

## CISCO UNIVERSAL CLOUD AGREEMENT

This Universal Cloud Agreement (the "Agreement") governs the Cisco Cloud Service You have purchased from Cisco or an Approved Source and is between You and Cisco Systems, Inc. (or its affiliates). The Agreement consists of:

- (i) the terms and conditions set forth in the applicable Offer Description located at [www.cisco.com/go/cloudterms](http://www.cisco.com/go/cloudterms);
- (ii) the terms contained herein;
- (iii) the applicable agreement between You and Cisco if you purchased the Cloud Service directly from Cisco.

In the event of a conflict, the order of precedence is as set out above. Capitalized terms are defined in Appendix 1.

BY CLICKING 'ACCEPT,' SUBMITTING AN ORDER FOR A CISCO CLOUD SERVICE THAT REFERENCES THIS AGREEMENT, OR USING THE CLOUD SERVICE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES, IN WHICH CASE "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, DO NOT CLICK ANY ACCEPT BUTTON AND DO NOT USE THE CLOUD SERVICE. IF YOU HAVE PAID A FEE FOR USE OF THE CLOUD SERVICE AND DO NOT AGREE TO THIS AGREEMENT, YOU MAY TERMINATE YOUR ACCESS TO THE CLOUD SERVICE FOR A FULL REFUND PROVIDED YOU TERMINATE YOUR ACCESS WITHIN THIRTY (30) DAYS OF YOUR INITIAL PURCHASE.

**1. Scope of Use.** Cisco will provide You the Cloud Service as specified in the applicable Offer Description and Order(s). You may use the Cloud Service only for Your internal business use in accordance with the Offer Description. You may need to install software ("Software") or provide additional information to register for and/or use certain Cloud Services. You may use the Software to the extent reasonably required to use the Cloud Service but only for the duration You are entitled to use the Cloud Service. Such Software is licensed to You under Cisco's End User License Agreement ("[EULA](#)"). Cisco reserves all rights to the Cloud Services and Software not expressly granted under this Agreement or the EULA.

## **2. Fees and Payment**

**a. Fees:** Fees for the Cloud Service are as described in the applicable Order(s) or Offer Description and may include overage amounts or usage charges. Order acceptance by Cisco may be subject to our credit approval process. Except as otherwise set forth above, all fees due to Cisco under the Agreement are non-cancelable and the sums paid are non-refundable.

**b. Purchases from an Approved Source:** Cloud Service fees and payment terms are set out in Your commercial agreement with the Approved Source.

**c. Direct Purchases from Cisco:** For Cloud Services purchased directly from Cisco, You agree that we may charge Your credit card or invoice You for the fees due in advance, in accordance with Your chosen billing frequency for the Initial Term and any Renewal Term, as set forth in the applicable Offer Description, Order and/or ordering tool. We may provide Your credit card information and related personal data to third parties for payment processing and fraud prevention purposes. Unless otherwise agreed, You will pay the fees associated with the Cloud Service within thirty (30) days of the invoice date. Past due fees will bear interest from the due date to the date of payment at the lesser of ten percent (10%) per annum or the maximum rate permitted by law. You will pay all sales, value added, general standard and similar taxes, levies, duty or charges imposed by any governmental authority related to the Cloud Service purchased. Cisco may gross up the price for the Cloud Service in any invoice if a required withholding prevents us from receiving the amount specified in such invoice. If Your payment is thirty (30) or more days overdue or ten (10) or more in the case of amounts You authorized Cisco to charge to Your credit card, Cisco may, in its sole discretion after giving You ten (10) days advanced written notice and without limiting our other rights and remedies, suspend or terminate Your Cloud Service until such amounts are paid in full. If You dispute an invoice, You must notify Cisco in writing within fifteen (15) days of the invoice date and provide written details explaining the dispute. We will work with You in good faith to resolve the dispute. If we are unable to resolve the dispute within thirty (30) days, Cisco may, in its discretion, suspend or terminate the Cloud Service after giving You an additional ten (10) days advance written notice.

## **3. Your Obligations**

**a. AUP:** You are responsible for complying with the [Cisco Cloud Services Acceptable Use Policy \("AUP"\)](#). We may investigate complaints or suspected violations of the AUP and, if we reasonably determine there is a violation, we may take action to remedy the violation including, removing Customer Data or restricting, suspending or terminating access to the Cloud Service. Where we reasonably believe that such violation would expose us to civil, regulatory or criminal liability, we may take action immediately without prior notice to You. You agree to indemnify, defend and hold us harmless for any claims, liability, damages, and costs (including attorneys' fees) arising from Your or Your users' violations of the AUP.

**b. Use of Cloud Services:** You are responsible for Your Customer Data. We do not endorse and have no control over what users submit through the Cloud Service. You are responsible for Your account information, password, or other login credentials. You agree to use reasonable means to protect Your credentials and You will notify Cisco immediately of any known unauthorized use of Your account. All registration information You provide must be accurate and You will keep such information current. You will not sell, resell, reframe, distribute, rent or lease the Cloud Service, include the Cloud Service in an outsourced or service bureau offering, or otherwise commercialize the Cloud Service.

**4. Changes to Cloud Service.** Cisco may enhance and/or change the features of the Cloud Service as long as we do not materially reduce the core functionality of the Cloud Service.

## **5. Privacy and Data Protection**

**a. Customer Data:** Cisco will use Customer Data and Personal Data in accordance with this Agreement and Cisco's [Privacy Statement](#), including any applicable supplemental privacy provisions included in an Offer Description. Where permitted by applicable law, we may process, transfer, copy, backup and store Customer Data and Personal Data in the United States or other countries or jurisdictions outside of the country where it was collected. You are responsible for providing any requisite notice and obtaining any required consent from Your users to such processing and transfer of Personal Data, including international transfers. Upon termination or expiration of this Agreement, we will make Customer Data available to You for a period of thirty (30) days following the date of termination.

**b. Telemetry Data:** Cisco may collect Telemetry Data related to Your use of the Cloud Service in order to maintain, improve or analyze the Cloud Service. You acknowledge that Cisco may freely use any non-personal Telemetry Data that does not identify You or any of Your users.

**c. International Data Transfers:** Cisco shall not transfer Personal Data outside of a particular jurisdiction unless permitted under Applicable Law and Cisco meets the security, privacy, and other legal requirements to allow such transfer.

Where Cisco processes Personal Data from the EEA on behalf of Customer, Cisco shall perform such processing in a manner consistent with the Privacy Shield Principles (see [www.commerce.gov/privacyshield](http://www.commerce.gov/privacyshield)) to the extent the Principles are applicable to Cisco's processing of such data. If Cisco is unable

to provide the same level of protection as required by the Principles, Cisco shall immediately (within 48 hours) notify Customer and cease processing. Any non-compliance with the Principles shall be deemed a material breach of the Agreement and Customer shall have the right to terminate the Agreement immediately without penalty.

**6. Confidentiality.** The party receiving Confidential Information (“Receiving Party”) will exercise the same degree of care that it uses to protect its own Confidential Information but in no event less than reasonable care to (i) protect and not disclose to third parties any Confidential Information, (ii) restrict dissemination of Confidential Information to individuals with a need to know and who are under a substantially similar duty of confidentiality, and (iii) not use any Confidential Information for any purpose other than to perform its obligations under this Agreement. The Receiving Party’s obligations hereunder shall not apply to information that (i) is rightfully in its possession prior to receipt from the disclosing party, (ii) is or becomes publicly available other than as a result of a breach of this Agreement, (iii) is rightfully obtained by the Receiving Party from a third party under no obligation of confidentiality with respect to the information, or (iv) is independently developed by the Receiving Party. The Receiving Party may disclose Confidential Information to the extent required by law or regulation.

#### **7. Ownership**

**a. Customer Data:** You retain all right, title and interest in and to Your Customer Data. You grant Cisco a worldwide, royalty-free, sublicensable license to use, modify, reproduce, publicly display, publicly perform, and distribute the Customer Data only as reasonably required to provide the Cloud Service. You represent that You have the right to grant the license contained in this section. Cisco is free to use and incorporate any feedback You provide regarding the Cloud Service without payment of any fees.

**b. Cisco Materials:** Cisco or its licensors retain their ownership in all intellectual property rights to the Cloud Service and its underlying technology, the software, and associated documentation (the “Materials”). This ownership extends to all copies and portions of the Materials, and all improvements, enhancements, modifications, and derivative works. You may use the Materials solely as part of the Cloud Service for Your internal business operations subject to the terms of this Agreement. You agree that this limited right is not a transfer of ownership of or title to the Materials. Your rights to use the Materials are limited to those rights expressly granted by this Agreement and, for software and the accompanying documentation, in the EULA.

**8. Warranty.** Unless otherwise provided in an applicable Offer Description, Cisco warrants that the Cloud Service will materially comply with the applicable Offer Description. Your sole and exclusive remedy for Cisco’s breach of warranty is (at our option) to repair or replace the Cloud Service or refund to the entity that paid Cisco the fees for the period in which the Cloud Service did not materially comply. In order to receive either of these remedies, You must promptly notify Cisco of such breach. ***Except as expressly stated in this Section 8, to the extent allowed by applicable law, Cisco: (a) expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition or other implied term as to merchantability, fitness for a particular purpose or non-infringement; and (b) makes no warranty or representation that: (i) the Cloud Service will be uninterrupted, completely secure, error-free, or free of viruses; or (ii) the Cloud Services will meet Your business requirements or operate with Your existing systems..***

#### **9. Indemnification**

**a. Cisco’s Indemnification Obligation:** Cisco will defend You against third party claims brought against You to the extent arising solely from an allegation that Your use of the Cloud Service directly infringes a third party patent or copyright. Cisco will indemnify You against damages (specifically excluding any increased or enhanced damages resulting from your willful infringement) finally awarded against You by a court of competent jurisdiction or a settlement amount approved by Cisco. Cisco’s obligations under this Section 9 will not apply if the claim results from (a) Your breach of this Agreement, (b) modification to the Cloud Service or use of the Cloud Service outside the scope of the applicable Offer Description, (c) combination, operation, or use of the Cloud Service with products, software, services or business processes not provided by Cisco, (d) Cisco’s compliance with any designs, specifications, requirements or instructions provided by You or a third party on Your behalf, (e) use of non-current or unsupported versions of the Cloud Services, (f) your Customer Data (g) trial or beta use of the Cloud Service, or (h) services you provide based on the Cloud, Service. In the event a claim is made or likely to be made, Cisco may, at Cisco’s option, (i) procure for You the right to continue using the Cloud Service under the terms of this Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without material decrease in functionality. If these options are not reasonably available, Cisco may terminate Cloud Service upon written notice to You and refund You (or the relevant Approved Source) a pro rata portion of the price You or the Approved Source originally paid to Cisco for the Cloud Service for the remainder of the unexpired term.

**b. Your Indemnification Obligation:** You will defend Cisco and its Affiliates, and their respective officers, directors, employees, contractors and agents (each, a “Cisco Indemnified Party”) against third party claims brought against a Cisco Indemnified Party arising from (a) Your, use of the Cloud Service in a manner not expressly authorized by the Agreement or that is in violation of applicable law, (b) Your Customer Data or the combination of Your Customer Data with other applications, content or processes, (c) Cisco’s compliance with any designs, specifications, requirements or instructions provided by You or a third party on Your behalf, and (d) a dispute between You and any of Your users. You will indemnify the applicable Cisco Indemnified Party against all damages finally awarded against the Cisco Indemnified Party (or the amount of any settlement entered into by You) with respect to such claims.

**c. Indemnification Procedure:** The party against whom a third party claim is brought will (a) timely notify the other party in writing of the claim (provided, that the failure to provide timely notice that prejudices the indemnifying party shall relieve the indemnifying party of its obligations under this Section 9 to the extent the indemnifying party has been prejudiced and such failure to provide timely notice shall relieve the indemnifying party of any obligation to reimburse the other party for its attorney’s fees incurred prior to notification), and (b) reasonably cooperate in the defense of the claim and may participate in the defense of the claim at its own expense. The party that is obligated to defend a claim will have the right to fully control the defense and to settle the claim; provided, however, that any settlement of a claim shall not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought. ***This section and section 10 state the parties’ entire obligation and Your exclusive remedy regarding any claims for intellectual property infringement.***

**10. Limitation of Liability.** All liability of Cisco, its affiliates officers, directors, employees, agents suppliers, and licensors collectively, to You, for claims related to, or arising out of, this Agreement, your Order or the Cloud Service, shall not exceed the fees paid to Cisco for the Cloud Service during the twelve (12) months before the last event that gave rise to Your claim. This limit is in the aggregate and not per incident. In no event will either party be liable, regardless of the theory of liability or whether arising out of the use or inability to use the Cloud Service or otherwise, even if either party been advised of the possibility of such damages: (a) indirect, incidental, exemplary, special or consequential damages; (b) loss or corruption of data or interrupted or loss of business; or, (c) loss of revenues, profits, goodwill or anticipated sales or savings. This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement or otherwise, even if either party has been advised of the possibility of such damages. Nothing in this agreement limits or excludes any liability that cannot be limited or excluded under applicable law.

## 11. Evaluation

**a. Beta:** We may invite You to try beta versions of the Cloud Service. You may need to agree to additional terms for the beta Cloud Service. A beta Cloud Service is provided for evaluation and feedback purposes and may not be used in a production environment. You understand that a beta Cloud Service is not generally released and, therefore, is unsupported and may contain bugs, errors, and other issues. You accept the beta Cloud Service "AS-IS," without warranty of any kind, and Cisco is not responsible for any problems or issues related to Your use of the beta Cloud Service. The beta Cloud Service may never be generally available and we may discontinue the beta Cloud Service in our sole discretion at any time for any reason and delete any Customer Data or data on the beta Cloud Service without liability to You.

**b. Trial:** We may give You trial access to the Cloud Service, subject to additional terms. Any trial period will expire on the later of thirty (30) days or as otherwise stated in writing from Cisco. Trial Cloud Services are also provided "AS-IS" without support or any express or implied warranty or indemnity of any kind. At any time during or at the end of the trial, Cisco may deactivate or delete Your account and any related data, information, and files, and bar any further access to such data, information and files for any reason.

**12. Support Services.** Cisco provides basic support with the Cloud Services and offers higher levels of support for an additional fee.

**13. Term and Termination.** This Agreement starts on the date You submit Your first Order. You may terminate this Agreement for any reason by giving Cisco written notice of termination when all of Your Orders expire or are terminated. Either of us may terminate this Agreement and any impacted Orders by giving written notice to the other party if the other party materially breaches this Agreement and does not cure that breach within 30 days after receiving written notice of the breach (without prejudice to Cisco's right to immediately suspend or terminate for breach of the AUP).

Cisco reserves the right to end the service life (EOL) of the Cloud Service three (3) years after the end of sale notice posted at <http://www.cisco.com/c/en/us/products/eos-eol-listing.html>. If You prepaid the fee for the EOL Cloud Service, Cisco will use commercially reasonable efforts to transition You to a substantially similar Cloud Service. If Cisco does not have a substantially similar Cloud Service, Cisco will credit You any unused portion of the prepaid fee for the EOL Cloud Service, calculated from the last date the Cloud Service is available. Such credit can be applied towards the future purchase of Cisco products.

*The term of an Order starts on the date the Cloud Service is available for Your use and lasts for the period stated in the Order ("Initial Term"). Unless otherwise prohibited by applicable law, the Initial Term will renew automatically for the renewal period You selected on the Order ("Renewal Term") unless (a) either party notifies the other in writing at least thirty (30) days before the end of the current Term of its intention not to renew the Cloud Service or (b) You elect on the Order at the time of initial purchase not to renew the Cloud Service. We will notify You reasonably in advance of any Renewal if there are any fee changes. If You agree with the fee changes, You may do nothing and the new fees will apply for the upcoming Renewal Term.* If this Agreement is terminated for any reason, You will pay the fees for the Cloud Service provided up to the effective date of termination.

The following provisions will survive the expiration or termination of this Agreement: (i) Section 2 and any payment provisions in the Order, and (ii) Sections 3-8, 9, 10, 15 and 16(b). Upon any termination or expiration of this Agreement, You must cease any further use of the Cloud Service and destroy any copies of Software within Your control.

**14. Assignment and Subcontracting.** We may assign this Agreement or any of our rights and delegate our obligations under this Agreement in our discretion without Your consent. Cisco may subcontract the performance of the Cloud Service to third parties. Any such subcontract shall not relieve Cisco of any of its obligations under this Agreement. You may not assign this Agreement without the prior written consent of Cisco.

**15. Applicable Law and Jurisdiction.** Appendix 2 identifies the governing law for this Agreement (ignoring any conflict of laws provision) and exclusive forum over any claim arising under this Agreement based on the primary place of business of the ordering entity.

## 16. Other

- a. Except for payment obligations, neither party will be responsible for failure of performance due to a Force Majeure Event.
- b. The Cloud Service, the Software and any other technology related thereto may be subject to local and extraterritorial export control laws and regulations. The Parties shall comply with such laws and regulations governing use, export, re-export, and transfer of the Cloud Service, Software and related technology and will obtain all required local and extraterritorial authorizations, permits or licenses. The export obligations under this clause shall survive the expiration or termination of this Agreement.
- b. You will comply with all applicable laws and regulations related to Your receipt and use of the Cloud Service. You must ensure You have the right to use all features of the Cloud Service in Your jurisdiction. The Cloud Service may not be available in all countries and may not be available for use in any particular location. We may modify or discontinue Cloud Service features to comply with applicable laws and regulations. Cisco will comply with all applicable laws in the provision of the Cloud Service to You.
- c. Cisco may update the terms of this Agreement and such updated terms shall only apply to Orders placed after the update. We will post the updated terms or otherwise notify You. If You renew the Cloud Service or purchase additional Cloud Service(s) after the updated terms have been posted, You agree to such terms. Any other modifications to this Agreement must be by mutual written agreement.
- d. Cisco may provide You with notice via email, regular mail and/or postings on the Cisco.com website or any other website used as part of the Cloud Service. Notices to Cisco should be sent to Cisco Systems, Office of General Counsel, 170 Tasman Drive, San Jose, CA 95134 unless this Agreement, applicable Offer Description or an Order specifically allows other means of notice.
- e. Failure to enforce any right under this Agreement will not waive that right. If any term of this Agreement is not enforceable, this will not affect any other terms.
- f. This Agreement is the complete agreement between the parties concerning the Cloud Service and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral) between the parties regarding this subject matter. Any modifications to this Agreement must be by mutual written agreement.

**APPENDIX 1: AGREEMENT DEFINITIONS**

**“Affiliate”** means any entity that one of us controls or controls one of us. “Control” means that entity (a) directly or indirectly owns more than 50% of one of us; or (b) has the ability to direct the affairs of one of us through any lawful means (e.g., a contract that allows control).

**“Approved Source”** means a Cisco authorized reseller, distributor or systems integrator.

**“Cisco” “we,” “our” or “us”** means Cisco Systems, Inc. or its applicable Affiliate (including, but not limited to, Cisco WebEx LLC).

**“Cloud Service”** means the Cisco hosted software-as-a-service offering described in the applicable Offer Description that You purchase with an Order and which is governed by this Agreement and expressly excludes any Software.

**“Confidential Information”** means non-public confidential or proprietary information of the disclosing party that is clearly marked confidential at the time of disclosure.

**“Customer Data”** means all information, software, data and materials that You or anyone acting on Your behalf provides or transfers to Cisco for any purpose in connection with Your use of the Cloud Services. Customer Data does not include Telemetry Data.

**“Force Majeure Event”** means an event beyond the affected party’s reasonable control, including (without limitation) accidents, severe weather events, acts of God, actions of any government agency, epidemic, pandemic, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

**“Offer Description(s)”** means a description of the applicable Cloud Services (located [here](#)) all of which are incorporated into this Agreement.

**“Order”** means an ordering document (including a web or other electronic form) that specifies the duration, type and quantity of Cloud Services to be provided and the associated fees.

**“Personal Data”** shall have the same meaning given to Personal Information in Cisco’s [Privacy Statement](#).

**“Policies”** means Cisco’s [Privacy Statement](#), [Acceptable Use Policy](#) and any other policy governing the use of Your data or personal information.

**“Telemetry Data”** means information generated by instrumentation and logging systems created through the use and operation of the Products and/or Services.

**“Term”** means the length of time You can use the Cloud Service(s) as specified in this Agreement or an Order.

**APPENDIX 2: Choice of Law, Venue**

Country or Territory	Governing Law	Jurisdiction and Venue
United States, Latin America or the Caribbean	State of California, United States of America	Superior Court of California, County of Santa Clara and Federal Courts of the Northern District of California
Canada	Province of Ontario, Canada	Courts of the Province of Ontario, Canada (Toronto Region)
Europe (excluding Italy), Middle East, Africa, Asia or Oceania (excluding Australia)	Laws of England*	English Courts
Japan	Laws of Japan	Tokyo District Court of Japan
Australia	Laws of the State of New South Wales	State and Federal Courts of New South Wales
Italy	Laws of Italy	Courts of Milan
All other countries or territories	State of California	Superior Court of California, County of Santa Clara and Federal Courts of the Northern District of California

\*Where the governing law is the laws of England, no person who is not a party to this Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.

Regardless of the above governing law, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party’s intellectual property or proprietary rights.

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