

## Crestron Cloudware License Agreement

This Cloudware License Agreement (“Agreement”) is between Crestron Electronics, Inc. (“Crestron”), a New Jersey corporation, and Customer. This Agreement is incorporated by reference and made a part of each subscription order for Crestron Cloudware.

### 1. LICENSE GRANT AND DEFINITIONS

1.1 Crestron grants Customer a non-exclusive, non-transferable right to receive the Subscription Services and use the Documentation for Customer’s internal business purposes only, subject to the terms of this Agreement, the Order, and the EU Standard Contractual Clauses and/or International Data Transfer Agreement, where applicable.

1.2 Software that is developed by, or under the permission of, Crestron, which runs on any device sold by or for Crestron including pre-installed software is subject to a separate Crestron Software License Agreement:

<http://www.crestron.com/legal/software-license-agreement>.

1.3 The Cloudware is located on servers that are provided by or on behalf of Crestron. Customer may access the Cloudware, but has no right to receive a copy of the object code or source code of the Cloudware.

1.4 In this Agreement:

“Authorized User” means an employee, representative, or independent contractor of Customer who is authorized by Customer to access the Cloudware and use the Subscription Services as either a named or concurrent user solely for Customer’s internal business purposes.

“Cloudware” means software that runs and is accessed on remote Internet servers rather than on local servers or personal computers and, for purposes of this Agreement, with functionality as described in a subscription order.

“Crestron Privacy Statement Regarding Internet Data Collection” means the policy set forth at: <http://www.crestron.com/legal/crestron-privacy-statement-regarding-internet-data-collection>

“Customer Data” means Customer’s electronic information which is processed in the Cloudware database including, but not limited to, data collected pursuant to the Crestron Privacy Statement Regarding Internet Data Collection. Customer Data may include Personal Data other than Sensitive Personal Information.

“Documentation” means user documentation provided in print and/or electronic form by Crestron for use with the Subscription Services, as periodically updated.

“EEA” means the European Economic Area, comprising of the European Union countries as well as Iceland, Liechtenstein and Norway.

“EU Standard Contractual Clauses” means the standard contractual clauses for the transfer of Personal Data to data processors established in third countries outside the EEA, which do not ensure an adequate level of data protection, pursuant to Commission Decision C(2010)(593), which is countersigned by Crestron and agreed to by Customer or its authorized representative..

“Intellectual Property” means intellectual property including, but not limited to: all systems, designs, software, tools, data, materials, documentation, trade secrets, processes, specifications, know-how, methods, patents, copyrights, trademarks and procedures of operation.

“International Data Transfer Agreement” means the agreement for the transfer of Personal Data from a first country outside of the US and the EEA to data processors established in the United States and other countries, which is countersigned by Crestron, and agreed to by Customer or its authorized representative.

“Order” means a document which has been accepted by Crestron, that identifies the Crestron Cloudware subscription the Customer has purchased. Each Order requires Customer’s, or Customer’s authorized representative’s, agreement to the EU Standard Contractual Clauses and/or International Data Transfer Agreement between Customer and Crestron, to satisfy cross-border data transfer obligations relating to Personal Data, where applicable.

“Personal Data” means any information that identifies, or can be used to identify, an individual. Personal Data includes both Sensitive Personal Information and publically available personal information such as names, titles, phone numbers, and email addresses.

“Privacy and Data Protection Laws” means any and/or all laws, rules, directives and regulations, on any local, provincial, state, federal or national level, pertaining to data privacy, data security and/or the protection of Personal Data including, but not limited to: (a) the European Directive 95/46/EC, as amended, the General Data Protection Regulation (GDPR), as and when effective, and each European Union Member States’ national implementation thereof; (b) the Australian Privacy Act 1988 (Cth), the Australian Privacy Amendment (Enhancing Privacy Protection Act) (2012); (c) the Canadian Personal Information Protection and Electronic Documents Act, SC 2000, c 5 (PIPEDA); (d) the Personal Data Protection Act 2012 of Singapore (PDPA); (e) additional privacy and data protection laws applicable to Customers’ location; and (f) any successor legislation or regulations applicable thereto.

“Sensitive Personal Information” means any personal or non-public information, the compromise of which with respect to confidentiality, integrity, or availability could result in tangible harm to an individual. Sensitive Personal Information includes in particular, national identification numbers, financial information, information about children, criminal records, health information, or information regarding one or more factors specific to an individual’s physical, physiological, mental, economic, cultural, or social identity.

“Subscription Services” means the hosted customer experience solutions identified in a subscription order, and any modifications periodically made by Crestron.

“Subscription Term” means the period of time during which Crestron is required to provide Customer with the Subscription Services.

### 2. OWNERSHIP AND CONDITIONS OF USE

2.1 Crestron solely owns the Cloudware, in all forms, any and all Intellectual Property in the Cloudware and the Documentation, and all derivative works and improvements thereof. Crestron does not own any third party components of the Cloudware.

2.2 Crestron refuses to accept and Customer agrees not to provide Crestron with any access to Sensitive Personal Information.

2.3 Certain trademarks, including, but not limited to: Crestron, the Crestron swirl, AirMedia, and Crestron Fusion are either trademarks or registered trademarks of Crestron in the United States and/or other countries. Customer shall not remove or conceal any trademark or proprietary notice of Crestron from the Subscription Services, Cloudware, or Documentation.

2.4 The Customer Data belongs to Customer, and Crestron makes no claim to any right of ownership in it.

2.5 It is the Customer’s responsibility to provide a high speed Internet connection, and hardware and software that is compatible with the Subscription Services, as set out in the Documentation.

2.6 Crestron regularly upgrades and updates the Subscription Services. This means that the Subscription Services are continually evolving. Some of these changes will occur automatically in the background, while others may require Customer to schedule and implement the changes. The changes may also mean that Customer needs to upgrade its equipment in order to make efficient use of the Subscription Services.

2.7 Crestron recognizes that Customer may have legitimate business reasons for not upgrading to a new version of the Subscription Services as soon as the version becomes available. However, at the end of each Subscription Term, Crestron may remove Customer's access to an older version and upgrade Customer to a new version.

2.8 Customer may not (and shall ensure that its employees, contractors and agents do not): (a) sell, rent or lease the Subscription Services; (b) make the Subscription Services or Documentation available to anyone who is not an Authorized User; (c) create any derivative works or improvements based upon the Subscription Services or the Documentation; (d) copy any feature, design or graphic in, or reverse engineer the Subscription Services, the Documentation or the Cloudware; (e) access the Subscription Services or the Documentation in order to build a competitive solution or to assist someone else to build a competitive solution; (f) use the Subscription Services or the Documentation in a way that violates any criminal or civil law; (g) load test the Subscription Services in order to test scalability; or, (h) exceed the usage limits listed in the subscription order.

2.9 Customer must provide all data for use in the Subscription Services, and Crestron is not obligated to modify or add to the Customer Data. Customer (a) is solely responsible for the content and accuracy of the Customer Data; (b) consents to having its Customer Data transmitted, collected, processed and stored by Crestron and/or its service providers in the United States and/or other locations as detailed in the Crestron Privacy Statement Regarding Internet Data Collection (the "Data Processing Activities"); and (c) represents and warrants to Crestron that it has (i) collected and processed Customer Data in compliance with all applicable Privacy and Data Protection Laws, and (ii) obtained all rights and consents necessary under applicable Privacy and Data Protection Laws to provide the Customer Data to Crestron, and to permit Crestron to collect and process such Customer Data for purposes of this Agreement including, but not limited to, in connection with the transfer of the Personal Data pursuant to Section 2.13.

The installation and operation of the Cloudware requires the Data Processing Activities. If Customer does not consent to the Data Processing Activities, they shall not license, install, use or otherwise access the Cloudware. Opting out of the Data Processing Activities will prevent the Cloudware from functioning.

2.10 Crestron shall only process the Customer Data in accordance with Customer's reasonable instructions and as necessary to provide the Subscription Services under this Agreement, and for no other purpose. As part of the Subscription Services, Crestron may: (a) observe and report back to Customer on Customer's usage of the Subscription Services; and/or (b) make recommendations for Customer's improved usage of the Subscription Services.

2.11 Crestron will take commercially reasonable technical and organizational measures to maintain the security of Customer Data and protect it against accidental loss or unlawful destruction, alteration, disclosure or access as set forth in the Crestron Privacy Statement Regarding Internet Data Collection. All Internet communication to and from Crestron processors is encrypted using Secure Socket Layer (SSL) standard security technology. However, no security system is impenetrable. Crestron cannot guarantee the

security of its databases, nor guarantee that the Customer Data will not be intercepted while being transmitted over the Internet.

2.12 Crestron shall have the right to identify trends and publish reports using anonymized and aggregated data from multiple customers that use the Subscription Services, provided that, such published reports do not identify Customer or contain Personal Data.

2.13 The parties shall comply with Privacy and Data Protection Laws applicable to the performance of their respective obligations pursuant to this Agreement.

(a) Customer has agreed to the EU Standard Contractual Clauses and/or an International Data Transfer Agreement, if applicable, each of which are countersigned by Crestron.

(b) Notwithstanding the foregoing, any Customer that processes the Personal Data of natural persons from the European Economic Area hereby unambiguously consents to the transfer of such Personal Data included in the Customer Data from the European Economic Area (EEA) to the United States and other countries deemed by the European Commission not to provide adequate security for such Personal Data. Crestron may, at its discretion and on giving reasonable written notice to Customer, elect to have such transfers governed by the Privacy Shield or such other successor program for the transfer of Personal Data from the EEA to the United States, as approved by the US Department of Commerce and the European Commission, instead of the EU Standard Contractual Clauses.

(c) In the event that international data transfer agreements, (including, as applicable, the EU Standard Contractual Clauses), are no longer deemed to provide adequate protection for the cross-border transfer of Personal Data from any country under applicable Privacy and Data Protection Laws, and if the Personal Data involves data that is subject to any country's Privacy and Data Protection Laws which require that an acceptable transfer mechanism be in place, Crestron and Customer shall cooperate in good faith to implement an acceptable alternative method to allow the transfer of such data in compliance with applicable Privacy and Data Protection Laws. In the event no method is agreed upon, Crestron may, at its election, terminate the Agreement upon written notice to Customer without further liability.

### 3. SUBSCRIPTION SERVICES

3.1 Crestron warrants that: (a) the Subscription Services will function substantially as described in the Documentation; and (b) Crestron owns or otherwise has the right to provide the Subscription Services and Documentation to Customer under this Agreement.

3.2 If the Subscription Services do not function substantially in accordance with the Documentation, Crestron shall, at its option, either: (a) modify the Subscription Services to conform to the Documentation; or (b) provide a workaround solution that will substantially meet the Documentation. If neither of these options is commercially feasible, either party may terminate the relevant Subscription Services under this Agreement, in which case Crestron shall refund to Customer all fees pre-paid to Crestron under the relevant Order for unused Subscription Services.

3.3 If the normal operation, possession or use of the Subscription Services by Customer is found to infringe any third party intellectual property right or Crestron believes that this is likely, Crestron shall, at its option, either: (a) obtain a license from such third party for the benefit of Customer; or (b) modify the Subscription Services so that they no longer infringe. If neither of these options is commercially feasible, either party may terminate the relevant Subscription Services under this Agreement, in which case Crestron shall refund to Customer, as its sole remedy, all fees pre-paid to Crestron under the relevant Order for unused Subscription Services.

3.4 Crestron has no warranty obligations for: (a) Customer's use of a version of the Crestron Cloudware that has passed its end-

of-life date (see Section 2.7); (b) problems caused by any third party software or hardware; (c) problems caused by the actions of any third party; or (d) other matters beyond Crestron's reasonable control.

#### **4. TERM AND TERMINATION**

4.1 This Agreement starts on the date that Customer signs an Order and ends when Crestron no longer is obligated to provide Customer with Subscription Services or Professional Services under any Order.

4.2 Either party may terminate rights granted under a particular Order if the other breaches any material term of the Order (including a material term of this Agreement insofar as it applies to the Order) and the breach is not cured within thirty (30) days of written notice.

4.3 Upon termination of Customer's Subscription Service, Crestron must promptly provide Customer with all Customer Data in a commercially reasonable electronic and interoperable format which allows for further use by the Customer. . However, Crestron may retain Customer Data in backup media for an additional period of up to twelve (12) months, or longer if required by law.

4.4 Provisions that survive termination or expiration of this Agreement are those relating to ownership, limitation of liability, confidentiality, payment and others which by their nature are intended to survive.

#### **5. WARRANTY DISCLAIMER**

5.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SUBSCRIPTION SERVICES ARE PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND CRESTRON DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CRESTRON DOES NOT WARRANT THAT THE USE OF THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

#### **6. LIMITATION OF LIABILITY**

6.1 NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY.

6.2 Crestron's maximum liability for all claims and/or damages arising out of or related to Crestron Cloudware, whether in contract or tort, or otherwise, shall in no event exceed, in the aggregate, the total amounts actually paid to Crestron for those Crestron Cloudware Subscription Services, under the Order that was in effect at the time of the event giving rise to such claim.

#### **7. CONFIDENTIALITY**

7.1 The Subscription Services, Cloudware, and Documentation contain valuable trade secrets that are the sole property of Crestron. Customer shall take reasonable care (and shall ensure that its employees, contractors and agents take reasonable care) to prevent (a) other parties from learning of these trade secrets, and (b) unauthorized access to or duplication of the Subscription Services, Cloudware, and Documentation.

#### **8. GENERAL**

8.1 This Agreement, together with the Order, and the EU Standard Contractual Clauses and/or International Data Transfer

Agreement, where applicable, constitutes the entire agreement of the parties, and supersedes any prior or current understandings, whether written or oral. If there is a conflict between the Agreement and an Order, the Agreement will prevail.

8.2 This Agreement may not be changed or any part waived except in writing by the parties.

8.3 If any term of this Agreement is found, by a proper authority, to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of the Agreement.

8.4 Customer must not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Crestron (which shall not be unreasonably withheld).

8.5 The Cloudware is of U.S. origin for purposes of U.S. export control laws.

8.6 Crestron and Customer shall each comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this Agreement including, but not limited to, the U.S. Commerce Department's Export Administration Regulations.

8.7 Except for actions for nonpayment or breach of Crestron's proprietary rights, the parties agree that any action in relation to an alleged breach of this Agreement shall be commenced within two (2) years of the date of the breach, without regard to the date the breach is discovered. Any action not brought within that two (2) year time period shall be barred, without regard to any other limitations period set forth by law or statute.

#### **9. GOVERNING LAW AND DISPUTE RESOLUTION**

9.1 This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, USA, without regard to conflict of laws principles.

9.2 All disputes arising out of or in connection with this Agreement shall be finally and exclusively settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The arbitration proceeding shall be conducted in New York, New York. The language to be used in the arbitration proceeding shall be English.

9.3 Notwithstanding the foregoing requirement that disputes be subject to binding arbitration, the parties shall retain the right to seek equitable or injunctive relief from a court of competent jurisdiction.

9.4 The provisions of this section 9 are applicable to this Agreement, except to the extent prohibited by international data transfer agreements, including, the EU Standard Contractual Clauses, executed by the parties pursuant to Section 2.13, in order to comply with Privacy and Data Protection Laws.