click-wrap, click-and-accept or electronic agreement) regarding the purchase and license of the specific Cisco Products or Services being purchased and such agreement is in effect at the time the applicable Purchase Order is received by Cisco (the “**Existing Agreement**”), in which case the terms and conditions of such Existing Agreement shall govern the purchase and license of those Cisco Products or Services.

1. DEFINITIONS

- a. “**Affiliate**” means any corporation, firm, partnership or other entity that directly or indirectly controls, or is controlled by, or is under common control with Cisco or Customer.
- b. “**Cisco Branded**” means a Product or a Service bearing a trademark or service mark of Cisco Systems, Inc. or any Cisco Affiliate.
- c. “**Confidential Information**” means proprietary and confidential information received by Cisco or Customer in connection with these Terms of Sale and their relationship and is conspicuously marked as confidential, proprietary or the like or, in the case of confidential information disclosed orally, clearly identified as confidential, proprietary or the like at the time of oral disclosure and confirmed as confidential, proprietary or the like in writing within 14 days by the disclosing party. Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party, as well as, in the case of Cisco, any information posted on Cisco.com (to the extent such information is not publicly accessible).
- d. “**Documentation**” means user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials and other information relating to Products or Services offered by Cisco, whether distributed in print, electronic, CD-ROM or video format.
- e. “**Effective Date**” means the date these Terms of Sale are electronically accepted, click-accepted or, if signed in hard copy by Customer, the date of last signature, or in the absence of any of the foregoing, these Terms of Sale shall be effective from the date an order is placed by Customer.
- f. “**Force Majeure Event**” means an event beyond the affected party’s reasonable control, including (without limitation) accidents, severe weather events, acts of God, actions of any government agency, epidemic, pandemic, acts of terrorism, or the stability or availability of the Internet or a portion thereof.
- g. “**Hardware**” means the tangible Cisco product acquired by Customer from Cisco and listed on the Price List. Hardware does not include any tangible product listed on the Price List in the name of a third party.
- h. “**Network Services**” means any services offered by Customer, as Customer’s primary business model, which services may include the following: access to the Internet, data and voice



transmission and any other communications service furnished by Customer by means of Customer's communications network.

- i. **"Price List"** means the price list(s) published at Cisco.com applicable to the relevant Cisco entity to which each Purchase Order is issued by Customer. Products on the Price List are categorized and discounts provided by Cisco will vary by category.
- j. **"Product"** means, individually or collectively as appropriate, Hardware, Software and Documentation listed on the then-current Price List.
- k. **"Purchase Order"** or **"PO"** means a written or electronic order to Cisco for Products or Services to be provided by Cisco under these Terms of Sale.
- l. **"Services"** means any maintenance, technical support, or any other services performed or to be performed by Cisco, provided that "Services" does not include those services for which Cisco requires a separate statement of work to be executed between the parties.
- m. **"Software"** means the machine readable (object code) version of the computer programs listed from time to time on the Price List or provided with the Hardware and made available by Cisco for license to Customer including firmware, and any copies made, bug fixes for, updates to, or upgrades thereof. Software does not include any computer programs listed on the Price List in the name of a third party.
- n. **"Territory"** means any country(ies) in which Customer has been granted Cisco resale certifications, or in the absence of any such certifications, the country in which Customer's principal place of business is located.

2. SCOPE

- a. These Terms of Sale set forth the terms and conditions for Customer's purchase of Products and Services solely for use in the Territory and solely for (i) Customer's internal business use, (ii) providing Network Services if Customer's primary business is Network Services, or (iii) resale only if and where Customer has been granted appropriate reseller certifications or distribution rights by Cisco for the specific Products or Services to be resold/distributed. Customer shall not resell to, make available for use by, or otherwise transfer title to any Product to, any end user or other third party, including any reseller, without such reseller certifications or distribution rights.
- b. Customer is not authorized by these Terms of Sale to resell Products to any United States Federal, state, or local entity.

3. PRICES

- a. Prices for Products and Services shall be those specified in Cisco's then current Price List, less any applicable Price List category or individual Product or Service based discount(s) granted by Cisco in a separate addendum in effect at the time of acceptance of the Purchase Order by Cisco, or in accordance with an applicable, valid written price quotation, if any, submitted by Cisco to Customer for such Products or Services.
- b. With the exception of freight, handling and shipping insurance charges, all prices are exclusive of any taxes, fees, duties or other similar amounts, however designated, and including without limitation value added taxes, Goods and Services Tax (GST), provincial sales tax and withholding taxes that are levied or based upon such prices or charges, or upon these Terms of Sale. Customer shall pay any taxes related to Products or Services provided pursuant to these Terms of Sale (except for taxes based on Cisco's revenue income) or shall present an



exemption certificate acceptable to all relevant taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible.

4. ORDERS

- a. Customer shall purchase or license Products or Services by issuing a Purchase Order, signed, if requested by Cisco, or (in the case of electronic transmission) sent by its authorized representative, indicating specific Products and Services, Cisco Product numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference, and identity of the end user for each Product and Service. No contingency contained on any Purchase Order shall be binding upon Cisco. The terms of these Terms of Sale shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms are deemed rejected by Cisco.
- b. Cisco shall use commercially reasonable efforts to provide order acknowledgement information within three (3) business days for all Purchase Orders placed on Cisco.com or within ten (10) business days of receipt for Purchase Orders placed by any other method. Upon and subject to credit approval by Cisco following Cisco's receipt of any Purchase Order, Cisco Customer Service will review and accept or decline any or all Purchase Orders for the Cisco entity that will supply the Products or Services, and no other person is authorized to accept Purchase Orders on behalf of Cisco. Cisco Customer Service may accept a Purchase Order even if some of the information required by Section 4a above is missing or incomplete.
- c. Customer may defer Product shipment for up to thirty (30) days from the original shipping date scheduled by Cisco, provided written or electronic notice (issued, in either case, by an authorized representative of Customer) is received by Cisco at least ten (10) days before the originally scheduled shipping date. Cancelled Purchase Orders, rescheduled shipments or Product configuration changes requested by Customer less than ten (10) days before the original scheduled shipping date shall be subject to (a) acceptance by Cisco, and (b) a charge of fifteen percent (15%) of the total invoice amount relating to the affected Products. Cisco reserves the right to reschedule shipment in cases of configuration changes requested by Customer within ten (10) days of scheduled shipment. No cancellation shall be accepted by Cisco where Products are purchased with implementation services, including design, customization or installation services, except as may be set forth in the agreement or statement of work under which the services are to be rendered.

5. SHIPPING AND DELIVERY

- a. Scheduled shipping dates will be assigned by Cisco as close as practicable to Customer's requested date based on Cisco's then-current lead times for the Products. Cisco will communicate scheduled shipping dates in the order acknowledgement or on Cisco.com. Unless given written instruction by Customer, Cisco shall select the carrier.
- b. Shipping options available as well as applicable shipment terms (per Incoterms 2010) are set forth in the Shipping Terms Exhibit available at the following URL: https://www.cisco.com/web/fw/tools/commerce/ngorder/doc/Standard_Shipping_Exhibit.pdf at Cisco.com (the "**Shipping Terms Exhibit**"). The selected shipping option shall be indicated on the Purchase Order. Where applicable, Customer shall pay the shipping and handling charges in addition to the purchase price for the Products, which will be included in remittance and/or commercial invoices issued by Cisco. Title and risk of loss shall transfer from Cisco to Customer and delivery shall be deemed to occur in accordance with the Shipping Terms Exhibit. Customer shall be responsible for all freight, handling and insurance charges subsequent to delivery.



- c. Where Customer places orders on any Cisco Affiliate other than Cisco, Customer shall pay any invoices issued by such entity with respect to such orders and the delivery terms agreed with such entity shall apply. Different shipping terms may apply to such Purchase Orders as set forth in the Shipping Terms Exhibit or otherwise as set out on Cisco.com.
- d. Customer shall assume responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance. This also applies in cases where Customer requests in its Purchase Order delivery of Products to Customer's forwarding agent or another representative in the country of shipment. Customer agrees not to use any export licenses owned by Cisco or any of its Affiliates.
- e. For shipments under FCA as per the Shipping Terms Exhibit, Customer specifically agrees to provide Cisco with the complete name and address of each End User either (i) in the Purchase Order issued, or (ii) in writing within five (5) days of receiving a request by Cisco, and other information required under these Terms of Sale or requested by Cisco. Export clearance will ensure utilizing Cisco's general global export licenses or in the case a general global license does not include the listed End User destination, then individual export licenses must be obtained prior to export. Customer accepts any additional delays caused by the export licensing process as well as delays to comply with conditions of the individual export license.
- f. CISCO SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY FOR DELAY IN DELIVERY OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY. EXCEPT IN ACCORDANCE WITH THE APPLICABLE SHIPPING TERMS SET FORTH IN THESE TERMS OF SALE, CISCO SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH SHIPMENT, NOR SHALL THE CARRIER BE DEEMED TO BE AN AGENT OF CISCO.
- g. All sales are final. Except as provided in Cisco's warranty statements, Cisco does not accept returns unless (i) Cisco shipped a product other than as specified in the Purchase Order, (ii) such Product is unopened, and (iii) the Product is returned in accordance with Cisco's then current RMA policy and procedures.

6. PAYMENT

Upon and subject to credit approval by Cisco, payment terms shall be thirty (30) days from shipping date. All payments shall be made in the currency of the Price List applicable to the Purchase Order. If at any time Customer is delinquent in the payment of any invoice, or is otherwise in breach of these Terms of Sale, Cisco may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order, require Customer to prepay for further shipments, and/or withhold the provision of Services, until complete payment has been received. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (i) ten per cent per annum or (ii) the maximum rate permitted by law, whichever is less. Customer grants Cisco a security interest in Products purchased under these Terms of Sale to secure payment for such Products. If requested by Cisco, Customer agrees to execute financing statements to perfect this security interest.

7. PROPRIETARY RIGHTS AND SOFTWARE LICENSING

- a. Subject to Section 7a and the terms of Cisco's End User License Agreement (the "EULA"), Cisco grants to Customer a non-exclusive, non-transferable license (a) to use the Software and Documentation for Customer's internal use, and (b) where Customer is a certified Cisco reseller or authorized distributor, to market and Resell the Software and related Documentation in the Territory during the term of these Terms of Sale, solely as permitted by Section 2 (Scope) and this Section 7 (Proprietary Rights And Software Licensing) of these Terms of Sale. Any resale of Software or Documentation to any person or entity other than as expressly permitted by Section



2 (Scope) is expressly prohibited. Customer may not sublicense, to any person or entity, any rights to distribute the Software or Documentation.

- b. For non-Cisco Branded products and/or services delivered in connection with these Terms of Sale: (i) third-party software and related documentation is separately licensed by the applicable third party, and Customer's rights and responsibilities with respect to such software or documentation shall be governed in accordance with the third party licensor's applicable software license; (ii) non-Cisco Branded products shall be governed by the applicable third party's product terms; and (iii) non-Cisco Branded services and support shall be governed by the applicable third party's services and support terms. If Customer chooses to order non-Cisco Branded products and/or services, Customer shall enter into one or more separate "click-accept" agreements or other third party agreements as part of the ordering, fulfillment, installation and/or download processes for such non-Cisco branded products and services. For the avoidance of doubt, the third-party supplier of non-Cisco Branded products and services shall be solely responsible for support, warranties, indemnities and other terms and conditions applicable to such products and services. Such agreements shall supersede these Terms of Sale with respect to such non-Cisco Branded products and services.
- c. Where Customer is a certified Cisco Reseller, Customer shall provide a copy of the Cisco EULA and applicable third party license agreement to each end user with delivery of the Product or prior to installation of the Software.
- d. Customer shall notify Cisco promptly of any breach or suspected breach of the Cisco EULA or third party license and further agrees that it will, at Cisco's request, assist Cisco in efforts to preserve Cisco's or its supplier's intellectual property rights including pursuing an action against any breaching third parties.

8. LIMITED WARRANTY

- a. Products. The warranties for Cisco Branded Products may be found at the following URL: <http://www.cisco.com/go/warranty>.
- b. Products. Notwithstanding any other term of these Terms of Sale, Cisco's sole and exclusive warranty and obligations are set forth in Cisco's Limited Warranty Statement delivered with the Cisco Branded Product and this Section 8. Customer shall not make any warranty commitment, whether written or oral, on Cisco's behalf. Customer shall indemnify Cisco against any warranties made in addition to Cisco's standard warranty and for any misrepresentation of Cisco's reputation or of Cisco's Products and Services.
- c. Services. Services provided hereunder shall be performed in a workmanlike manner consistent with industry standards. Customer must notify Cisco promptly, but in no event more than thirty (30) days after completion of the Services, of any claimed breach of this warranty. Customer's sole and exclusive remedy for breach of this warranty shall be, at Cisco's option, re-performance of the Services, or termination of these Terms of Sale or the applicable Service and return of the portion of the Service fees paid to Cisco by Customer for such non-conforming Services. The provision of Services under these Terms of Sale shall not extend the warranties provided with any Hardware purchased or Software licensed by Customer.
- d. Restrictions. The limited warranties referenced in this Section 8 do not apply if the Cisco Branded Product (i) has been altered, except by Cisco, (ii) has not been installed, operated, repaired, used or maintained in accordance with instructions made available by Cisco, (iii) has been subjected to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated; (iv) is acquired by Customer for beta, evaluation,



testing, demonstration purposes or other circumstances for which Cisco does not receive a payment of a purchase price or license fee.

- e. Unless otherwise specified in writing by Cisco, the limited warranties referenced in this Section 8 do not apply to any non-Cisco Branded Software or Hardware that may be offered for sale on the Price List in the name of a third party. Non-Cisco Branded Hardware and Software are warranted solely by the applicable manufacturer or licensor. Cisco will pass through, to the extent permitted, the manufacturer's and/or licensor's warranties and Customer shall look solely to such manufacturer and/or licensor for warranty claims.
- f. **DISCLAIMER OF WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, CISCO HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, OR SYSTEM INTEGRATION, OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD.

9. CONFIDENTIALITY

- a. Customer and Cisco acknowledge that they may each obtain Confidential Information in connection with these Terms of Sale and their relationship. The receiving party shall at all times keep in trust and confidence all such Confidential Information, and may use such Confidential Information solely for the purpose of furtherance of the business relationship between the parties as provided in these Terms of Sale.
- b. Notwithstanding the above, Cisco shall be authorized to disclose Customer's Confidential Information to contractors or employees of a Cisco entity who have a legitimate business need to have access to such information.
- c. Upon termination or expiration of these Terms of Sale (for any reason and at any time), the receiving party shall if so requested, immediately cease use of and return to the disclosing party or destroy all Confidential Information (including all copies thereof) in the receiving party's possession, custody, or control, provided that the receiving party may keep archival copies for regulatory purposes and to enforce its rights and subject to the obligations of confidentiality herein.
- d. This Section 9 shall not apply to information which: (i) has entered the public domain except where such entry is the result of the receiving party's breach of these Terms of Sale; (ii) was rightfully in the receiving party's possession prior to disclosure under these Terms of Sale; or (iii) is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party.
- e. The receiving party will be authorized to disclose Confidential Information as may be required by applicable law pursuant to a valid order issued by a court or government agency or relevant regulatory authority (including a stock exchange), provided that the receiving party provides: (i) prior written notice to the disclosing party of such obligation; and (ii) the opportunity to oppose such disclosure.



- f. Nothing in these Terms of Sale will prohibit either party from developing or having developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that such party does not violate any of its obligations under these Terms of Sale in connection with such development. In addition, either party shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein, provided such Confidential Information is not expressly incorporated in a tangible form provided by the disclosing party.
- g. Neither party shall disclose the terms and conditions of these Terms of Sale without the prior written consent of the other party. Any press release or publication regarding these Terms of Sale is subject to both the prior review and the written approval of both parties.

10. PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT INDEMNIFICATION

- a. Cisco will defend any claim against Customer that a Cisco-Branded Product or Cisco-Branded Service provided under these Terms of Sale infringes third party patents, copyrights or registered trademarks (the "Claim") and will indemnify Customer against the final judgment entered by a court of competent jurisdiction or any settlements arising out of a Claim.
- b. Customer shall:
 - i. promptly notify Cisco in writing of the Claim (or threat thereof), and any subsequent litigation updates; and
 - ii. cooperate with Cisco in the defense of the Claim (including any statements to third parties regarding the Claim), and grant Cisco full and exclusive control of the defense and settlement of the Claim and any subsequent appeal.

If Customer fails to notify Cisco promptly of the Claim, and that failure prejudices Cisco's ability to defend, settle or respond to the Claim, then Cisco's obligation to defend or indemnify Customer with respect to that Claim will be reduced to the extent Cisco has been prejudiced. In addition, such failure to provide prompt notification shall relieve Cisco of any obligation to reimburse for Customer attorneys' fees incurred prior to notification.

- c. If a Claim is made or appears likely, Customer agrees to permit Cisco to procure for Customer the right to continue using the Cisco-Branded Product and/or Cisco-Branded Service, or to replace or modify the Cisco-Branded Product and/or Cisco-Branded Service with one that is at least functionally equivalent. If Cisco determines that none of those alternatives is reasonably available, then Customer will return the Cisco-Branded Product and Cisco will refund Customer's remaining net book value of the Cisco-Branded Product calculated according to generally accepted accounting principles, or in the case of a claim alleging infringement by a Cisco-Branded Service, Cisco will terminate the infringing Service and refund to Customer a pro rata portion of the price originally paid by Customer for such Cisco-Branded Service for the remainder of the unexpired term.
- d. Cisco has no obligation for any Claim based on:
 - i. compliance with any designs, specifications, requirements or instructions provided by Customer or a third party on Customer's behalf;



- ii. modification of a Cisco-Branded Product or Cisco-Branded Service by Customer or a third party;
 - iii. the amount or duration of use made of the Cisco-Branded Product or Cisco-Branded Service, revenue earned through use of the Cisco-Branded Product or Cisco-Branded Service, or services offered through use of the Cisco-Branded Product or Cisco-Branded Service; or
 - iv. combination, operation or use of a Cisco-Branded Product or Cisco-Branded Service with non-Cisco products, software, services or business processes.
- e. This Section states Cisco's entire obligation and Customer's exclusive remedy regarding any claims for intellectual property infringement.

11. TERM AND TERMINATION

- a. These Terms of Sale shall commence on the Effective Date and continue thereafter for a period of one year, unless sooner terminated, as set forth below. These Terms of Sale shall be automatically renewed thereafter, for successive one (1) year periods, unless at least forty-five (45) days prior to the date of any such renewal, either party shall have given written notice to the other of its intention that these Terms of Sale not be renewed. These Terms of Sale shall automatically terminate at the end of the annual period during which such notice is given.
- b. Either party may terminate these Terms of Sale at any time by providing the other party with at least forty-five (45) days' prior written notice of termination.
- c. A party may terminate these Terms of Sale immediately by written notice if (i) the other party ceases or threatens to cease to carry on business as a going concern; or (ii) the other party becomes or is reasonably likely to become subject to voluntary or involuntary proceedings in bankruptcy or liquidation; or (iii) a receiver or similar officer is appointed with respect to the whole or a substantial part of the other party's assets; or (iv) an event similar to any of the foregoing occurs under any applicable law.
- d. If a party breaches any of the provisions of these Terms of Sale, the non-breaching party may terminate these Terms of Sale as follows: (i) immediately upon providing written notice to the breaching party if the breach is not capable of being cured, and (ii) thirty (30) days after providing written notice to the breaching party if the breaching party fails to cure such breach within such thirty (30) day period.
- e. Cisco may terminate these Terms of Sale upon twenty (20) days' written notice in the event it becomes known that (i) Customer or an Affiliate or Customer's direct or indirect parent has acquired or intends to acquire a controlling interest in a third party, or (ii) Customer or its direct or indirect parent is to be acquired by a third party, or (iii) a controlling interest in Customer or its direct or indirect parent is to be transferred to a third party.
- f. Cisco may terminate these Terms of Sale immediately upon written notice in the event that Customer is in breach of Sections 7 (Proprietary Rights and Software Licensing), Section 9 (Confidentiality), or Section 14 (Export, Re-Export, Transfer & Use Controls), or Section 15 (Compliance with Laws, Including Anti-Corruption Laws).
- g. Upon termination or expiration of these Terms of Sale, (a) Cisco reserves the right to cease all further delivery of Product or Services, (b) all outstanding invoices immediately become due and payable by certified or cashier's check, and (c) all rights and licenses of Customer under these Terms of Sale shall terminate, subject to the terms of the last sentence of this paragraph. If



Cisco agrees to complete delivery of any further Products or Services due against any existing Purchase Orders then Customer shall pay for such Products or Services in advance by certified or cashier's check. Except for a termination of these Terms of Sale resulting from Customer's breach of Section 7 (Proprietary Rights and Software Licensing), Section 9 (Confidentiality), or Section 14 (Export, Re-Export, Transfer & Use Controls), upon termination or expiration of these Terms of Sale, Customer may continue to use, in accordance with these Terms of Sale, Products provided to it by Cisco prior to the date of termination or expiration.

- h. Upon termination or expiration of these Terms of Sale, Customer shall immediately return to Cisco all Confidential Information (including all copies thereof) then in Customer's possession, custody or control; provided, that except for a termination resulting from Customer's breach of Section 7 (Proprietary Rights and Software Licensing), or Section 14 (Export, Re-Export, Transfer & Use Controls), Customer may retain a sufficient amount of such Confidential Information and material to operate its installed base of Products.
- i. In the event that, following the expiration or termination of these Terms of Sale, Customer places Purchase Orders and Cisco accepts such Purchase Orders, then any such Purchase Orders shall be governed by these Terms of Sale notwithstanding the earlier expiration or termination of these Terms of Sale; provided, however, that acceptance by Cisco of any such Purchase Order will not be considered to be an extension of the term of these Terms of Sale nor a renewal thereof.

12. SERVICES

- a. Customer may place Purchase Orders for the various Services offered by Cisco. Such Services, if accepted by Cisco, shall be subject to these Terms of Sale, as well as the additional terms and conditions set forth in Cisco's then-current applicable Service descriptions that describe the deliverables and other terms applicable to such Services unless an Existing Agreement is in effect in which case the terms of the Existing Agreement shall govern any such Services. Copies of Cisco's Services descriptions may be found at www.cisco.com/go/servicedescriptions/. Cisco reserves the right to subcontract Services to a third party maintenance organization to provide Services to Customer.

13. RECORDS

- a. Customer shall keep full, true, and accurate records and accounts, in accordance with generally-accepted accounting principles, of each Product, Service and Software license purchased, resold, and/or deployed, including information regarding Software usage and export or transfer. Customer shall make such records available for review by or on behalf of Cisco upon fifteen (15) days' prior written notice, during regular business hours, at Customer's principal place of business and shall provide Cisco with reasonable assistance in order to review and secure copies of such records. In the event such review discloses non-compliance with these Terms of Sale, Customer shall promptly pay to Cisco the appropriate license fees, plus the reasonable cost of conducting the review.
- b. Inventory Review. From time-to-time Cisco may perform an inventory review of Customer's installed base of Products and review serial numbers and other records (upon reasonable advance notice) to validate Service entitlement. Cisco will charge a Service fee if it finds that Services are being provided beyond that for which Customer has paid Cisco. This Service fee includes amounts which should have been paid, interest, attorneys' fees, if any, and audit fees. Cisco requires that Customer take all necessary action (for example, disabling passwords) to ensure that any former employees or contractors do not access or use the Services.



14. EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS

Cisco products, technology and Services are subject to U.S. and local export control laws and regulations. The parties shall comply with such laws and regulations governing use, export, re-export and transfer of Products and technology and shall obtain all required U.S. and local authorizations, permits or licenses.

15. COMPLIANCE WITH LAWS, INCLUDING ANTI-CORRUPTION LAWS

- a. Cisco Systems expects and requires that all of its suppliers, subcontractors, channel partners, consultants, agents and other parties with whom Cisco does business (“**Cisco Partners**”), act at all times in a professional and ethical manner in carrying out their services and contractual obligations to Cisco, or on Cisco’s behalf to a Cisco customer or other third party. To that end, all Cisco Partners shall:
- i. Comply with all country, federal, state and local laws, ordinances, codes, regulations, rules, policies and procedures, including, but not limited to, anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act (“**Applicable Laws**”). Cisco Partners can find more information about the FCPA at the following URL: <http://www.usdoj.gov/criminal/fraud/fcpa/>, or by contacting publicsectorcompliance@cisco.com;
 - ii. Not take any action or permit the taking of any action by a supplier or third party which may render Cisco liable for a violation of Applicable Laws, including the FCPA;
 - iii. Not use any money or other consideration paid by Cisco for any unlawful purposes, including any purposes violating the FCPA or other Applicable Laws, such as direct or indirect payments, for the purpose of assisting Cisco in obtaining or retaining business, to any of the following:
 1. Government officials (including any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or of any public international organization, such as the United Nations or World Bank, or any person acting in any official capacity for or on behalf of such government, public enterprise or state-owned business);
 2. Political parties or party officials;
 3. Candidates for political office; or
 4. Any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any of the above-identified persons or organizations.
 - iv. Upon request, Cisco’s Partners may be required to have their own subcontractors, consultants, agents or representatives execute a similar written anti-corruption compliance statement, and to confirm to Cisco that such action has been taken;
 - v. The record-keeping, audit and other related terms and obligations, as set forth in Partners’ agreement(s) with Cisco, shall equally apply to their compliance with this policy;
 - vi. In no event shall Cisco be obligated under any supplier or third party agreement to take any action or omit to take any action that Cisco believes, in good faith, would cause it to be in violation of the FCPA or other Applicable Laws;



- vii. Cisco retains the right to suspend or terminate any Cisco Partner agreement immediately upon written notice if Cisco believes, in good faith, that such Cisco Partner has breached any elements of this policy, or if the Partner makes a false or fraudulent statement, representation or warranty while carrying out their contractual obligations;
- viii. Cisco's Partners shall immediately report to Cisco any concerns it may have regarding any business practices by any Cisco employee or Cisco Partner by emailing ethics@cisco.com, or by calling Cisco's Helpline toll free number in North America 1-877-571-1700 or worldwide number (reverse calling charges to Cisco) 001-770-776-5611.
- ix. Customer has read and agrees to act consistently with Cisco's Policy re: Compliance with Global Anticorruption Laws by Cisco's Partners", published at http://www.cisco.com/legal/anti_corruption.html (available in English and ten other languages), or by contacting publicsectorcompliance@cisco.com.
- x. Customer shall use its best efforts to regularly inform Cisco of any requirements under any Applicable Laws that directly or indirectly affect these Terms of Sale, the sale, use and distribution of Products or Services, or Cisco's trade name, trademarks or other commercial, industrial or intellectual property interests, including, but not limited to, certification or type approval of the Products from the proper authorities in the Territory;
- xi. Additionally, Customer shall comply, and notify end users of their obligations to comply, with all applicable Cisco published policies, including Software Transfer Policy, Used Equipment Policy, as published by Cisco and as amended from time to time. Customer shall promptly notify Cisco of any failure by any end user to comply with any of the foregoing policies that comes to Customer's attention.

16. LIMITATION AND EXCLUSION OF LIABILITY

- a. Nothing in these Terms of Sale limits or excludes the liability of:
 - i. Either party to the other for:
 - 1. bodily injury or death resulting directly from the negligence of the other party;
 - 2. fraud or fraudulent misrepresentation;
 - 3. a breach of Section 9 (Confidentiality); or
 - 4. any liability that cannot be limited or excluded under applicable law.
 - ii. Customer to Cisco arising out of:
 - 1. Customer's breach of Section 7 (Proprietary Rights and Software Licensing);
 - 2. Customer's breach of Cisco's EULA; or
 - 3. Failure to pay any amounts due to Cisco under these Terms of Sale.
- b. Subject to Section 16a above and Section 16c below, each party's total aggregate liability is limited to the money paid to Cisco under these Terms of Sale during the twelve (12) month period prior to the event that first gave rise to such liability.



- c. Subject to Section 16a above, and notwithstanding anything else in these Terms of Sale 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;
 - iii. lost or damaged data; or
 - iv. wasted expenditure (other than any expenditure necessarily incurred to discharge the innocent party's duty or to mitigate its losses).

This limitation of liability applies whether the claims are contract, tort (including negligence), misrepresentation or otherwise. This limitation of liability is in the aggregate and not per incident.

- d. Except for Customer's breach of Cisco's intellectual or proprietary rights, neither party may bring a claim under these Terms of Sale more than 24 months after the event that creates the action or claim.
- e. References in this Section 16 to (a) a "**party**" includes a party's affiliates, officers, directors, employees, agents and suppliers and (b) "**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. In Section c, references to "**loss**" refers to any and all kinds of loss or damage including, without limitation, any damages, fines, costs, charges, fees or other liability.

17. GENERAL

- a. Choice of Law. The validity, interpretation, and performance of these Terms of Sale shall be governed by and construed under the laws of the Province of Ontario, as if performed wholly within the province and without giving effect to the principles of conflicts of law.

The courts of the Province of Ontario shall have exclusive jurisdiction over any claim arising thereunder, provided that either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.

The parties agree that the UN Convention on Contracts for the International Sale of Goods shall not apply to the interpretation or enforcement of these Terms of Sale.

- b. Dispute Resolution. Cisco and Customer agree that any conflict, dispute, controversy, or claim arising out of or relating to these Terms of Sale or the relationship created by these Terms of Sale, including questions of arbitrability, whether sounding in tort or contract (together or individually a "**Dispute**"), shall be finally resolved in accordance with the following process:
- i. Escalation of Disputes. Subject to Section x below, the parties agree to attempt to resolve each Dispute by first escalating the Dispute to their respective business managers. Within fourteen (14) calendar days of written notice of a Dispute, the business managers will meet in person or by phone and work in good faith to resolve the Dispute.
 - ii. Mandatory, Non-Binding Mediation. Subject to Section x below, if the parties are unable to resolve the Dispute in accordance with Section i above, either party may initiate a mandatory, non-binding mediation in accordance with the London Court of International



Arbitration (“**LCIA**”) Mediation Procedure then in effect. The LCIA Mediation Procedure is hereby incorporated by reference into this clause.

- iii. The parties shall share all fees and costs of the mediation proceedings.
 - iv. All communications made during the course of the mediation by either of the parties or the mediator are intended to be confidential and privileged to the extent permitted by law.
 - v. Binding Arbitration. SUBJECT TO SECTION x BELOW, IF THE PARTIES ARE UNABLE TO RESOLVE THE DISPUTE THROUGH THE MEDIATION PROCESS WITHIN SIXTY (60) CALENDAR DAYS OF THE APPOINTMENT OF THE MEDIATOR, OR SUCH FURTHER PERIOD AS THE PARTIES SHALL AGREE TO IN WRITING, THE DISPUTE SHALL BE REFERRED TO AND FINALLY RESOLVED BY BINDING ARBITRATION UNDER THE LCIA ARBITRATION RULES THEN IN EFFECT, WHICH ARE HEREBY INCORPORATED BY REFERENCE INTO THIS CLAUSE.
 - vi. The arbitration tribunal shall consist of a sole arbitrator, selected in accordance with the LCIA arbitration rules. The arbitrator shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an adequate opportunity to discover relevant information regarding the subject matter of the Dispute.
 - vii. Cisco shall pay all fees and costs of the arbitration proceedings. After the arbitrator issues the written award, however, the prevailing party may apply to the arbitrator for recovery of all reasonable costs and expenses associated with the arbitration, including, but not limited to, the fees of the arbitrator, administrative fees, and reasonable attorneys’ fees. Such costs and expenses will be awarded at the arbitrator’s discretion.
 - viii. Notwithstanding anything to the contrary, the arbitrator shall exceed his or her powers if the arbitrator awards damages inconsistent with the provisions set forth in Section 16 of these Terms of Sale. The parties irrevocably waive the award of any such damages.
 - ix. The language to be used in the arbitration shall be English.
 - x. Preliminary Relief. At any point after a Dispute has arisen, in the event interim or provisional relief is necessary to protect the rights or property of a party under Section 9 of these Terms of Sale or otherwise prior to the resolution of the Dispute, either party may, without waiving any process or remedy under these Terms of Sale, seek such relief from any court of competent jurisdiction.
- c. Force Majeure. Neither party shall be liable for any delay or failure in non-monetary performance obligations due to a Force Majeure Event. The time for performance of the obligations and rights of the defaulting party shall be extended for a period equal to the duration of the Force Majeure Event.
 - d. No Waiver. The waiver by either party of any right provided under these Terms of Sale shall not constitute a subsequent or continuing waiver of such right or of any other right under these Terms of Sale.
 - e. Assignment. Neither these Terms of Sale nor any right or obligation under these Terms of Sale shall be assigned by a party without the other’s prior written consent, which will not be unreasonably withheld or delayed. Any attempted assignment shall be void and of no effect. Notwithstanding the foregoing, the parties may assign these Terms of Sale and any right or obligation under it without the other’s approval, to any Affiliate. Notwithstanding any assignment



by Customer, Customer shall remain liable for the payment of all amounts due under these Terms of Sale.

- f. Severability. If one or more terms of these Terms of Sale become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from these Terms of Sale. All remaining terms of these Terms of Sale shall remain in full force and effect. However, if this paragraph is invoked and, as a result, the value of these Terms of Sale is materially impaired for either party, then the affected party may terminate these Terms of Sale by written notice with immediate effect.
- g. Attorneys' Fees. In any suit or proceeding relating to these Terms of Sale the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of these Terms of Sale, and shall survive expiration or termination and shall not be merged into any such judgment.
- h. No Agency. These Terms of Sale do not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of these Terms of Sale. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
- i. Entire Agreement. These Terms of Sale constitute the complete agreement between the parties concerning the subject matter of these Terms of Sale and replace any prior oral or written communications between the parties except as agreed in writing between the parties. There are no conditions, understandings, agreements, representations or warranties, expressed or implied. These Terms of Sale may only be modified by a written document executed by both parties.
- j. Future Products and Services. For any Products and Services included in the Price List, including Products and Services which become or have become Cisco Products or Services as a result of an acquisition by Cisco of another entity, Cisco may stipulate certification, installation, or training requirements for Customer prior to allowing Customer (if Customer is a certified Cisco reseller) to purchase such Products and Services for resale, and may require on-going fulfillment of some or all of the requirements to retain the right to purchase, license, resell or support such Products and Services. Cisco reserves the right, during the term of these Terms of Sale, to license and distribute additional items of Software. Such items of Software may be licensed under additional or different license terms which will be made available to Customer at the time such items of Software are ordered by or provided to Customer.
- k. Notices. All notices required or permitted under these Terms of Sale shall be in writing. Notices will be deemed to have been given (i) one day after deposit with a commercial express courier specifying next day delivery; or (ii) two days for international courier packages specifying two-day delivery), with written verification of receipt.

All communications shall be sent to the parties' addresses shown on the first page of these Terms of Sale or to such other address as may be designated from time to time by a party by giving at least 14 days' written notice to the other party.

Notwithstanding the above, notices from Cisco regarding general changes in pricing, Services, policies or programs may also be by posting on Cisco.com (or any other website used by Cisco) or by e-mail or fax.



- l. Survival. The following sections shall survive the expiration or earlier termination of these Terms of Sale: Sections 1 (Definitions) 2 (Scope), 6 (Payment), 7 (Proprietary Rights and Software Licensing), 8 (Limited Warranty), 9 (Confidentiality), 10 (Patent, Copyright and Trademark Infringement Indemnification), 11 (Term and Termination), 13 (Records), 14 (Export, Re-Export, Transfer and Use Controls), 16 (Limitation and Exclusion of Liability), 17 (General), and the license to use the Software in the EULA subject to the termination provisions set forth in Section 11 (Term and Termination) of these Terms of Sale).
- m. Counterparts. These Terms of Sale may be executed in two counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "**Counterpart Image**") shall be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. If a party delivers a Counterpart Image in place of an originally-executed counterpart, such party shall retain the originally-executed counterpart in its files for at least the duration of these Terms of Sale.