

XiO Cloud Monitoring Services Terms of Use

Crestron Electronics, Inc.

Last Updated: 11 June 2021

1. Scope

1.1 Crestron's XiO Cloud Provisioning and Management Service (the "**XiO Cloud Service**") enables you, as a Crestron Authorized Reseller or a Crestron Service Provider (together, "**You**"), upon the authorization of Your end-user customers (the "**Customers**"), to provide monitoring, maintenance, management and/or support services to Your Customers' XiO Cloud connected rooms and devices and/or Your Customers' XiO Cloud Service accounts ("**Monitoring Services**"), in order to maintain such rooms, devices and accounts and identify and resolve technical issues (the "**Purpose**").

1.2 Subject to the Terms of Use set forth herein, you may provide Monitoring Services through XiO Cloud Service mechanisms made available to You by Crestron, which include, but may not be limited to:

(a) You may create an account in the XiO Cloud Management Portal (a "**Portal Account**"), enabling the XiO Cloud licensed rooms and/or devices in Your Customers' XiO Cloud Service accounts to be associated with your Portal Account, upon Your Customer's authorization (the "**Associated Rooms**");

(b) You may be enabled by Your Customers as a user on the Customers' XiO Cloud Service accounts (the "**Customer Accounts**") to manage their XiO Cloud licensed rooms and/or devices, or a subset of their XiO Cloud licensed rooms or devices ("**Customer Rooms**"); or

(c) You may create managed rooms for your Customers in Your company's XiO Cloud Service account (the "**Managed Rooms**"), where such Managed Rooms are not associated with a separate Customer Account.

1.3 Devices that are included in the Associated Rooms, Customer Rooms and/or Managed Rooms (together, the "**Rooms**") will transmit data ("**Customer Data**") via the Internet through the XiO Cloud Service, as described in the Crestron Privacy Statement Regarding Internet Data Collection, available at <http://www.crestron.com/legal/crestron-privacy-statement-regarding-internet-data-collection>, which may be updated by Crestron from time to time. Customer Data for the Rooms will be made available to You through the XiO Cloud Service.

2. Acceptance of Terms

2.1 The right to provide Monitoring Services through the XiO Cloud Service is available solely to those parties that are subject to a separate written agreement ("**Underlying Agreement**") with Crestron Electronics, Inc., or its subsidiaries and affiliates (together, "**Crestron**"). The Underlying Agreement may be: (a) a Crestron Dealer Agreement, (b) an authorized Enterprise Distributor Agreement; (c) a Crestron Service Provider Agreement, or (d) another form of agreement similar in purpose to items (a) through (c).

2.2 By registering for the XiO Cloud Service and/or providing Monitoring Services, you represent that: (a) you are a party to an Underlying Agreement with Crestron; (b) You are duly authorized to accept and agree to these Terms of Use on behalf of your company; and (c) You and your company agree to be bound by

these Terms of Use. If You do not agree to these Terms of Use, do not register for, access, or use the XiO Cloud Service and / or provide Monitoring Services.

3. Ownership and License

3.1 The XiO Cloud Service, along with any portion or function thereof, may be protected by United States Patent, Trademark, and Copyright Laws and International Treaty provisions. Except for the rights expressly granted herein, these Terms of Use transfer to You no right, title, or interest in or to the XiO Cloud Service, or to any copyright, patent, trademark, trade secret, or other intellectual property or proprietary right in the XiO Cloud Service. Crestron retains sole and exclusive ownership of the XiO Cloud Service and to any portion or function thereof.

3.2 Your use of and access to the XiO Cloud Service is subject to the terms of Crestron's Cloudware License Agreement and Addendum ("**Cloudware License**"), available at www.crestron.com/Legal/software-products-on-premises-and-cloudware.

3.3 Subject to these Terms of Use and the Cloudware License; Crestron hereby grants You, during the term of the Underlying Agreement, a non-exclusive, non-sublicensable, non-transferable, and limited license to use the XiO Cloud Service to provide Monitoring Services. All rights not expressly granted in these Terms of Use are reserved by Crestron. No additional rights whatsoever (including, without limitation, any implied licenses) are granted by implication, estoppels, or otherwise.

3.4 Use of the XiO Cloud Service and provision of Monitoring Services includes but is not limited to creating an XiO Cloud Service Account or a Portal Account; logging into Your or Your Customers' XiO Cloud Service accounts (together with Portal Accounts, "**Accounts**") ; assigning roles to Your personnel; registering, claiming or associating Rooms with Accounts; accessing any Customer Data or other information stored or collected by the XiO Cloud Service, or using the XiO Cloud Service in any way.

3.5 Termination of the Underlying Agreement will automatically terminate your right and license to use the XiO Cloud Service to provide Monitoring Services.

4. Rules and Conduct

4.1 You are required to register with Crestron, in accordance with the instructions provided to You by Crestron, in order to provide Monitoring Services through the XiO Cloud Service. You agree to provide and maintain complete, accurate and up to date registration and user information. You are solely responsible for the activity that occurs on Your Accounts and / or in connection with Monitoring Services You provide, as well as for maintaining the confidentiality of your login credentials to the XiO Cloud Service and/or any Accounts. You are responsible for administering access to the XiO Cloud Service and/or any Account for all persons that You have allowed to access the XiO Cloud Service. This includes You monitoring all Account access and permissions and the removal of access for your terminated employees or other personnel. You must immediately notify Crestron of any unauthorized use of or access to the XiO Cloud Service and/or any Accounts.

4.2 You shall not cause or cause Customer to: **(a)** take any action that imposes or may impose (as determined by Crestron in its sole discretion) an unreasonable or disproportionately large burden on the XiO Cloud Service's infrastructure; **(b)** attempt to access the XiO Cloud Service using any method other than the interfaces and instructions that Crestron provides; **(c)** circumvent any measure Crestron may use

to prevent or restrict access to the XiO Cloud Service ; or **(d)** interfere or attempt to interfere in any way with the proper working of the XiO Cloud Service or any Accounts.

4.3 You, either through your own actions or by directing or permitting a third party to act, shall not: **(a)** attempt to discover any source code, underlying ideas or algorithms used by Crestron to develop the XiO Cloud Service through reverse engineering, de-compilation, or disassembly of the XiO Cloud Service, or any portion thereof; **(b)** modify, translate, or otherwise create derivative works of any part of the XiO Cloud Service; or **(c)** copy, rent, lease, distribute, or otherwise transfer any of the rights that You receive hereunder.

5. Privacy and Security Obligations

5.1 You shall not access or in any way utilize the Customer Data or other information collected or stored by the XiO Cloud Service for any purpose other than the intended Purpose. You shall use the XiO Cloud Service and/or provide Monitoring Services only as permitted by law, including 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) 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; **(f)** the California Consumer Privacy Act; and **(g)** any successor legislation or regulations applicable thereto.

5.2 Prior to registering, claiming or associating any Rooms in the XiO Cloud Service, You shall

(a) notify Customer that both You and Crestron will collect, transmit, store, access, and process the Customer Data, including as detailed in the Crestron *Privacy Statement Regarding Internet Data Collection*, available at <http://www.crestron.com/legal/crestron-privacy-statement-regarding-internet-data-collection>;

(b) provide Customer with the Crestron Privacy Statement Regarding Internet Data Collection;

(c) notify Your Customer of Your intended use of the Customer Data, which must be consistent with the Purpose described above; and

(d) obtain Your Customer's unambiguous consent to allow You to register, claim or associate the Rooms in the XiO Cloud Service; to provide Monitoring Services hereunder; and to Your and Crestron's access to and use of Customer Data as described above.

5.3 Prior to registering, claiming or associating Rooms in the XiO Cloud Service and/or providing Monitoring Services, You must advise the Customer of their right, at any time, to terminate the registration or association of the Rooms in XiO Cloud Service and to revoke Your right and/or Crestron's right to access or use their Customer Data. In the event a Customer revokes rights for Managed Rooms, you will promptly terminate the XiO Cloud Service for such Managed Rooms.

5.4 You shall process the Customer Data only in accordance with the Purpose set out in these Terms of Use, unless it is otherwise required by applicable law (in which case, You shall notify Crestron of the relevant legal requirement before processing the Customer Data).

5.5 You shall use industry best practices regarding data security whenever you collect, transmit, process, and store the Customer Data.

5.6 You shall respond without undue delay to any request from a Customer under a data protection law, including but not limited to those identified above, regarding their Customer Data (“**Data Subject Request**”) by taking the required actions, which may include (a) removing the Rooms from the XiO Cloud Service and/or from Your Accounts; (b) discontinuing Your use or processing of Customer Data for the Rooms; (c) deleting the associated Customer Data that You have obtained through the XiO Cloud Service; (d) providing Customer with information regarding Customer Data; and / or (e) performing other actions as required by the Data Subject Request and/or the applicable data protection law. You shall notify Crestron of any such Data Subject Request and provide Crestron with your full cooperation and assistance in relation to any Data Subject Request received by Crestron regarding Customer Data.

5.7 You shall protect the Customer Data by ensuring that only persons authorized by You process Customer Data and that such persons are subject to binding obligations to maintain the confidentiality of the Customer Data. You shall notify Customer and Crestron without undue delay (and in any event within twenty-four (24) hours) after discovering any failure or defect in security which leads, or might reasonably be expected to lead, to a disclosure of Customer Data to unauthorized persons.

6. Term and Termination

6.1 Your license and rights to use the XiO Cloud Service to provide Monitoring Services may continue for as long as Crestron makes the XiO Cloud Service mechanisms to provide Monitoring Services available to You in the form present on the date You accepted these Terms of Use. Subsequent updates or revisions to the XiO Cloud Service, the terms at which Crestron offers the XiO Cloud Service, and or the mechanisms made available by Crestron to provide Monitoring Services may require You to agree to subsequent terms and conditions in order to continue to provide such services. Crestron may modify, suspend, or discontinue the XiO Cloud Service, features of the XiO Cloud Service, mechanisms for providing Monitoring Services and/or the terms and conditions under which such services are made available at any time and for any reason. Your continued use of the XiO Cloud Service to provide Monitoring Services following an update or modification of these Terms of Use will constitute your acceptance and agreement to any such updated Terms of Use.

6.2 Termination of the Underlying Agreement will automatically terminate your license to use the XiO Cloud Service to provide Monitoring Services, as described above.

6.3 Crestron may terminate your access to the XiO Cloud Service and/or your right to provide Monitoring Services at any time for a breach of these Terms of Use, the Cloudware License, or the Underlying Agreement. In addition, Crestron may terminate your access to the XiO Cloud Service and any features or functions thereof, including without limitation any Accounts, at any time for any reason or for no reason.

7. Warranty Disclaimer

7.1 Crestron specifically disclaims any and all representations and warranties, either express or implied, including those of merchantability, merchantable quality, non-infringement of third-party rights, and fitness for a particular purpose.

7.2 Except as otherwise expressly provided herein, or in the Cloudware License, the XiO Cloud Service, and any feature or function thereof, including without limitation, any mechanism for the provision of Monitoring Services, is provided on an “as is” basis, without warranty of any kind. More specifically, Crestron disclaims any warranties that the XiO Cloud Service or any portion thereof will meet Your requirements or that the operation of the XiO Cloud Service, including any associated software, functionality, and/or Accounts will be uninterrupted or error free.

7.3 If the disclaimer of warranty provided herein cannot be given local legal effect according to their terms, a reviewing court shall apply local law that most closely approximates an absolute waiver of all civil liability in connection with the XiO Cloud Service.

8. No Obligation to Provide Support Services

You acknowledge that these Terms of Use do not entitle You or Customer to any support, maintenance or upgrade from Crestron and Crestron is under no obligation to provide You or Customer with such support, maintenance, or upgrade.

9. Indemnification

You agree to defend, indemnify, and hold harmless Crestron and each of its employees, contractors, officers, directors, and representatives from all liabilities, claims and expenses, including reasonable attorneys’ fees and other legal costs, that arise from or relate to your use or misuse of, or access to, the XiO Cloud Service; your provision of Monitoring Services; or otherwise from your violation of these Terms of Use. Crestron reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by You, in which event You will assist and cooperate with Crestron in asserting any available defenses.

10. Limitation of Liability

10.1 In no event will Crestron be liable to You, Your Customers or any third party for any loss of use, interruption of business, or any direct, indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), strict product liability or otherwise, even if Crestron has been advised of the possibility of such damages.

10.2 If the limitation of liability provided herein cannot be given local legal effect according to their terms, a reviewing court shall apply local law that most closely approximates an absolute waiver of all civil liability in connection with the XiO Cloud Service and the Monitoring Services.

10.3 The use of the XiO Cloud Service to provide Monitoring Services is provided for Your benefit and these Terms of Use are not intended to confer any right or benefit on any third party. No action may be commenced or prosecuted against You or Crestron by any third party (including without limitation, affiliates) claiming as a third-party beneficiary of the XiO Cloud Service, these Terms of Use or the rights granted herein.

11. Integration and Severability

11.1 These Terms of Use supplement the Underlying Agreement between You and Crestron and add additional terms and conditions that are applicable to your use of the XiO Cloud Service to provide

Monitoring Services, but do not in any other way alter or modify the terms of Your Underlying Agreement, which remains in full force and effect. All prior or contemporaneous representations, understandings, or agreements, whether oral or written, regarding your use of the XiO Cloud Service to provide Monitoring Services that are not expressly set forth within these Terms of Use or the Cloudware License, are hereby deemed waived, superseded, and abandoned.

11.2 The invalidity or unenforceability of any provision of these Terms of Use shall not affect any other provision of these Terms of Use, and the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision had not been included in these Terms of Use.

12. Governing Law and Dispute Resolution

All disputes arising out of or in connection with these Terms of Use shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. These Terms of Use shall be governed and construed in accordance with the laws applicable to the Underlying Agreement, without regard to conflicts of laws principles. The arbitration proceeding shall be conducted in New York City, New York. The language to be used in the arbitration proceeding shall be English. For the avoidance of doubt, nothing in this Section (Governing Law and Dispute Resolution) shall prevent either party from seeking injunctive relief from a court of appropriate jurisdiction.

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