



**U.S. Department of Justice**  
*United States Attorney's Office*  
*Southern District of Texas*

1000 Louisiana  
Suite 2300  
Houston, Texas 77002

Phone (713) 567-9000  
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April 2, 2015

Perry Viscounty  
Latham & Watkins LLP  
650 Town Center Drive  
20th Floor  
Costa Mesa, CA 92626-1925

Re: Curvature, LLC, formerly known as Network Hardware Resale, Inc.

Dear Mr. Viscounty:

On the understandings specified below, the United States Attorney's Office for the Southern District of Texas (the "Office"), will not criminally prosecute Curvature, LLC (formerly Network Hardware Resale, Inc.), a limited liability entity organized under the laws of California and headquartered in California (the "Company"), for any crimes (except for criminal tax violations, as to which the Office does not and cannot make any agreement) arising out of or relating to the Company's acquisition, importation, exportation, distribution, or sale of Cisco Systems, Inc. ("Cisco") products prior to the date on which this Agreement was signed (the "Effective Date") or any other alleged misconduct disclosed by the Company to the Office prior to the Effective Date, including but not limited to the conduct described in the Statement of Facts attached hereto as Attachment A, the conduct described in the letter from the Office to the Company dated December 6, 2013, including all attachments and the enclosed subpoenas, and any other conduct disclosed by the Company to the Office prior to the Effective Date (the "Covered Conduct").

The Office enters into this Non-Prosecution Agreement based on the individual facts and circumstances presented by this case and the Company. This Agreement should not be considered relevant or controlling for any separate or future NPA involving the Company or any other corporate entity. Among the facts considered were the following: (a) the Company's cooperation, including voluntarily making its employees available for interviews, and collecting, analyzing, and organizing evidence and information for the Office; (b) the Company has engaged in extensive remediation, enhancing its due diligence protocol for the purchase of computer products, and instituting heightened review of proposals and other transactional documents for all the Company contracts; (c) the Company no longer employs the employees primarily responsible for the activity under investigation; and (d) the Company has committed to continue to enhance its compliance program and internal controls, including ensuring that its compliance program satisfies the minimum elements set forth in Attachment B to this Agreement.

The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as set forth in the Statement of Facts attached hereto as Attachment A and incorporated by reference into this Agreement, and that the facts described in Attachment A are true and accurate. The Company expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Company make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above or the facts described in the Statement of Facts attached hereto as Attachment A. If the Office determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the Office shall so notify the Company, and the Company may avoid a breach of this Agreement by repudiating such statement(s) within five (5) business days after notification. The Company shall be permitted to raise defenses and assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Company in the course of any criminal, regulatory or civil case initiated against such individual, unless such individual is speaking on behalf of the Company.

The Company agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, the Company shall first consult the Office to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Office and the Company; and (b) whether the Office has any objection to the release.

The Company's obligations under this Agreement, including all Attachments, shall have a term of two years from the Effective Date. However, the Company shall cooperate fully with the Office in any and all matters relating to the conduct described in this Agreement and Attachment A, subject to applicable law and regulations, until the date upon which all investigations and prosecutions arising out of such conduct are concluded, whether or not those investigations and prosecutions are concluded within the term specified above. At the request of the Office, the Company shall also cooperate fully with other domestic law enforcement and regulatory authorities and agencies in any investigation of third party entities related to the matters encompassed by this Agreement and Attachment A. The Company agrees that its cooperation shall include, but not be limited to, the following:

a. The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to its activities, those of its parent company and affiliates, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which the Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the Office, upon request, any document, record or other tangible evidence about which the Office may inquire of the Company.

b. Upon request of the Office, the Company shall designate knowledgeable employees, agents or attorneys to provide to the Office the information and materials described above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

c. In connection with any ongoing investigation of third party entities related to the conduct encompassed by this Agreement, the Company shall use its best efforts to make available for interviews or testimony, as requested by the Office, present or former officers, directors, and employees of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic law enforcement and regulatory authorities. Cooperation shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the conduct of the third party or parties under investigation.

d. With respect to any information, testimony, documents, records or other tangible evidence provided to the Office pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government of such materials as the Office, in its sole discretion, shall deem appropriate.

In addition, during the term of the Agreement, should the Company learn of credible evidence or allegations of a violation of U.S. federal law, the Company shall promptly report such evidence or allegations to the Office, the United States Secret Service or the Federal Bureau of Investigation. No later than 90 days prior to the expiration of the term of this Agreement, the Company, by its Chief Executive Officer and Compliance Officer described in Attachment B, will certify to the Office that the Company has met its disclosure obligations pursuant to this Agreement.

The Company represents that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of discount fraud throughout its operations, including those of its affiliates, agents, and joint ventures, and those of its contractors and subcontractors.

The Company agrees to pay a monetary penalty in the amount of \$2,200,000 to the United States Treasury within 30 business days of the signing of this Agreement. The Company acknowledges that no United States tax deduction may be sought in connection with the payment of any part of this penalty. The Company also agrees that its Chief Executive Officer, Michael Sheldon, will not be in charge of the Company's procurement program. Rather, the Compliance Officer described in Attachment B will oversee the Company's procurement program and will report directly to the Company's board of directors on a quarterly basis, outside the presence of Mr. Sheldon. The Company further agrees that Mr. Sheldon will participate in the Company's annual training program regarding ways to avoid purchasing Cisco products that have been potentially obtained from Cisco based on fraudulent misrepresentations.

The Office agrees, except as provided herein, that it will not bring any criminal or civil case or administrative proceeding against the Company arising out of or relating to the Covered Conduct. The Office, however, may use any information related to the conduct described in the attached Statement of Facts against the Company: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by the Company.

If, during the term of this Agreement, the Company (a) commits any felony under U.S. federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information; (c) fails to cooperate as set forth in this Agreement; (d) terminates the compliance program set forth in Attachment B; or (e) otherwise fails specifically to perform or to fulfill completely each of the Company's obligations under the Agreement, the Company shall thereafter be subject to prosecution for any federal criminal violation of which the Office has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by the Office in the U.S. District Court for the Southern District of Texas or any other appropriate venue. Determination of whether the Company has breached the Agreement and whether to pursue prosecution of the Company shall be in the Office's sole discretion. Any such prosecution may be premised on information provided by the Company. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Office prior to the Effective Date that is not time-barred by the applicable statute of limitations on the Effective Date may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the Effective Date shall be tolled for the term plus one year.

In the event the Office determines that the Company has breached this Agreement, the Office agrees to provide the Company with written notice of such alleged breach prior to instituting any prosecution resulting from such alleged breach. Within thirty (30) days of receipt of such notice, the Company shall have the opportunity to respond to the Office in writing to explain the nature and circumstances of such alleged breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Office shall consider in determining whether to pursue prosecution of the Company.

In the event that the Office determines that the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to the Office or to the Court, including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director,

officer or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the Office.

This Agreement is binding on the Company and the Office but specifically does not bind any other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Office will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

It is further understood that the Company and the Office may disclose this Agreement to the public.

This Agreement sets forth all the terms of the agreement between the Company and the Office. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, the attorneys for the Company, and a duly authorized representative of the Company.

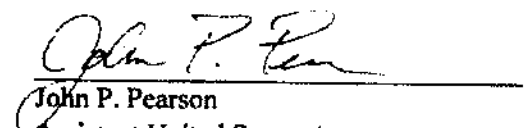
Sincerely,

KENNETH MAGIDSON  
United States Attorney

Date: 4.2.15

BY:   
Jason Varnado  
Deputy Criminal Chief, Major Fraud Division

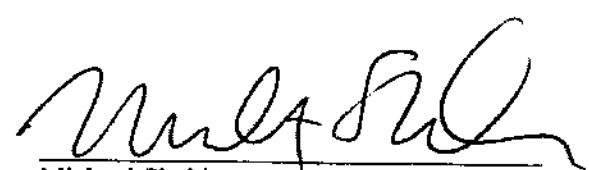
Date: 4/2/15

BY:   
John P. Pearson  
Assistant United States Attorney


AGREED AND CONSENTED TO:

Curvature, LLC

Date: 4.2.15

BY:   
Michael Sheldon  
Chief Executive Officer  
Curvature, LLC

Date: 4/3/15

BY:   
Perry Viscounty  
Latham & Watkins LLP

## ATTACHMENT A

### STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the non-prosecution agreement (the "Agreement") between the United States Attorney's Office for the Southern District of Texas and Curvature, LLC, formerly known as Network Hardware Resale, Inc. (NHR). Curvature hereby agrees and stipulates that the following information is true and accurate. Curvature admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below:

1. Cisco Systems, Inc. (Cisco) was a company that produced and sold computer equipment, including switches and routers. Cisco sold its products directly to customers and through its authorized resellers. Authorized resellers, also known as "Cisco Authorized Channel Partners," were able to buy Cisco products at substantial standard discounts from the list price.
2. Cisco also sold products to certain customers at even larger discounts, under an agreement known as a Direct Services Agreement (DSA). Under a DSA, Cisco would provide even larger discounts—up to over 80% off the list price. Any customer or partner seeking a DSA discount was required to provide Cisco with information about the intended use of the products.
3. Curvature is a reseller of new and used computer equipment; it also provides various IT support and maintenance services. At all times relevant to this agreement, Curvature

did business as NHR. NHR advertised itself as the largest stocking provider of new and used surplus Cisco equipment worldwide.

4. As early as 2007, NHR and certain of its employees knew that Cisco Brand Protection did not condone the sale of Cisco products at DSA prices to users who planned to resell the product and not use it internally. NHR and certain of its employees also knew that Cisco's Brand Protection unit investigated sales of Cisco products in order to learn whether any Cisco products were being sold at these discounts to entities other than the actual end user.
5. As early as 2007, NHR and certain of its employees were also aware that at least one vendor who supplied Cisco products to NHR was submitting Purchase Orders to Cisco that did not accurately identify the ultimate purchaser and/or end user of the Cisco products encompassed by the Purchase Orders and whether the product would be used internally.
5. In April 2010, an NHR sales employee ("NHR Employee A") learned that an Ohio-based network services provider, identified herein as Company B, was able to obtain Cisco products at DSA discount levels from an authorized Cisco partner, identified herein as Company A. NHR Employee A contacted Company A, asked if NHR could obtain that same discount level, and submitted a purchase order for certain Cisco products.
6. When NHR Employee A was told that Company A would not sell Cisco products to NHR at the same discount level that it sold to Company B, NHR Employee A contacted Company B and asked to purchase Cisco products from it. NHR Employee A and the

Chief Executive Officer of Company B agreed that NHR could take advantage of Company B's DSA and place orders through Company B, who would then order them from Cisco and Company A.

7. When Company B submitted a purchase order to Company A for products it planned to pass on to NHR, employees at Company A noticed that the order was very similar to the purchase order that NHR Employee A had tried to submit directly to Company A. Company A employees became concerned that Company B was attempting to purchase products at a special DSA discount and resell them. Company A contacted Company B executives and ultimately refused to approve the sale to Company B.
8. In May 2010, Company B signed an Internet Commerce Agreement (ICA), which allowed Company B to buy directly from Cisco without using a partner. Company B submitted a purchase order which was again similar to the prior orders. Cisco Brand Protection employees discussed this order with Company B executives, who repeatedly misrepresented to Cisco employees that the products were not being resold and were for internal use. NHR Employee A knew that Company B was concealing NHR's presence as the ultimate purchaser as well as NHR's intention of reselling the products.
9. From approximately April 2010 through August 2010, NHR purchased Cisco products from Company B whose full list price exceeded \$35,000,000. Based on misrepresentations by Company B, however, Cisco sold the products to Company B at Company B's DSA discount price, for \$5,519,647. Company B then sold the products to NHR for \$9,780,386. As a result, NHR and Company B obtained substantial discounts



based on the misrepresentations made by Company B to conceal NHR's identity as the ultimate purchaser and its intention to resell the products.

10. In June 2010, in order to keep the name of Company B confidential from other NHR employees, NHR changed the name of Company B in its internal vendor database from the company's real name to "Mark I."
11. In August 2010, employees of an NHR customer that had purchased some of the Company B-sourced products contacted Cisco in an attempt to register the products on SMARTNet, Cisco's warranty and repair database. When Cisco learned that the products had been sold to Company B as part of a DSA but had ended up in the hands of a different end user, Cisco began investigating the sale. Cisco contacted Company B, whose executives offered to provide a sampling of products back to Cisco in order to show that they were not being resold. At Company B's request, NHR Employee A had NHR ship some of the products it still had in inventory back to Company B so that Company B could provide the products to Cisco in an attempt to cover up the resale.
12. Even after Cisco discovered the misrepresentations by Company B, NHR Employee A continued to attempt to purchase Cisco products from Company B. In December 2010, NHR Employee A asked Company B executives to locate two Cisco products and offered to guarantee that the products, in order to avoid detection of the resale, would not be registered on SMARTNet.

ATTACHMENT B

CORPORATE COMPLIANCE PROGRAM

The Company agrees to the following:

- (a) The adoption and maintenance of a comprehensive, risk-based Compliance Program;
- (b) The designation of a Compliance Officer who will ensure the Company's compliance under this section of the Agreement;
- (c) The establishment of procedures to ensure periodic, but no less than annual, review of the Compliance Program by the Board of Directors or senior management of the Company;
- (d) Such Compliance Program shall include annual employee training for sales employees and senior executives;
- (e) Within sixty (60) days of the execution of this Agreement, establish with the assistance of the Company's corporate compliance counsel, an internal training program, with annual updates, to instruct employees on how to identify, avoid, and report discount fraud, including discount fraud that involves third party vendors used by the Company and conduct similar to that outlined in the Statement of Facts. The Company shall thereafter permit purchases or sales to be conducted only by individuals who have received the training described in this paragraph;
- (f) Agreements with vendors, suppliers, contractors, and subcontractors to provide products and services to the Company, if any, shall include provisions requiring the contractor or subcontractor to avoid engaging in discount fraud, including but not limited to conduct similar to that outlined in the Statement of Facts.

## ATTACHMENT C

### CORPORATE COMPLIANCE REPORTING

Within thirty (30) days of this Agreement, the Company shall establish a self-reporting procedure for timely reporting to the Federal Bureau of Investigation or the United States Secret Service the discovery of or allegations of credible criminal violations of federal fraud statutes relating to the Company or its personnel. The Office will not criminally prosecute the Company for any acts or conduct voluntarily disclosed pursuant to this Agreement if the Company voluntarily, truthfully, completely and timely discloses all information and knowledge that the Company has with regard to such discoveries of or allegations of criminal violations of federal laws.