

1. Applicability

Unless otherwise agreed in writing, the following terms and conditions ("**Agreement**") shall apply to the purchase, sale and licensing of all Infinera Deliverables to Buyer.

2. Definitions

"**Business Hours**" means Monday through Friday (excluding public and bank holidays) during the normal business hours of the Infinera facility providing Support. "**Deliverables**" means, collectively, Products and Services. "**Documentation**" means the user instructions related to a Product. "**Force Majeure**" means causes outside the reasonable control of a Party that cannot be avoided by the exercise of reasonable care, including but not limited to: (a) governmental actions, orders, legislation, regulations, restrictions or rationing; (b) riots, civil disturbances or disobedience, epidemic, quarantine, acts of terrorism or war; (c) strikes, lockouts or shutdowns; (d) shortages of labor or supplies, interruption or lack of transportation, embargo or prohibition of imports or exports; or (e) fire, flood, hurricane, earthquake, storm, lightning, explosion, acts of god or of a public enemy. "**Hardware**" means that portion of a Product that is not Software and Documentation. "**Infinera**" means the Infinera entity that fulfills the Order. "**Infinera Affiliates**" means Infinera Corporation and any entity that is controlled by Infinera Corporation, where "**control**" means (a) the direct or indirect beneficial ownership of at least fifty percent (50%) of the votes in an entity, or (b) the ability to directly or indirectly (i) control the composition of an entity's board of directors or equivalent body or (ii) direct an entity's affairs. "**Network**" means: (a) the operation support system under the exclusive control of Buyer; and/or (b) the equipment infrastructure that Buyer uses to deliver its end-user services. "**Order**" means Buyer's written or electronic offer to purchase Deliverables. "**Party**" or "**Parties**" means, individually or collectively, Infinera and Buyer. "**Product(s)**" means those systems, associated system plug-ins, and other goods, including the Software and Documentation, Infinera sells and/or licenses to Buyer. "**Service(s)**" means any work that Infinera performs for Buyer, as stated in the Infinera proposal or agreement to which the Order refers. "**Shipment**" means delivery of the Product by Infinera to the carrier. "**Software**" means the Infinera standardized executable computer programs, system operating software, firmware and other digital instructions and control data associated with a Product, including any enhancements, modifications or parts thereof. "**Subcontractors**" means third parties Infinera may use to perform all or part of its obligations under this Agreement. "**Support**" means those Services pertaining to maintaining the Product. "**Support Fee**" means the annual fee that Buyer is obliged to pay in order to receive Support during each Support Term. "**Support Term**" means the period, as stated in the Infinera proposal or agreement to which the Order refers, during which Buyer is entitled to receive Support. "**Supported Product**" means a Product (or Product system, if applicable) for which Buyer purchases Support.

3. License Grant

Buyer agrees that any Software and Documentation supplied under this Agreement are an integral part of the Products, are supplied solely to enable the effective operation of the Products by the Buyer and are subject to the Infinera License Grant, attached hereto as Exhibit A.

4. Information

Any drawings, specifications, technical and other information supplied by Infinera shall: (a) be used solely for installing and maintaining Products; (b) not be used in a manner detrimental to Infinera's interests; (c) not be reproduced, used or disclosed to third parties without Infinera's prior written consent; and (d) remain Infinera's property.

5. Confidentiality

Software and Documentation contain confidential and proprietary information of Infinera or its licensors. Buyer shall receive and maintain the Software and Documentation and other Infinera confidential information (including this Agreement) in confidence and agrees to use at least the degree of care that it uses to protect its own proprietary information, but no less than reasonable care, to prevent the unauthorized use outside the scope of this Agreement, disclosure or publication of Infinera confidential information. Buyer's use of and access to the Software and Documentation will be strictly limited to its employees with a need to know who shall have contractually agreed to comply with confidentiality obligations no less stringent than those stated herein. Buyer's obligations under this Section 5 shall continue indefinitely for so long as such Software and Documentation continue to be a trade secret.

6. Limited Warranties; Disclaimer

6.1. Infinera warrants that the hardware will perform in accordance with the standard specifications for a period of 12 months from Acceptance, and the Software will perform in accordance with the standard specifications for 90 days from Acceptance.

6.2. Warranty does not extend to any Products damaged or modified by anyone other than Infinera or Infinera's authorized service agents, or to use of the Products other than in accordance with the operational manuals provided. Infinera shall have no obligation with respect to any data stored in Products returned for repair or replacement.

6.3. As its sole obligation and Buyer's exclusive remedy for any breach of warranty, Infinera shall, at its option, either: (i) repair the Products; or (ii) replace the Products; or (iii) refund the purchase price.

6.4. Buyer shall make a warranty claim by (i) immediately notifying Infinera in writing of the Product issue and furnishing an explanation; and (ii) returning the Product at its own risk and expense, in appropriate packaging and in compliance with Infinera's RMA procedures.

6.5. Tampering with, opening (except for the packaging), modification, reverse engineering, or de-compilation of the Products voids the warranty.

6.6. Any Services included on any Order shall be performed in accordance with Infinera's standard Services statements of work as available upon request.

6.7. THE WARRANTIES IN THIS AGREEMENT ARE THE BUYER'S SOLE REMEDY AND EXPRESSLY IN LIEU OF ALL OTHER CONDITIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OF NON-INFRINGEMENT AND ALL OTHER OBLIGATIONS AND LIABILITIES OF INFINERA OR ITS INFINERA AFFILIATES, EACH OF WHICH ARE HEREBY DISCLAIMED, WITH RESPECT TO ANY DEFECT OR DEFICIENCY APPLICABLE TO OR RESULTING DIRECTLY OR INDIRECTLY FROM, THE DELIVERABLES SUPPLIED HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE. DOCUMENTATION IS LICENSED "AS IS."

7. Limitation of Liability

IN NO EVENT SHALL INFINERA HAVE ANY LIABILITY TO BUYER UNDER OR IN CONNECTION WITH AN ORDER FOR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF ANTICIPATED SAVINGS, NETWORK DOWNTIME, COST OF CAPITAL, COST OF SUBSTITUTE FACILITIES OR EQUIPMENT, OR LOSS OR CORRUPTION OF DATA, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE LOSS OR DAMAGES, EVEN IF INFINERA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES OR CLAIMS MADE AGAINST THE BUYER FOR ANY SUCH LOSS OR DAMAGES.

INFINERA'S LIABILITY SHALL NOT EXCEED THE NET PURCHASE PRICE OR LICENSE FEE PAID FOR THE DELIVERABLE CAUSING THE DAMAGE, LOSS OR LIABILITY. THIS SECTION 7 SHALL ONLY BE LIMITED IF, AND TO THE EXTENT, REQUIRED BY APPLICABLE GOVERNING LAW.

8. Intellectual Property

8.1 Infinera shall defend Buyer from a third-party claim against Buyer asserting that a Product infringes a United States patent, copyright or trade secret ("Claim"), and Infinera shall pay any settlement made by Infinera, Buyer's reasonable and verifiable costs and expenses, and third-party damages finally awarded against Buyer, provided that: (a) Buyer promptly notifies Infinera in writing of the Claim; (b) Infinera has sole control of the defense and settlement; (c) Buyer reasonably cooperates in providing information and assistance; and (d) Buyer reasonably cooperates with any efforts that Infinera may undertake to replace or modify the Product to avoid infringement.

8.2 In addition, if Buyer is enjoined from using the Product by reason of such Claim or Infinera determines in its sole judgment that an injunction is likely, then provided Buyer meets Buyer's obligations (a)–(d) in Subsection 8.1 and absent any replacement or modification provided by Infinera to avoid infringement, Infinera may at its sole election: (a) obtain the rights necessary to permit continued use of such Product; or (b) terminate this Agreement, allow Buyer to return such Product for a refund of the amount paid for such Product less depreciation, and if Buyer fails to do so, Buyer will give Infinera access to Buyer's facilities during normal business hours to retake the Product.

8.3 Notwithstanding the above, Infinera is not obligated to the extent the Claim is based upon: (a) a modification made other than by Infinera; (b) Infinera's compliance with Buyer's designs, instructions or specifications; (c) combination of a Product with other equipment, materials or processes; (d) use of a Product not in accordance with the applicable Documentation; (e) use of a Product in violation of or otherwise outside the scope of this Agreement ((a)–(e) collectively "Claim exceptions"); or (f) a Product that is a third party-branded product generally available to Buyer in the open market but which Buyer instead procured through Infinera as a line-item offering by Infinera distinct from Infinera-branded Product. Buyer shall, in a commensurate manner, defend Infinera from any third-party claim based upon any Claim exceptions, and shall pay any settlement made by Buyer, Infinera's reasonable and verifiable costs and expenses, and any third-party damages finally awarded against Infinera.

8.4 This Section 8 states Infinera's sole obligations and Buyer's exclusive remedies with respect to any third-party claim based upon intellectual property rights.

9. Termination

The license granted in Section 3 ("License Grant") is effective for the life of the Hardware portion of the Product for which the Software and Documentation are delivered unless earlier terminated as provided in this Agreement or by Buyer in writing. This Agreement (including such license) will terminate immediately:

(a) upon any breach of Section 3 ("License Grant") or Subsection 15.5 (export compliance) or any incurable Buyer breach of this Agreement; (b) if Buyer fails to cure any curable breach within thirty (30) days after notice of such breach; or (c) as this Agreement otherwise provides. Immediately upon termination or Buyer's receipt of replacement Software and Documentation and other Infinera confidential information, Buyer shall immediately cease all use of, and return or certify destruction of, the Software and Documentation and other Infinera confidential information and all copies. Services may not be terminated in whole or in part without the prior written consent of Infinera. Upon termination, payment for all Deliverables provided up to the effective date of such termination will immediately become due and payable, despite any credit arrangements or facilities previously granted to Buyer. Infinera may also retain any security given or monies paid by Buyer and apply this against the assessed loss and damages incurred by Infinera in performance of this Agreement. Termination is not an exclusive remedy.

10. Pricing and Taxes

10.1. Prices for Deliverables shall be as stated in the then-current Infinera price list. Buyer shall pay the agreed Deliverables prices with no setoffs or deductions.

10.2. VAT AND SIMILAR. Prices defined are net of any sales, use and/or excise taxes, Value Added Tax (VAT), other transfer taxes, duties and surcharges that might be applicable and might be charged by Infinera to Buyer. Buyer shall pay these charges, if applicable and based on a proper invoice/document provided by Infinera.

10.3. TAXES SOURCES LEVIED WITH BUYER. If there are sales, use and/or excise taxes, Value Added Tax (VAT), other transfer taxes, customs fees, duties, surcharges, withholding taxes and/or taxes at source levied by any governmental authority (collectively "taxes") Buyer shall be liable for declaration and payment to the competent authority. These "taxes" (except withholding tax) shall not be deducted from the agreed net price(s). For avoidance of doubt, the net selling price will be grossed up by Buyer to the extent necessary so that Infinera receives the entire net selling price. The procedure of payment of withholding tax is specified below.

10.4. WITHHOLDING TAXES. The Parties acknowledge and agree that any payment to Infinera for the Software shall not represent royalties and are dealt with as commercial income in accordance with Article 7 (Business Profits) of the OECD Model Tax Convention on Income and on Capital and based on the official commentary on Model Tax Convention on Income and on Capital 2014 (Full Version); Commentary on Article 12: Concerning the Taxation of Royalties. Furthermore, the Parties agree and acknowledge that as Infinera does not receive any royalties under this Agreement, the Parties are jointly of the opinion that no international withholding tax ("WHT") is applicable and the fee will be paid net without any reduction.

If any WHT is applicable, then Buyer shall inform Infinera without undue delay upfront and provide Infinera with any reasonable support needed to minimize the WHT burden. Infinera shall gross up the net selling price or other payments, as applicable, such that the net selling price or other payments to be received by Infinera shall be equal to the amounts owed in accordance with the Agreement prior to the levying of any WHT. Buyer shall make all payments under this Agreement without withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required,

then Buyer shall, acting at all times in accordance with applicable law, seek to minimize the level of withholding tax payable pursuant to this Agreement. Infinera shall provide proof of residence for tax purposes in the applicable territory in order to reduce or eliminate any WHT. This proof of residence document shall be certified by the competent authorities of the country of Infinera's residence for application of a relevant double taxation treaty. If Buyer has proven that WHT applies, especially if Infinera does not fulfill its obligation to provide a residence certificate, then such WHT will be withheld as applicable. In such case, Buyer shall (for each calendar year) submit documents which prove tax payment (valid tax withheld certificate) as applicable in the respective country.

10.5. **INCOME TAXES AND OTHER TAXES.** Each Party is responsible for all taxes (including, but not limited to, taxes based upon its income) or levies imposed on it under applicable laws, regulations and tax treaties as a result of any contract and any payments hereunder. Every Party bears its own taxes.

10.6. **TAX INFORMATION.** Infinera and Buyer shall cooperate with reasonable efforts to provide to each other with such relevant information that either Party may reasonably require in order to meet its applicable tax filing requirements and to minimize each other's tax burden.

11. Payment

Buyer shall pay Infinera for Products via: (a) confirmed irrevocable letter of credit ("L/C"); or (b) check or wire transfer received at least five (5) business days before the Order's confirmed Shipment date, or, if approved by Infinera's credit department, within thirty (30) calendar days after the date of the Order invoice. Each L/C shall: (c) allow partial shipments or transshipments; (d) be issued by a Infinera-designated bank; (e) be opened in favor of Infinera at least six (6) weeks prior to the confirmed Shipment date; (f) be payable at the counter of the Infinera-designated confirming bank at sight immediately upon presentation of the Order's commercial invoice, airway bill or packing list and without confirmation by Buyer or any other third party; (g) not require any other documents in order to be opened; and (h) be subject to the rules of the Uniform Customs and Practice for Documentary Credits (2007 revision)/ICC Publication no. 600, except to the extent that the rules are inconsistent with the agreement. Buyer shall pay all L/C costs and expenses (including but not limited to all confirmation charges and those costs and expenses pertaining to the issuing bank, the advising bank and/ or extensions of the letter of credit). Buyer shall pay Infinera for Services via check or wire transfer received at least five (5) business days before the Order's confirmed Service start date. If payment is past due, then Infinera may suspend its supply of the Deliverables. Interest on past-due amounts shall accrue at the lesser of one-and-one-half percent (1.5%) per month or the highest rate permitted by law. Buyer payments will be applied first against any accrued interest. Buyer acknowledges and agrees that Infinera may, at any time in its sole discretion and without prior notice, sell or transfer to third parties any receivables from Buyer, whether in whole or in part.

12. Incoterms, Title and Security Interest

All shipments are FCA, Infinera named premises (Incoterms 2010). Delivery of the Product will be deemed to have occurred in accordance with the Incoterm. If, however, the Parties have agreed in advance in writing that acceptance testing shall occur, then acceptance shall be deemed to have occurred upon delivery to Buyer's specified destination, and acceptance of Services will occur upon written notification from Infinera that Services are completed ("Acceptance"). Title to Hardware portions of a Product (excluding the Software and Documentation) shall pass to Buyer upon Shipment. Nonetheless, if the law of the place where such Product is destined requires that Infinera hold title in order to retain a security interest in such Product, then title shall immediately revert back to Infinera if Buyer defaults on its payment obligations. Software and Documentation are and will remain the exclusive property of Infinera and its licensors, whether or not specifically recognized or perfected under the laws of the country where the Software and Documentation are located.

13. Cancellations

Buyer shall pay the following charges for cancellation of Product Orders:

EFFECTIVE DATE OF CANCELLATION (Stated as number of days before the scheduled Shipment date)	CANCELLATION CHARGE (as percentage of total net purchase price of cancelled Order)
Fifteen (15) or less	Fifty percent (50%)
Sixteen (16) to thirty (30)	Twenty-five percent (25%)
Thirty-one (31) to forty-five (45)	Ten percent (10%)
More than forty-five (45)	No charge

Cancellations by Buyer are effective upon receipt of written notification by Infinera. Buyer may not cancel an accepted Order for Services.

14. Reservation of Rights

Notwithstanding Subsection 15.6, Infinera may make changes to this Agreement at any time. All such changes shall become effective immediately and apply to all Orders received by Infinera after the effective date of such changes.

15. General

15.1 This Agreement states all of the promises, agreements and conditions regarding its subject matter, supersedes all prior understandings (whether written, oral or otherwise) and constitutes the entire agreement between the Parties. If any provision of this Agreement shall for any reason be held to be unenforceable (in whole or in part) in any respect, then such unenforceable provision (or part thereof) shall be construed as if it had never been contained herein. Unless the Parties have mutually executed an agreement governing the purchase of Deliverables subject to the Order, all Orders shall be fulfilled strictly in accordance with the terms and conditions of this Agreement, and no other terms and conditions shall apply.

15.2 Buyer shall not assign or transfer the Software and Documentation or this Agreement or any interest in the foregoing except with Infinera's prior written consent.

15.3 Infinera and Buyer are each engaged in an independent business. Each Party shall perform its obligations as an independent contractor and not as the agent, employee or servant of the other Party. Each Party shall be solely responsible for: (a) the employment, direction, supervision, compensation and discharge of its own employees, agents and subcontractors, including compliance with social security, withholding and all other applicable regulations; and (b) its own acts and those acts of its employees, agents and subcontractors.

15.4 Any failure by either Party (or by Infinera's Subcontractors) to fulfill any of its obligations shall not be deemed a breach of this Agreement if that failure is due to Force Majeure. Notice of Force Majeure shall be made promptly in writing to the other Party. The performance of a Party's obligations under this Agreement shall be suspended for as long as Force Majeure exists. Each Party shall take reasonable steps to limit the effect of Force Majeure. If Force Majeure continues for more than six (6) months, then either Party shall have the right to terminate this Agreement upon written notice.

15.5 The Parties are aware of, and shall strictly comply with, all applicable trade sanctions, executive orders, export control laws, regulations, restrictions and the like (including but not limited to those imposed by the governments of the United States of America and the European Community) pertaining to any Products or Services (and the technology therein) supplied by Infinera or its Infinera Affiliates or Subcontractors. Without limiting the generality of the foregoing, Buyer shall not export, re-export, transship, divert or transfer (whether directly or indirectly) any such Products or Services (or technology therein) contrary to such trade sanctions, executive orders, export control laws, regulations, restrictions or the like. Each Party agrees not to pay, promise to pay, or authorize the payment of any money or anything of value, whether directly or indirectly, to any person (whether a government official or private individual) for the purpose of illegally or improperly inducing any foreign official or any foreign political party or official thereof to make an award decision or illegally or improperly to assist either Party in obtaining or retaining business, or to take any other action favorable to either Party in connection with the award of a license. Any Party that fails to comply with this Section must indemnify the other Party from and against any claim, loss, damage, liability, expense, cost, of whatsoever nature arising out of or related to, or connected with the Party's failure to comply.

15.6 No changes or additions to this Agreement shall be effective unless in writing and signed by Infinera's authorized representative. Infinera's failure to insist upon strict adherence to any term or condition of this Agreement shall not be a waiver by Infinera of its right to thereafter insist upon strict adherence to that, or any other, term or condition.

15.7 Sections 5 ("Confidentiality"), 7 ("Limitation of Liability") and 12 ("Incoterms, Title and Security Interest") hereof and any provision of this Agreement that, given its purpose, interpretation or context, logically should survive the expiration or termination of this Agreement shall so survive.

15.8 If a dispute arises that is not resolved within thirty (30) days from the date that either Party provides the other Party with written notice of the existence thereof, then each Party shall designate an executive who is authorized to investigate, negotiate and settle the dispute. The executives shall exercise good faith efforts to settle the dispute. If the executives do not resolve the dispute within thirty (30) days (or an extended period if they so agree), then the dispute resolution procedure shall be as follows:

(a) If the Infinera entity is a U.S. corporation, then the Parties shall submit the dispute to non-binding mediation. The venue of such mediation shall be in the State of California, U.S.A. The Parties shall share equally the costs and expenses of the mediation, except that each Party shall bear its own attorneys' fees. If the dispute is not resolved through mediation within thirty (30) days of the mediator's appointment, then the Parties may submit the dispute to litigation subject to the governing law specified herein. No litigation or any other action pertaining to a dispute shall be pursued unless this dispute resolution procedure has been exhausted. All questions regarding the validity, intention, interpretation, meaning or enforcement of this Agreement shall be resolved under the laws of the State of California, U.S.A. (excluding its conflict of laws provisions). Nonetheless, either Party at any time may pursue equitable relief before any court of competent jurisdiction in order to protect its intellectual property rights or confidential information.

(b) If the Infinera entity is a non-U.S. company, then the Parties shall submit the dispute to arbitration. All disputes arising out of or in connection with this Agreement shall be finally settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed within the said rules. The place of arbitration shall be London, England. The language of the arbitration proceedings shall be English. All questions regarding the validity, intention, interpretation, meaning or enforcement of this Agreement shall be resolved under the laws of England and Wales (excluding its conflict of laws provisions). The procedural laws of England and Wales likewise will apply to the extent the Rules are silent. The award of such arbitration shall be final and binding on both Parties and judgment thereon may be entered in any court having jurisdiction over the Parties or their assets. Notwithstanding the foregoing, either Party at any time may pursue equitable relief before any court of competent jurisdiction in order to protect its intellectual property rights or confidential information.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply to any transaction entered into between the Parties.

15.9 Buyer agrees to make a press release with respect to its relationship with Infinera and the value of this Agreement and shall endeavour to do so within thirty (30) days of the placement of an Order hereunder. During the term of this Agreement, and typically after a six (6) to twelve (12) month period, Buyer shall also collaborate with Infinera to publish a case study covering such topics as the challenges faced, the decision criteria, benefits delivered and experience of working with Infinera. The wording of this press release, case study and any other planned press release, case study or publicity statement intended to be made by either Party in relation to their relationship with the other shall be submitted to the other Party for approval at least five (5) business days prior to the planned release date. Following delivery of such information, the Parties will consult with each other and will attempt to agree on the final form of such wording.

15.10 Buyer will not deploy Alien Wavelengths over a Product purchased unless accompanied with the Infinera-required Hardware or Software Alien Wavelength right to use (RTU) licenses. "Alien Wavelength" means any ITU-grid wavelength that originates from a source not provided or approved by Infinera.

15.11 Buyer assumes full responsibility and cost for the health and safety of its Network operations, including maintenance of Products and sites, and for the proper removal, control, collection, recycling, disposal, and reporting of its Products and utilities at the Product's end of life (regardless of whether such Product was purchased under, before or outside of this Agreement) according to sound environmental principles including, if applicable, any such requirements in local legislation. If such local legislation specifies that such end of life obligations, including financing, may be allocated either to the end user or producer depending on the contractual agreement of the Parties, this clause should be interpreted as contractually allocating that responsibility to Buyer. Infinera reserves the right to impose reasonable audit, indemnity and/or financial assurance requirements to ensure Buyer's continuing capacity to perform this obligation. This provision survives termination or expiration of the Agreement. Where Product is replaced, relocated or recycled, it is understood that Buyer's responsibility for end of life disposal remains the same as described above, unless one of the following circumstances apply: (a) the Parties have expressly agreed to different terms for a particular replacement or exchange project in the Buyer's Network and the items to be removed have been listed and mutually agreed; (b) Buyer has purchased Infinera's standard Hardware swap/repair Service under a Support agreement (and in such case, only the Network Product and spare parts covered in that swap/repair service and which become the responsibility of Infinera for disposal are exempted from the above allocation of responsibilities); or (c) Infinera has an obligation under the warranty provisions of this Agreement to repair or

replace a particular defective part or Product in the Buyer's Network (in which case Infinera assumes responsibility for disposal of the defective part or Product in question, pursuant to the terms of the relevant warranty provisions of this Agreement and nothing in this provision is intended to modify or waive Infinera's warranty obligations under this Agreement). For avoidance of doubt, it is acknowledged that replacements or exchanges of equivalent Products may trigger obligations for disposal of so-called historical waste under relevant environmental take back legislation (for example, Clause 9 of the European Union Directive on Waste Electrical & Electronic Equipment of February 13, 2003) – it is understood that this obligation for disposal of historical waste is intended to remain with Buyer under this Agreement, unless one of the three exceptions above apply. In addition, no Hardware should be sold or transferred to third parties by Buyer unless Buyer has ensured that the obligation to remove, control, collection, recycle and dispose of such Hardware in accordance with applicable law and sound environmental principles has been assumed by such third party or remains with Buyer. Buyer indemnifies Infinera for any failure to comply with this obligation. This provision survives termination or expiration of the Agreement.

15.12 Any Product roadmaps provided to Buyer in connection with the Agreement are indicative only. Any information referred to in a roadmap is not intended to imply a binding commitment. The roadmaps represent reasonable time and feature estimates, based on Infinera's current internal plans for the development and supply of these products for commercial use, and also upon Infinera's current understanding of existing standards, technologies and market situations. These roadmaps may therefore change in the future. Final Product deployments may include different features and different timelines.

16. Product-Specific Terms and Conditions

In addition to the terms and conditions of this Agreement, use of certain Infinera Products is subject to the Product-specific terms and conditions set forth in the Product or in the Documentation provided with the pertinent Product.

17. Additional Support-Specific Terms and Conditions

The additional terms and conditions in this Section 17 pertain to Support.

17.1 Buyer shall be responsible for performing all day-to-day maintenance of the Supported Product per the Documentation, including but not limited to the following: (a) performing all necessary Hardware replacements, removals, installs, decommissioning and commissioning; (b) ensuring that all Supported Product databases, database configurations and data stores are backed up; (c) cooperating with, assisting and providing information to Infinera as needed to perform the Support (including but not limited to providing an on-site technician); (d) providing Infinera with access to the Supported Product (including but not limited to VPN access), and all sites, workstations and personnel as necessary to provide the Support, subject to Buyer's reasonable security and operational regulations; (e) fully preparing relevant sites and Supported Products for Infinera's performance of Support (including but not limited to providing all necessary and requested electricity, heat, light, plumbing, ventilation and supplies and assuring that such sites are free from actual and/or potential hazards); and (f) ensuring applicable Software upgrades and updates are installed in a timely manner.

17.2 Infinera may, but is not obligated to, provide Support for problems related to: (a) modification or repair of the Supported Product other than by Infinera; (b) used equipment that has not been recertified by Infinera; or (c) Buyer's failure to fulfill the requirements listed in the Documentation or in the Section immediately above. If Infinera provides any Services (including problem diagnosis) related to such excluded instances, then Infinera may (in its sole discretion) charge Buyer for such Services at Infinera's then-current time and materials rates and for all related expenses (including travel, lodging and telephone).

17.3 If Buyer wishes to purchase Support for a Product (including used Infinera products acquired other than from Infinera) and such Product is not a Supported Product under an existing Infinera Support Agreement, then Infinera shall be entitled to inspect the Product in order to determine whether any repairs, adjustments, Software revisions, and/or relicensing charges or the like are necessary as a precondition for such Support. All required repairs, adjustments, revisions and the like shall be purchased from and performed by Infinera at Infinera's then-current pricing before Support will be provided.

18. Additional Professional Services-Specific Terms and Conditions

The additional terms and conditions in this Section 18 pertain to Professional Services.

18.1 "**Extended Business Hours**" means, in the time zone where the Works are performed, (a) Monday through Friday from 1700 to 0800, and (b) Saturdays, Sundays and Infinera observed holidays. "**Normal Business Hours**" means Monday through Friday from 0800 to 1700 in the time zone where the Works are performed; excluding Infinera observed holidays. "**Pre-existing Technology**" means Technology that was in existence on or before the date of the Proposal. "**Price**" means the price set forth in the Proposal that Infinera charges for the Works. "**Professional Services**" means a solution comprised of one or more Services (excluding Support) provided by Infinera on a project basis with a fixed term and scope. "**Proposal**" means the proposal issued by Infinera and accepted by Buyer that describes the Works and Price. "**Technology**" means inventions, original works of authorship, engineering documents, technical specifications, Software, document templates and other proprietary technical information, methodologies, and know-how, together with all rights to patents and applications for patents, all mask works, all trade secrets, and all other forms of intellectual property throughout the world relating thereto. "**Variation(s)**" means modification(s) of the Works. "**Works**" means the Professional Services to be performed and/or materials or Software (including but not limited to third party Hardware and Software) to be delivered or supplied to Buyer by Infinera under this Agreement, as further described in the pertinent Proposal.

18.2 Infinera shall immediately notify Buyer of any significant factors that will likely prevent Infinera from meeting a Works due date ("Factors"). Following such notice, Infinera shall submit a plan of action to Buyer detailing how it will minimize the impact of Factors. Buyer and Infinera shall review the plan and agree on any modifications thereto, including any variations or reasonable changes to the Price and due dates.

18.3 Any Buyer request for changes to the scope of Works shall be subject to Infinera's prior written acceptance. Such changes may require adjustments to the due dates and/or Price. If Infinera agrees to any such change, then the Parties shall execute a change order in accordance with Infinera's change management process in order to document the change, any adjustments to the due dates and/or Price, and Infinera's authorization to issue an invoice for such Price adjustment (if applicable).

18.4 During the term of the Works and for a period of one (1) year thereafter, Buyer shall neither directly nor indirectly employ, offer employment to or solicit the employment of (or advise, suggest or recommend that any other person or entity employ, offer employment to or solicit the employment of) any Infinera personnel (including but not limited to employees, agents or consultants of Infinera with whom Buyer comes in contact in performing its obligations under this Agreement). If Buyer breaches this non-solicitation obligation, then Buyer shall immediately pay Infinera liquidated damages (and not a penalty) in the amount of fifty percent (50%) of the annualized gross salary payable to such Infinera personnel during his/her first twelve (12) months of employment with Buyer or the recipient of Buyer's advice, suggestion or recommendation.

18.5 The Parties agree that ownership in and to the Works shall be as follows:

- (a) Pre-existing Technology shall remain the exclusive property of the Party supplying such Pre-existing Technology.
- (b) Subject to the provisions of Subsections 18.5 (a) and (c) and Section 5 as to Infinera confidential information, Buyer shall own the physical or electronic copy of Works delivered by Infinera to Buyer, subject to Buyer's compliance with this Agreement and payment of the Price.
- (c) Notwithstanding Section 18.5 (b) above, all discoveries, designs, information, ideas, artwork, Software, methodologies and other Technology developed by Infinera through or as a result of the Works, whether or not contained in the Works themselves, shall remain the exclusive property of Infinera.

Nothing in this Section 18.5 shall prevent or limit Infinera's performance of services, or delivery of materials, Software, or any other item, to any other Infinera customer which are the same as, or similar to, the Works provided to Buyer under this Agreement.

Subject to Buyer's compliance with this Agreement and payment of the Price, Infinera grants Buyer, under Infinera's Technology and Pre-existing Technology, a non-exclusive, non-transferable right and license to use and make copies of the Software that is mentioned in Section 18.5(c) above and provided to Buyer by Infinera within the scope of the Works ("Works Software and Documentation"); provided that such use and copies are strictly for Buyer's internal purposes. The Parties further agree that Works Software and Documentation shall be subject to all other Software and Documentation terms, conditions and restrictions that are set forth elsewhere in this Agreement. Buyer receives no other express or implied license or right under any patent, copyright, trademark, trade secret or other proprietary rights. Title and ownership in the Works Software and Documentation and all copies remains with Infinera or its licensors. The Works Software and Documentation contain confidential and proprietary information of Infinera or its licensors. Buyer shall receive and maintain the Works Software and Documentation in confidence. Buyer's use of and access to the Works Software and Documentation will be strictly limited to its employees with a need to know who shall have undertaken to comply with the obligations set forth herein. Infinera reserves all rights not expressly granted in this Agreement. Nothing herein shall be construed to preclude Infinera from developing, marketing, using, licensing, modifying or otherwise freely exploiting services or materials that are similar to or related to the Works, Work Product or Works Software and Documentation.

18.6 Buyer shall pay the following charges for cancellation of Professional Services Orders:

EFFECTIVE DATE OF CANCELLATION (Stated as number of days before the scheduled Professional Services commencement date)	CANCELLATION CHARGE (as percentage of total Price of cancelled Professional Services)
Fifteen (15) or less	Twenty-percent (20%)
Sixteen (16) to thirty (30)	Fifteen percent (15%)
Thirty-one (31) to forty-five (45)	Ten percent (10%)
More than forty-five (45)	No charge

Cancellations by Buyer are effective upon receipt of written notification by Infinera.

18.7 Either Party shall have the right to immediately terminate the Works for Cause by providing written notice. "Cause" shall include, but is not limited to: (a) failure to cure a breach of any material term, condition or obligation in this Agreement within thirty (30) days after receipt of written notice of such breach; (b) insolvency, bankruptcy, assignment for the benefit of creditors or any other winding up, termination of affairs or judicially imposed sale of assets; and (c) breach of the confidentiality or license grant or export compliance or non-solicitation obligations set forth in this Agreement, the cure period set forth in subsection (a) being non-applicable. Either Party may further terminate Works at any time without Cause by giving the other Party at least ninety (90) days prior written notice.

If Infinera terminates this Agreement for Cause, then Infinera shall promptly invoice Buyer for (a) that portion of the Price pertaining to any Works performed or delivered up to the effective date of termination plus, (b) twenty-five percent (25%) of the Price pertaining to the unperformed or undelivered portion of the Works set forth in this Agreement. If Buyer terminates this Agreement for Cause, then Infinera shall promptly invoice Buyer for that portion of the Price pertaining to any Works performed or delivered up to the effective date of termination. If Infinera terminates this Agreement without Cause, then Infinera shall promptly invoice Buyer for that portion of the Price pertaining to any Works performed or delivered up to the effective date of termination. If Buyer terminates this Agreement without Cause, then Infinera shall promptly invoice Buyer for (a) that portion of the Price pertaining to any Works performed or delivered up to the effective date of termination plus, (b) twenty-five percent (25%) of the Price pertaining to the unperformed portion of the Works set forth in this Agreement.

18.8 Buyer shall be liable to Infinera for the full repair or replacement cost of any and all computers, tools, equipment or other property that: (a) Infinera provides to Buyer or brings to Buyer's premises for purposes of performing or delivering Works; and (b) is (i) lost, (ii) stolen, (iii) damaged, (iv) returned to Infinera in a condition other than that in which it was provided (reasonable wear and tear excepted) or (v) not returned to Infinera within three (3) days after Infinera's written request. Buyer shall reimburse Infinera in full for such repair or replacement cost promptly upon Infinera's request or, if Infinera (in its sole discretion) so chooses, Infinera may invoice Buyer for the same.

18.9 IN NO EVENT SHALL INFINERA BE LIABLE FOR ANY LIABILITIES OR DAMAGES (INCLUDING BUT NOT LIMITED TO LIQUIDATED DAMAGES, PENALTIES, BOND FORFEITURES OR CREDITS) ARISING FROM SERVICE OUTAGES OR DISRUPTIONS IN BUYER'S (OR ANY OTHER PARTY'S) NETWORK(S) CAUSED BY OR ARISING FROM THE WORKS.

**EXHIBIT A
INFINERA LICENSE GRANT**

A.1 Subject to the terms of this Agreement, Infinera grants Buyer a non-exclusive, non-transferable license to use the Software and Documentation Infinera delivers to Buyer: (a) with the single Product for which it was delivered; (b) for Buyer's internal purposes; (c) in accordance with the Documentation; and (d) for Management Licensed Materials, for the permitted number of computing devices, simultaneous users and network elements in Buyer's Network, as specified in the Documentation or otherwise. "**Management Licensed Materials**" means that portion of the Products (and capacity expansions, if any) that is licensed for the purpose of monitoring, surveying, configuring, provisioning and otherwise managing Products in Buyer's Network, for the permitted number of computing devices, simultaneous users and network elements in Buyer's Network, as specified in the Documentation or otherwise.

A.2 Buyer receives no other express or implied license or right under any patent, copyright, trademark, trade secret or other proprietary right. The Software and Documentation are protected by copyright laws and international treaties.

A.3 Buyer may make one (1) copy of the Software (excluding firmware), solely for backup purposes (unless additional copies are necessary for the Software's intended use). Such copy shall be treated as an original for purposes of any restrictions herein. Buyer shall not remove, obscure or otherwise disturb any copyright or proprietary notices on the Software and Documentation, and Buyer shall reproduce the same on any copy.

A.4 Buyer shall not directly or indirectly: (a) decompile, disassemble, decode, reverse engineer (unless required for interoperability, but only where and to the extent the foregoing prohibitions are invalid under applicable law or applicable open source license), modify, append, translate, copy (except as provided above), distribute, publicly display, disclose, sell, lease, loan, rent, transfer, assign, sublicense or otherwise provide to third parties the Software and Documentation, including their authorization control utilities; (b) release benchmarks or comparisons of the Software and Documentation; or (c) use the Software and Documentation for time-sharing, service bureau or subscription services.

A.5 Third-party software Infinera provides to Buyer solely under the third-party's name shall be subject to the terms and conditions, including the licenses, warranties and indemnities, specified by the licensor of the third-party software. To the extent that the Software and Documentation originate from a third-party licensor, such licensor may be a third-party beneficiary to the license granted herein, may enforce the license directly against Buyer, and shall have no warranty or other obligation or liability to Buyer under this Agreement regarding such Software and Documentation. Some suppliers are intended third-party beneficiaries of this license. Third-party-beneficiary suppliers include: (a) IP Infusion (ZebOS Software), (b) Wind River Systems, Inc. and its suppliers; (c) Oracle and (d) any other supplier Infinera identifies as a third-party beneficiary in the applicable software documentation or additional supplements. These suppliers may enforce and are express beneficiaries of this license. However, they are not in any contractual relationship with Buyer.

A.6 This paragraph applies to all acquisitions of the Software and Documentation by or for the U.S. government. The Software and Documentation have been developed entirely at private expense. The Software and Documentation are "commercial items," as that term is defined at 48 C.F.R. §2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the commercial computer software and commercial computer software documentation are being licensed to U.S. government end users (a) only as commercial items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions set forth in the Infinera Standard Terms and Conditions for Infinera Deliverables.