

## Force10 Networks, Inc. End User License Agreement (the "Agreement")

1. WARRANTY AND DISCLAIMERS. (a) Limited Hardware Warranty. Force10 Networks, Inc. ("Force10") warrants to the original End User Customer ("Customer") for a period of one (1) year commencing from the date of original shipment by Force10, that the hardware portion of the product(s) ("Hardware") purchased from Force10 or its authorized resellers, shall be free of defects in material and workmanship under normal use and will perform substantially in accordance with Force10's published specifications provided to Customer with the Hardware that are applicable to the product release purchased. If the Hardware fails to comply with the foregoing warranty during the applicable warranty period, (a "Defect") Force10, at its sole discretion, shall repair or replace the Hardware that is determined to be defective, provide a workaround for the non-conforming Hardware, or if replacement or repair is impractical, refund the fees paid by Customer for such non-conforming Hardware, (solely pursuant to the Hardware Return Material Authorization process describe below). The warranted Hardware may include some used, refurbished or remanufactured components which are warranted the equivalent of new. (b) Limited Software Warranty. Force10 warrants to Customer for a period of ninety (90) days commencing from the date of original shipment by Force10, that the software portion of the products (the "Software" as described below) purchased from Force10 or its authorized resellers, will perform substantially in accordance with the Force10's published specifications provided to Customer with the Software for the product purchased. If the Software fails to comply with the foregoing warranty during the applicable warranty period, Force10, at its sole discretion, shall repair or replace the Software that is determined to be defective, provide a workaround for the non-conforming Software, or if replacement or repair is impractical, refund the fees paid by Customer for such non-conforming Software. If the Customer purchases media, Force10 warrants for sixty (60) days commencing from the date of original shipment by Force10 that the media upon which the Software is furnished shall be materially free of defects in material and workmanship under normal use. The sole and exclusive remedy of the Customer shall be replacement of software media. Force10 does not warrant or guarantee that the Software is free from errors or "bugs" or that the Customer will be able to operate the Software without interruption or problems or that the functions in the Software will operate in all combinations of hardware and software which may be selected by Customer or will meet Customer's requirements. (c) Hardware Return Material Authorization. Products shall be non-returnable except as provided in the "Limited Hardware Warranty" set forth above. Prior to any return by Customer of any product, Customer's claim under Force10's warranty must be promptly submitted to Force10 TAC in accordance with the procedures posted at [www.force10networks.com/support](http://www.force10networks.com/support). A Return Material Authorization (RMA) number will be assigned by a TAC engineer and communicated to the Customer via email or online notification. Customer must clearly mark the RMA number on the returned item packaging label and return the products with the RMA form to Force10's designated repair facility, freight and insurance prepaid with a written statement describing the Defect. Force10 may refuse any product not accompanied by an RMA and such refused shipments will be returned to Customer freight collect. Replacement products will be warranted for the remaining warranty period of the original product. (d) DISCLAIMERS. THE FOREGOING WARRANTIES DO NOT APPLY IF THE PRODUCT (i) HAS NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH FORCE10'S INSTRUCTIONS, (ii) HAS BEEN MISHANDLED, MISTREATED, USED OR MAINTAINED OR STORED OTHER THAN IN CONFORMITY WITH FORCE10'S APPLICABLE PRODUCT PUBLISHED SPECIFICATIONS, (iii) HAS BEEN SUBJECTED TO ABNORMAL PHYSICAL OR ELECTRICAL STRESS, ENVIRONMENT, NEGLIGENCE, ACT OF GOD, OR ACCIDENT. ANY PRODUCT SOLD OR, IN THE CASE OF SOFTWARE, LICENSED, FOR BETA, EVALUATION, TESTING, OR DEMONSTRATION PURPOSES FOR WHICH FORCE10 DOES NOT RECEIVE A PAYMENT OF PURCHASE PRICE OR LICENSE FEE IS PROVIDED "AS IS" WITH NO WARRANTY AND SHALL ONLY BE USED FOR TESTING OR EVALUATION, AS AUTHORIZED BY FORCE10, AND NOT USED FOR PRODUCTION USE. 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3. General Limitations. Except as otherwise expressly provided under this Agreement, Customer shall have no right, and Customer specifically agrees not to: (i) transfer, assign, resell, distribute, or provide unauthorized application services, rental, outsourcing, or time sharing, or sublicense its license rights to any other person, or use the Software on unauthorized or secondhand Force10 equipment, and any such attempted transfer, assignment, resale, distribution, unauthorized application services, rental, outsourcing, time sharing, or sublicense shall be void; (ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or to permit third parties to do the same; or (iii) decompile, decrypt, reverse engineer, disassemble or otherwise reduce the Software to human-readable form to gain access to the Software or any trade secrets or confidential information contained therein.

4. Upgrades and Additional Copies. For purposes of this Agreement, "Software" shall include (and the terms and conditions of this Agreement shall apply to) any upgrades, updates, bug fixes or modified versions (collectively, "Upgrades") or backup copies of the Software licensed or provided to Customer by Force10 or an authorized reseller for which Customer has paid the applicable license fees. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO USE ANY SUCH ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE; (2) USE OF UPGRADES IS LIMITED TO FORCE10 EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR WHO OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) USE OF ADDITIONAL COPIES IS LIMITED TO BACKUP PURPOSES ONLY.

5. Limitation of Liability. IN NO EVENT WILL FORCE10, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, AUTHORIZED RESELLERS, SUPPLIERS OR LICENSORS BE LIABLE FOR COST OF PROCUREMENT OR SUBSTITUTE PRODUCTS BY CUSTOMER OR ANY THIRD PARTY, OR FOR ANY LOST REVENUE, LOST PROFITS OR LOST SAVINGS, LOSS OF DATA, BUSINESS INTERRUPTION EXPENSE OR FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF CUSTOMER OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE HARDWARE AND/OR SOFTWARE WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE, WHETHER OR NOT FORCE10, ITS AUTHORIZED RESELLERS, SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT SHALL FORCE10, ITS EMPLOYEES', AGENTS', REPRESENTATIVES', AUTHORIZED RESELLERS', SUPPLIERS, OR LICENSORS' LIABILITIES TO CUSTOMER OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE PURCHASE PRICE PAID FOR THE RELEVANT PRODUCTS GIVING RISE TO THE CLAIM. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY PROVIDED HEREIN.

6. Copies and Proprietary Notices. Customer may make such backup copies of the Software as may be necessary for Customer's lawful use and in accordance with the license rights granted in this Agreement, provided Customer affixes to such copies all copyright, confidentiality, and proprietary notices that appear on the original. Except as expressly authorized in the preceding sentence, Customer shall not make any copies or duplicates of any Software without the prior written permission of Force10.

7. Protection of Information. Customer agrees that aspects of the Software and associated documentation, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of Force10. Customer shall not disclose, provide, or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of Force10. Customer shall implement reasonable security measures to protect such trade secrets and copyrighted material. All right, title, and interest in and to the Software and all related specifications, including without limitation any copies, modifications or derivatives of such shall remain solely with Force10 and its licensors. This provision shall survive any termination or expiration of this Agreement.

8. Term and Termination. The licenses granted in this Agreement shall be effective until terminated. Customer may terminate this Agreement at any time if Force10 defaults in the performance of any material provision of this Agreement. Force10 may terminate Customer's rights under any license granted hereunder and this Agreement without prior notice if Customer fails to comply with any provision of this Agreement. Upon termination by either party, Customer must destroy all copies of the Software and related specifications in its possession or control, and upon request from Force10, certify in writing to the destruction.

9. Customer Records. Customer grants to Force10 and its independent accountants the right to examine Customer's books, records, and accounts related to the subject matter under this Agreement during Customer's normal business hours to verify compliance with the License in this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer shall promptly comply and as applicable, pay to Force10 all fees found to be due and not paid. In addition, subject to this Agreement and Force10's Privacy Policy at <http://www.force10networks.com/company/PrivacyPolicy.asp>, as the same may be amended from time to time by Force10, Customer hereby consents and grants to Force10 a license to collect and use the data provided by Customer for the purposes of providing the products and support, and to the extent that reports or statistics are generated using such data, they shall be disclosed only in the aggregate and no identifying information may be surmised therefrom, including without limitation, Customer names, phone numbers, email addresses, physical addresses, and Customer content.

Notwithstanding the foregoing, Customer may terminate Force10's right to collect and use data from Customer at any time upon prior written or electronic notification, provided that the Software or components of the Software, or support may not be available to Customer if such right is terminated.

10. Compliance with Laws; Government Rights in the Software. Software, including technical data, may be subject to export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all regulations and laws with respect to the Software and technology provided from Force10 and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Force10 Hardware and/or Software. If the Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in Software and published specifications, including its rights to use, modify, reproduce, release, perform, display or disclose the Software and/or published specifications, will be subject in all respects to the commercial license rights and restrictions provided in the applicable Force10 "Usage License" and this Agreement. Customer agrees to (i) identify Force10's products in all proposals and agreements with the United States Government or any contractor for the United States Government, and (ii) identify or mark the Force10 products provided as necessary to obtain protection substantially equivalent to that afforded commercial computer software and related documentation developed at private expense and consistent with Force10's license grants in this Agreement.

11. General Terms Applicable to this Agreement. Force10's prices are exclusive of all applicable taxes. For orders placed with Force10, Customer agrees to pay all taxes associated with the licensing and use of Force10's products, including but not limited to, sales, use, excise, value added, withholding, and similar taxes and all customs, duties or governmental impositions, but excluding Force10's employment or net income taxes. If Customer claims a tax exemption, Customer must provide Force10 with valid tax exemption certificates. Products ordered from Force10 are shipped to Customer ExWorks Origin (*Incoterms 2000*) Force10's facility. This Agreement shall be governed by and construed in accordance with the laws of the State of California as applied to contracts entered into and to be performed entirely within California, without reference to principles of conflict of laws. The United Nations Convention on the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply. The parties agree that jurisdiction and venue shall be in Santa Clara County, California, or, if applicable, the Federal Northern District Court of California. If any portion hereof is found to be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. A waiver by Force10 of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except as expressly provided herein, this Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes any conflicting or additional terms contained in the purchase order. If Customer has entered into a separate and mutually agreed written contract directly with Force10 for supply of the products subject to this Agreement, the terms of that contract shall supersede any terms of this Agreement which are inconsistent with that contract. Customer acknowledges that: the Internet URL address and the web pages referred to in this Agreement may be updated by Force10 from time to time; the version in effect at the date of delivery of the products to the Customer shall apply. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NOTHING IN THIS AGREEMENT PREVENTS EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of (i) any provision of any present or future law or regulation of the United States or any applicable law that applies to the subject hereof, and (ii) interruptions in the electrical supply, failure of the Internet, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such party. The following provisions shall survive any termination or expiration of this Agreement: Warranty and Disclaimers, General Limitations, Limitations of Liability, Protection of Information, Compliance with Laws, Government Rights in the Software, General Terms Applicable to this Agreement, and all obligations for payment that accrued prior to termination. //end