



## END USER CISCO BRAND SERVICES (CBS) RESALE SERVICE AGREEMENT

This Agreement sets forth the terms and conditions that apply to Cisco Brand Services provided by Cisco Systems, Inc., or one of its affiliated companies (listed below) to an end user customer (“Customer”) when both (i) and (ii) below exist:

- (i) Customer has purchased Cisco Brand Services directly from an authorized Cisco reseller; and
- (ii) Customer’s agreement with the authorized Cisco channel partner (from whom Customer purchased the Cisco Brand Services) includes a statement that is substantially similar to the following statement:

*“Cisco will provide the Cisco Brand Services directly to End User Customer subject to the terms of the Cisco End User Support Agreement at the following URL: <https://www.cisco.com/c/en/us/about/legal/cbr.html>. By placing an order for services with [name of the Cisco channel partner], End User Customer accepts all terms at the <http://www.cisco.com/c/en/us/about/legal/cbr.html>, except that [name of the Cisco channel partner] will invoice End User Customer for the charges for the services upon ordering of the related equipment or upon ordering a renewal of the services.”*

Cisco, as used herein, means Cisco Systems, Inc. (for U.S. and Latin America); Cisco Systems Canada Co. (for Canada); Cisco Systems International B.V. (for Croatia, Libya, the Netherlands, Republic of Korea, the Russian Federation, Saudi Arabia (KSA), Singapore, or United Arab Emirates (UAE)); Cisco International Limited (for Israel, the Asia Pacific region (excluding Australia, China, India, Republic of Korea, and Japan), or the Middle East (excluding Saudi Arabia (KSA) and United Arab Emirates (UAE)), Africa (excluding Libya), Central and Eastern Europe (excluding Croatia, the Netherlands, the Russian Federation, and the member states of the European Economic Area)); Cisco Systems (Italy) S.r.l (for Italy), Cisco Systems Services B.V. (for India); Cisco Systems K.K. (for Japan); Cisco Systems Australia Pty Ltd ABN 52 050 332 940 (for Australia); or Cisco Systems (China) Information Technology Services Limited (for China).

### 2. Incorporated Terms.

This Agreement expressly incorporates the following documents posted at <http://www.cisco.com/go/servicesdescriptions>: The Service Description(s) (only those listed as available for resale), “Glossary of Terms”, “End User Obligations”, “Severity and Escalation Guidelines”, and the “List of Services Not Covered”.

**For purposes of this Agreement only**, the following language, posted at <http://www.cisco.com/go/servicesdescriptions>, which reads:

**“Purchase through Cisco-Authorized Channel**

If you purchase services through a Cisco-authorized reseller or distributor, the corresponding Service Descriptions are posted here for informational purposes only and do not create any contract between Cisco and you. The contract, if any, governing the provision of the services will be the one between you and your reseller, who should provide the applicable Service Description to you at the time of sale.”

is hereby deleted per this Agreement. As noted above, the Service Descriptions and other related documents at the above-cited URL are incorporated into this Agreement. Also, each Service Description should be read on the basis that you have a direct services agreement with Cisco.

3. Cisco will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid to Cisco by the Cisco authorized reseller, (ii) a valid Software license has been granted and (iii) Customer provides information requested by Cisco, such as valid serial numbers, site location, contract number, and Product type.

If Customer is unable to provide valid and applicable serial number(s) for Product and Cisco agrees to provide Services, then Service fees payable by Customer shall be at Cisco's then-current time and materials or non-contract service rates.

Authorized Channels are free to determine their resale prices unilaterally. Customer understands that no employee or representative of Cisco or anyone else has any authority to determine such resale prices, or to limit the Authorized Channels' pricing discretion with respect to Services.

#### **4. Term and Termination.**

This Agreement become effective (Effective Date) when Customer places a purchase order with a Cisco-authorized reseller for the CBR services. Subject to the "Survival" section below, this Agreement shall thereafter remain effective for the term of the CBR services contract (including any SOW-based Advanced Services) that Customer has purchased from the authorized Cisco reseller. This Agreement and any Equipment List or SOW may be terminated immediately by either party upon written notice:

- (i) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching party if the breaching party fails to cure such breach within such period.
- (i) if: (a) the other party ceases to carry on business as a going concern; or (b) the other party becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation; or (c) a receiver or similar officer is appointed with respect to the whole or a substantial part of the other party's assets; or (d) an event similar to any of the foregoing occurs under applicable law with respect to the other party.
- (ii) if the other party assigns or transfers any of the rights or responsibilities granted under this Agreement or any Equipment List or SOW in breach of the "Assignment" Section 13.

If Cisco has not been timely paid by the authorized reseller for the Services, Cisco reserves the right to withhold the provision of Services to Customer until all amounts past due are paid in full, and/or terminate immediately this Agreement, any Equipment List (or portion thereof), SOW or combination thereof.

Each Equipment List and SOW hereunder shall terminate immediately upon termination of the Agreement, unless otherwise agreed by Cisco.

**5. Confidentiality.** Customer and Cisco agree that in connection with this Agreement and their relationship, they may obtain Confidential Information. The receiving party shall at all times keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. 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. The receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration at any time and for any reason of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was

already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder 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. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, 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.

## **6. Warranty.**

a. ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, 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, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY.

b. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT CISCO'S OPTION, REPERFORMANCE OF THE SERVICES; OR TERMINATION OF THIS AGREEMENT OR THE APPLICABLE EQUIPMENT LIST OR SOW AND RETURN OF THE PORTION OF THE SERVICE FEES PAID TO CISCO BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES.

## **7. Limitation of Liability and Consequential Damages Waiver.**

a. TO THE EXTENT REQUIRED UNDER LOCAL LAW, NOTHING IN THIS AGREEMENT SHALL LIMIT: (I) CISCO'S, ITS AFFILIATES', OFFICERS', DIRECTORS', EMPLOYEES', AGENTS' AND SUPPLIERS' COLLECTIVE LIABILITY TO CUSTOMER FOR BODILY INJURY OR DEATH CAUSED BY THEIR NEGLIGENCE, OR (II) CISCO'S LIABILITY FOR FRAUDULENT MISREPRESENTATION OR IN THE TORT OF DECEIT.

b. ALL LIABILITY OF CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER ARISING SHALL BE LIMITED TO THE GREATER OF (I) THE MONEY PAID TO CISCO FOR THE SERVICES PROVIDED UNDER THIS AGREEMENT DURING THE TWELVE MONTH (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY OR (II) ONE HUNDRED THOUSAND (\$100,000) U.S. DOLLARS. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

c. IN THE CASE OF TRANSACTIONAL ADVANCED SERVICES PERFORMED UNDER A SOW, THE LIABILITY OF CISCO SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO CISCO PURSUANT TO THE RELEVANT SOW DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY.

d. SUBJECT TO CUSTOMER'S BREACH OF SECTION 8 (LICENSE), IN NO EVENT SHALL EITHER PARTY, ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

## 8. License.

a. Cisco grants to Customer a nonexclusive and non-transferable license to use only for Customer's internal business use (i) Software provided as a result of Services (ii) the Deliverables specified in each SOW (in object code form if Software) and (iii) Data Collection Tools, if any. This license grant does not include the right to sublicense. This license shall be governed by (i) the terms and conditions attached to the Software or, in the absence of such terms, by the End User License Agreement posted at [www.cisco.com/go/warranty](http://www.cisco.com/go/warranty) and (ii) this Agreement.

b. Customer agrees that it is licensed to use Software: (1) only on Hardware covered under this Agreement; or (2) in the case of Application Software, on third party hardware (except as otherwise authorized in the Software documentation); or (3) in the case of Data Collection Tools, in object code form only, on the Data Collection Tool on which such Software is provided.

c. This license is perpetual, provided Customer is not otherwise in breach of this license. Notwithstanding the above, for Data Collection Tools the license is valid until the earlier of: (i) the expiration or termination of the Service under which the Data Collection Tool was provided; or (ii) Cisco's request to Customer that the Data Collection Tool(s) be returned to Cisco.

d. Except as expressly authorized, Customer shall not (and shall not 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 otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Software, Deliverable or Data Collection Tool which is software to human-readable form; or transfer, sublicense, rent, lease, distribute, sell, or create derivative works of any Deliverables. There are no implied licenses and all rights not expressly granted herein are reserved to Cisco.

When Customer updates or upgrades a copy of Software to a new release, Customer shall not use (except for a limited period of parallel testing) the new Software release and the corresponding copy of the previous Software release concurrently. Under no circumstances shall the previous release be reused or transferred to any other device(s).

## 9. Ownership.

a. Cisco shall at all times retain all right, title and interest in and to all pre-existing Intellectual Property owned by Cisco as of the Effective Date and all Intellectual Property in and to the Services, Cisco Products, Deliverables and Data Collection Tools or other Intellectual Property provided or developed by Cisco or a third party on Cisco's behalf thereafter.

b. Customer shall at all times retain all right, title and interest in and to all pre-existing Intellectual Property owned by Customer as of the Effective Date and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter without the benefit of any of Cisco's Intellectual Property. Third Party Products shall at all times be owned by the applicable third party.

**10. Force Majeure.** Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, industry wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

## 11. Applicable law and Jurisdiction.

a. The validity, interpretation, and performance of this Agreement shall be controlled by and construed as follows:

- (1) **For reseller orders accepted by Cisco Systems Inc.** the laws of: (a) the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the state and federal courts of California shall have exclusive jurisdiction over any claim arising under this Agreement.
- (2) **For reseller orders accepted by Cisco Systems Canada Co.:** the laws of the Province of Ontario and the federal laws of Canada applicable therein, as if performed wholly within the province and without giving effect to the principles of conflicts of law, and the courts of the Province of Ontario shall have exclusive jurisdiction over any claim arising under this Agreement.
- (3) **For reseller orders accepted by Cisco Systems International B.V., Cisco Systems Services B.V., Cisco International Limited, or Cisco Systems (Italy) S.r.l.:** England and the English Courts shall have exclusive jurisdiction over any claim arising under this Agreement.
- (4) **For reseller orders accepted by Cisco Systems K.K.:** Japan and the Tokyo District Court shall have exclusive jurisdiction over any claim arising under this Agreement.
- (5) **For reseller orders accepted by Cisco System Australia Pty Ltd.:** the State of New South Wales, Australia, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the State and Federal Courts of New South Wales shall have exclusive jurisdiction over any claim arising under this Agreement.
- (6) **For reseller orders accepted by Cisco Systems (China) Information Technology Services Limited:** the People's Republic of China; provided, however, that to the extent that the laws of the People's Republic of China do not stipulate, relevant international practice and customs shall apply, and any claim arising under this Agreement shall be submitted to the Hong Kong International Arbitration Centre ("HKIAC") for final and binding arbitration in Hong Kong upon the request of either party with a notice to the other party.

For any arbitration under the above paragraph (6), the following terms shall apply. There shall be a sole arbitrator appointed in accordance with the then-prevailing rules of the HKIAC. If the parties fail to agree on the choice of sole arbitrator within twenty (20) days from the date on which the respondent receives the notice of arbitration, the HKIAC shall make the appointment. The arbitrator will be bound by this Agreement and shall be made aware of it prior to his appointment. The arbitrator shall have no power or authority to make or issue any award that provides for punitive or exemplary damages. The arbitration proceedings shall be conducted in English and in accordance with the rules of the HKIAC. However, if any rules are in conflict with the provisions of this section, including the provisions concerning the appointment of arbitrators, the provisions of this section shall prevail. Upon rendering a decision, the arbitrator shall state in writing the basis for the decision. The arbitrator's decision shall be final and binding upon the parties. Application may be made by a party to a court of competent jurisdiction for the recognition and enforcement of an arbitral award rendered by an arbitration tribunal pursuant to this section. The costs of arbitration and attorneys' fees and disbursements shall be borne by the losing party, unless otherwise determined by the arbitration award. Except for the matters under dispute, the parties shall each continue to fulfill their respective obligations (and shall be entitled to exercise their rights) under this Agreement.

b. Notwithstanding the foregoing section 11(a), either party shall at all times have the right to commence proceedings in any other court of its choice for interim injunctive relief in the event of threatened or actual breach of Intellectual Property rights or provisions regarding protection and nondisclosure of Confidential Information.

c. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

**12. Export Control.** Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of Cisco Products and technology and will obtain all required U.S. and local authorizations, permits, or licenses. Information regarding compliance with U.S. use, export, re-export, and transfer laws may be found at:

[http://www.cisco.com/web/about/doing\\_business/legal/global\\_export\\_trade/general\\_export/contract\\_compliance.html](http://www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export/contract_compliance.html)

**13. Assignment.**

Neither party may assign or delegate its rights or obligations under this Agreement without the prior written consent of the other, and such consent will not to be unreasonably withheld or delayed, provided that any such assignment shall not relieve the assigning entity of any obligation to pay monies that were owed prior to the date of the assignment.

Notwithstanding the foregoing, (i) either party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to its parent or majority-owned subsidiary company of sufficient net worth to meet any potential liability under this Agreement, and Cisco may, without Customer's consent, assign this Agreement or all or any portion of its rights and obligations hereunder, to any Cisco Affiliate.

**14. Subcontracting.** Cisco reserves the right to subcontract Services to a third party organization to provide Services to Customer. Any such subcontract shall not relieve Cisco of any of its obligations under this Agreement.

**15. Inventory Review.** From time-to-time Cisco may perform an inventory review of Customer's installed base and review serial numbers and other records (upon reasonable advance notice) to validate entitlement. Cisco will charge a Service fee if it finds that unauthorized Services are being provided. This Service fee includes amounts which should have been paid, interest, attorneys' and audit fees. Cisco requires that Customer take all necessary action (for example, disabling passwords) to ensure that any former employees and contractors do not access or use the Service

**16. Notices.** Cisco's Notice obligations under this Agreement are predicated on Customer advising Cisco who, on behalf of Customer, should be the point of contact for such notice. Customer should notify Cisco of its designated point of contact for notice at the commencement of the Services. *For Cisco, all Notices shall be sent to General Counsel, Cisco Systems, Inc., 300 East Tasman Drive, San Jose, California, 95134.* All notices required or permitted under this Agreement will be in writing and will be deemed given one day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. Notwithstanding the above, notices regarding general changes in pricing, policies or programs may also be by posting on [Cisco.com](http://Cisco.com) or by e-mail or fax.

**17. Entire Agreement.** This Agreement, including all documents referenced as incorporated herein, is the complete agreement concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein.

**18. No Waiver.** The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.

**19. Severability.** In the event that one or more terms of this Agreement becomes or is declared to



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be illegal or otherwise unenforceable by any court of competent jurisdiction, each such term shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of this Agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this Agreement by written notice with immediate effect to the other.

**20. Attorneys' Fees.** In any suit or proceeding relating to this Agreement 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 this Agreement, and shall survive expiration or termination and shall not be merged into any such judgment.

**21. No Agency.** This Agreement does 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 this Agreement. 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.

**22. Survival.** The following terms shall survive the termination or expiration of this Agreement: 4 (Term and Termination), 5 (Confidentiality), 6 (Warranty), 7 (Limitation of Liability and Consequential Damages Waiver), 8 (License), 9 (Ownership), 10 (Force Majeure), 11 (Applicable Law and Jurisdiction), 12 (Export Control), 15 (Inventory Review), 16 (Notices), 17 (Entire Agreement), 18 (No Waiver), 19 (Severability), 20 (Attorneys' Fees), 21 (No Agency), 22 (Survival), the Glossary of Terms and the Services-Not-Covered Documents posted at [www.cisco.com/go/servicedescriptions](http://www.cisco.com/go/servicedescriptions).

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