



# Supplemental End User License Agreement

## IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software product(s) and related services set forth herein and licensed under the End User License Agreement (“EULA”) between you and Cisco Systems, Inc. or its affiliates, including its wholly owned subsidiary, AppDynamics LLC (“AppDynamics”) (collectively, the “Agreement”). Except as otherwise set forth in this SEULA, capitalized terms will have the meanings as in the EULA. To the extent that there is a conflict between the EULA and this SEULA, this SEULA will take precedence. For clarity, all references to Software in the EULA shall be read to encompass the AppDynamics software product, and vice versa. Furthermore, for the avoidance of doubt and as defined in the EULA, all references to Cisco in the EULA shall be read to include AppDynamics, as a wholly owned subsidiary of Cisco.

Please note that with respect to this SEULA, the following sections of the EULA are not applicable to Your use of the Software: 1 (Acceptance of Terms) as it relates to an initial thirty (30) day refund period; 2 (License) as it relates to Cisco equipment and the last two sentences of Section 2; 7 (Limited Warranty and Disclaimer); 9 (Upgrades and Additional Copies of Software); 11 (Term and Termination) as it relates to terminating the Agreement at any time by ceasing use of or destroying all copies of Software; 12 (Transferability) and all cross references to Section 12 in the EULA; 16 (Interoperability) and all cross references to Section 16 in the EULA; and 17 (Governing Law, Jurisdiction and Venue).

AppDynamics reserves the right to change this SEULA at any time.

**By downloading, installing, or using the Software you agree to comply with the terms of this SEULA.**

**SUPPLEMENTAL LICENSE TERMS FOR: AppDynamics**

### DEFINITIONS:

- “Documentation” means the AppDynamics documentation located at <http://docs.appdynamics.com>, as it may be updated from time to time.
- “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 at [https://legal.appdynamics.com/Enterprise\\_Support\\_2017.11.01.pdf](https://legal.appdynamics.com/Enterprise_Support_2017.11.01.pdf)
- “Order” means an ordering document (including a web or other electronic form) that specifies the duration, type and quantity of Software to be provided and the associated fees.

“Support” means AppDynamics’ obligations to respond to support requests as described at [https://legal.appdynamics.com/Enterprise\\_Support\\_2017.11.01.pdf](https://legal.appdynamics.com/Enterprise_Support_2017.11.01.pdf).

### ADDITIONAL LICENSE RIGHTS AND RESTRICTIONS:

#### A. Fees and Payment.

1. *Fees.* Fees for the Software are as described in the applicable Order(s) and may include overage
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amounts or usage charges. Order acceptance by Cisco or AppDynamics (as applicable) (each, a “Group Member”) may be subject to its credit approval process. Except as otherwise set forth above, all fees due to the Group Member under the EULA, this SEULA or any Order are non-cancelable and the sums paid are non-refundable.

2. *Purchases from an Approved Source.* Software fees and payment terms are set out in Your commercial agreement with the Approved Source.

3. *Direct Purchases.* For Software purchased directly from a Group Member, You agree that the Group Member may invoice You for the fees due in advance as set forth in the applicable Order. Unless otherwise agreed, You will pay the fees associated with the Software 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 Software purchased. The Group Member may gross up the price for the Software in any invoice if a required withholding prevents it from receiving the amount specified in such invoice. If Your payment is thirty (30) or more days overdue, the Group Member 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 Software until such amounts are paid in full. If You dispute an invoice, You must notify the Group Member in writing within fifteen (15) days of the invoice date and provide written details explaining the dispute. The Group Member will work with You in good faith to resolve the dispute. If the Group Member is unable to resolve the dispute within thirty (30) days, it may, in its discretion, suspend or terminate the Software after giving You an additional ten (10) days advance written notice.

4. AppDynamics on-premise licenses purchased pursuant to this SEULA may only be converted to SaaS licenses at an additional fee and upon AppDynamics’ written consent.

**B. Confidentiality.** The party receiving Confidential Information (defined below) (“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 the 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 the 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. For purposes of this SEULA, “Confidential Information” means non-public confidential or proprietary information of the disclosing party that is clearly marked confidential at the time of disclosure.

**C. Use Limitations.** In addition to the limitations and restrictions set forth in Section 5 of the EULA, You shall not (and shall not authorize any third party to): (a) use AppDynamics Test & Dev Edition licenses in any environment other than test-only, non-production environments; or (b) 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>.

**D. Maintenance and Support.** Subject to Your payment of the fees set forth in the applicable Order, AppDynamics will provide Maintenance and Support for the Software in accordance with the terms specified at [https://legal.appdynamics.com/Enterprise\\_Support\\_2017.11.01.pdf](https://legal.appdynamics.com/Enterprise_Support_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.

**E. 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 On Premises Visibility Pack purchase is located at [https://legal.appdynamics.com/AppDynamics\\_On\\_Premises\\_Visibility\\_Pack\\_September\\_2018.pdf](https://legal.appdynamics.com/AppDynamics_On_Premises_Visibility_Pack_September_2018.pdf). The foregoing is incorporated by reference.

**F. Warranties.** Notwithstanding anything to the contrary set forth in Section 7 of the EULA, AppDynamics' sole and exclusive warranty for the Software listed in this SEULA 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 HEREIN, 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 17 of the EULA, if Your primary place of business as an ordering entity is in North, Central or South America, the governing law of the Agreement is the State of California, United States of America and the exclusive forum over any claim arising under the Agreement 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, the Agreement shall be governed by and construed in accordance with the laws of England and the exclusive forum over any claim arising under the Agreement are the courts located in and serving England and Wales.

**H.** Notices. AppDynamics may provide You with notice via email, regular mail and/or postings on its website or any other website used as part of the Software. 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 LLC, 303 Second Street, North Tower, 8th Floor, San Francisco, CA 94107, Attn: Legal Department.