



Offer Description for AppDynamics

IMPORTANT: READ CAREFULLY

1. OVERVIEW

This Offer Description describes supplemental terms and conditions that will govern Your use of the AppDynamics LLC's ("AppDynamics") software product ("Software") and related services, as indicated in the Order(s) for internal business purposes only. Please consult the AppDynamics documentation located at <http://docs.appdynamics.com> for further information on its technical specifications, configuration requirements, features and functionalities (the "Documentation"). AppDynamics SaaS licenses purchased pursuant to this Offer Description may only be converted to on-premise licenses at an additional fee and upon AppDynamics' written consent.

The Cisco Universal Cloud Agreement ("Agreement") and the terms herein govern Your use of the Software referenced herein. A current copy of the Agreement is located at: <http://www.cisco.com/c/en/us/about/legal/cloud-and-software.html>.

Unless defined within the text herein, capitalized terms used in this Offer Description are defined in the Agreement. For clarity, all references to Cloud Service in the Agreement shall be read to encompass the Software, as defined herein, and vice versa. Furthermore, for the avoidance of doubt and as defined in the Agreement, all references to Cisco in the Agreement shall be read to include AppDynamics, as a wholly owned subsidiary of Cisco.

If the Software listed in this Offer Description is compatible for use with other Cisco products or service offerings not referenced herein, such other products and/or offerings may have additional license terms that apply to Your use of such products and offerings. You are also responsible for complying with the terms for such other Cisco products and offerings, as applicable. The terms set forth herein apply to the Software listed in this Offer Description whether purchased for use on a standalone basis, or purchased for use with such other Cisco products or offerings.

Please note that with respect to this Offer Description, the following sections of the Agreement are not applicable to Your use of the Software: 8 (Warranty); 12 (Support Services); 13 (Term and Termination) as it relates to the EOL policy specified therein; and 15 (Applicable Law and Jurisdiction). Further, the clause relating to an initial thirty (30) day termination period specified in the preamble of the Agreement is not applicable to your purchase of the Software described in this Offer Description.

AppDynamics reserves the right to change this Service Description at any time.

2. TERMS AND CONDITIONS

A. Use Limitations. You shall not (and shall not authorize any third party to): (a) modify or create derivative works based on all or any part of the Software, nor modify any proprietary rights notices that appear in the Software; (b) cause the decompiling, disassembly, or reverse engineering of any portion of the Software, or attempt to discover any source code or other operational mechanisms of the Software, (c) publish the results of any benchmarking tests run on the Software; (d) use AppDynamics Test & Dev Edition licenses in any environment other than test-only, non-production environments; or (e) configure the Software to collect any (1) social security numbers or other government-issued identification numbers, (2) passwords or other authentication credentials, (3)

health information, biometric data, genetic data, or payment/financial information, (4) any data relating to a person under the age of 13 years old, or (5) any other data that is subject to regulatory or contractual handling requirements (e.g., PCI, HIPAA, or state and federal data security laws). You acknowledge and agree that the license to the Software is not intended to limit the licenses set forth at <https://docs.appdynamics.com/display/DASH/Legal+Notices>.

B. Maintenance and Support. “Support” is defined as AppDynamics' obligations to respond to support requests as described at https://legal.appdynamics.com/Enterprise_Support_2017.11.01.pdf. “Maintenance” means AppDynamics' obligations related to error resolution, bug fixes and the provision of updates and upgrades made generally commercially available by AppDynamics in its sole discretion, as described https://legal.appdynamics.com/Enterprise_Support_2017.11.01.pdf. Subject to Your payment of the fees set forth in the applicable Order, AppDynamics will (a) provide Maintenance and Support for the Software, and make the Software available to You in accordance with the terms specified at https://legal.appdynamics.com/Enterprise_SLA_2017.11.01.pdf. For time-limited licenses for the Software (as set forth in an Order, “Subscription Licenses”), the fees for Maintenance and Support are included in the fees for the Software.

C. Services. All Services will be rendered on a time and materials basis. AppDynamics will not exceed the total time purchased without prior written approval from You. If the Services purchased have been consumed, AppDynamics will stop work until additional Services have been purchased. Services will be performed on business days (a business day means Monday through Friday, excluding national holidays, during working hours, in the location where the Services are delivered). Saturday work, and hours worked during the week that exceed the local working hours in a week, will be charged at the agreed rate x 1.5. Work on Sundays or national holidays will be charged at 2 x the agreed rate. If You cancel or delay any scheduled Services less than ten (10) business days before the start date of such Services, then AppDynamics will deduct from Your account (or You will pay for) the amount of Services that were scheduled in any of the ten (10) business days following the date of cancellation (or notification of the delay, as applicable), and You will fully reimburse AppDynamics for any reasonable travel and expenses incurred by AppDynamics for such Services (and for any Services rescheduled by You) for which AppDynamics is unable to obtain a refund. Travel and living expenses are not included in the Services fees unless otherwise stated on the Order. If not used, pre-purchased Services and pre-paid expenses expire twelve (12) months after the date purchased.

The Services offering for Your AppDynamics Bundle purchase is located at https://legal.appdynamics.com/AppDynamics_Bundle_Remote_Services_Offering_10October2017.pdf and a description of the applicable Service Module is located at https://legal.appdynamics.com/SOW_AppDynamics_Standard-Foundation.pdf.

The Services offering for Your AppDynamics Accelerator purchase is located at https://legal.appdynamics.com/AppDynamics_Accelerator_Services_Offering_10October2017.pdf and a description of the applicable Service Modules are located at: https://legal.appdynamics.com/SOW_AppDynamics_Standard-Foundation.pdf https://legal.appdynamics.com/SOW_AppDynamics_Standard-Modular-Sprint.pdf.

The Services offering for Your AppDynamics Starter Pack purchase is located at [https://legal.appdynamics.com/AppDynamics Starter Pack March 2018.pdf](https://legal.appdynamics.com/AppDynamics_Starter_Pack_March_2018.pdf).

The foregoing are each incorporated by reference.

For either Your AppDynamics Bundle or Accelerator purchase, the Premium University Subscription entitles a named student unlimited access to the self-paced catalogue of classes, unlimited public virtual instructor led classes, 2 Certification Exam attempts, and up to 32 hours monthly of on-demand lab access.

D. Data Protection. Notwithstanding anything to the contrary set forth in Section 5(c) of the Agreement, if Your primary place of business as an ordering entity is outside North, Central or South America, the following terms shall apply until 25 May 2018. From 25 May 2018, the terms set out at [https://legal.appdynamics.com/AppDynamics Offer Description Exhibit C Data Protection Clauses.pdf](https://legal.appdynamics.com/AppDynamics_Offer_Description_Exhibit_C_Data_Protection_Clauses.pdf) shall apply in lieu of Clauses D1 to D6 below.

1. *Definitions.* In this Offer Description, the terms “data controller”, “data processor”, “sensitive personal data” and “personal data” have the meanings given to them in European Union Directive 95/46/EC.
2. *Your Compliance with Privacy Laws.* You will at all times comply in full with the requirements of any applicable privacy and data protection laws to which You are subject as a data controller (“Applicable Privacy Law(s)”), and You represent that You have all rights and consents necessary to provide personal data to AppDynamics hereunder.
3. *AppDynamics’ Compliance.* AppDynamics shall only process Your Personal Data in accordance with the instructions received from You and to the extent necessary for the purpose of performing AppDynamics’ obligations under this Agreement.
4. *Security.* AppDynamics shall implement appropriate technical and organizational measures against unauthorized destruction or unlawful processing, accidental loss or damage to or destruction of Your Personal Data.
5. *Subprocessing.* AppDynamics may subcontract processing of Your Personal Data provided that it enters into a written agreement with any subcontractor containing terms at least as stringent as those in this clause; AppDynamics will remain liable to You for the acts and omissions of any subcontractor it appoints to process Your Personal Data.
6. *Adequacy.* AppDynamics may export Your Personal Data outside of the European Economic Area provided that it complies with Applicable Privacy Law(s).

E. Term; Renewal. Notwithstanding anything to the contrary set forth in Section 13 of the Agreement, the term of this Agreement begins on the date that an Order is executed by You and will remain in effect until all Subscription Licenses (and Maintenance and Support Terms, if applicable) expire or until this Agreement is otherwise terminated in accordance with the terms hereof, whichever occurs first (the “Term”). For the avoidance of doubt, the “License Term” begins on the date the Software license keys are delivered to You and extends for the period specified in the applicable Order (unless earlier terminated in accordance with this Agreement). Notwithstanding the auto-renewal provision set forth in Section 13 of the Agreement, the Software purchased pursuant to this Offer Description shall not auto-renew.

F. Warranties. Notwithstanding anything to the contrary set forth in Section 8 of the Agreement, AppDynamics sole and exclusive warranty for the Software listed in this Offer Description is that during the first ninety (90) days following the date the Software is purchased, the Software will, in all material respects, conform to the functionality described in the then-current Documentation for the applicable Software version. AppDynamics' sole obligation for a breach of this warranty shall be that AppDynamics shall be required to use commercially reasonable efforts to modify the Software to conform in all material respects to the Documentation, and if AppDynamics is unable to materially restore such functionality within thirty (30) days from the date of written notice of such breach, You shall be entitled to terminate the applicable license upon written notice and receive a pro-rata refund of the Software license fees (or Maintenance and Support Fees, for perpetual licenses) that have been paid in advance for the remainder of the License Term for the applicable Software (beginning on the date of termination). EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL SOFTWARE, DOCUMENTATION, MAINTENANCE AND SUPPORT AND SERVICES ARE PROVIDED "AS IS" AND APPDYNAMICS AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT THERETO, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

G. Governing Law. Notwithstanding anything to the contrary set forth in Section 15 and Appendix 2 of the Agreement, if Your primary place of business as an ordering entity is in North, Central or South America, the governing law of this Agreement and Offer Description is the State of California, United States of America and the exclusive forum over any claim arising under the Agreement and Offer Description are the courts located in and serving San Francisco, CA. If Your primary place of business as an ordering entity is outside North, Central or South America, this Agreement and Offer Description shall be governed by and construed in accordance with the laws of England and the exclusive forum over any claim arising under the Agreement and Offer Description are the courts located in and serving England and Wales.

H. Notices. Notwithstanding anything to the contrary set forth in Section 16(e), You may give notice to AppDynamics at any time by any letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to AppDynamics at the following address or such other address as may be notified to You from time to time: AppDynamics, 303 Second Street, North Tower, 8th Floor, San Francisco, CA 94107, Attn: Legal Department.