

Cloudware License Agreement

Crestron Electronics, Inc.

Last updated: 04 February 2022

1. Scope and Acceptance

1.1 This Cloudware License Agreement (“**Agreement**”), as it may be amended from time to time, is entered into between Crestron Electronics, Inc., 15 Volvo Drive, Rockleigh, New Jersey, 07647 (USA) (“**Crestron**”), and you (“**Customer**”, “**you**”, or “**your**”) with respect to the use of Crestron Cloudware, including but not limited to Crestron Fusion® Cloud, Crestron XiO Cloud™, and Crestron Hosted Scheduling. This Agreement is incorporated by reference and made a part of each Customer subscription order (the “**Order**”) and/or registration form or customer information form made available by Crestron (the “**Registration Form**”) identifying applicable Crestron Cloudware products. Subject to the descriptions and limitations set forth in the applicable Order and/or the applicable Registration Form, this Agreement governs Customers’ license, access, and use of certain Crestron software-as-a-service subscription products that run and are accessed on remote Internet servers made available to Customer by or on behalf of Crestron (the “**Cloudware**”), rather than on Customer owned or controlled local servers, cloud-based resources or personal computers, along with all related documentation provided in print and/or electronic form by Crestron for use with the Cloudware, as periodically updated (the “**Documentation**”). The Cloudware may be used in connection with the control, automation, scheduling, management, maintenance, monitoring and registration of Customer buildings, rooms and devices, including control systems, projectors, displays, lighting, shades, occupancy sensors, HVAC, and other devices, but may not be used for emergency response systems or to operate emergency safety devices.

1.2 By ordering, registering for, accessing, or using the Cloudware, in whole or part: (a) you represent and warrant that you have the proper legal authority to enter into this Agreement; (b) you acknowledge that you have read this Agreement in its entirety; and (c) you agree to be bound by all of the terms of this Agreement, and to the prices and conditions provided to you in association with your access and / or your use the Cloudware. IF YOU DO NOT INTEND TO BE LEGALLY BOUND BY THIS AGREEMENT, DO NOT ACCESS OR USE THE CLOUDWARE.

1.3 If you are ordering, registering for, or activating the Cloudware or Documentation on behalf of a third party, you represent that the third party, whether an individual or a business entity, agrees to be bound by the terms and conditions of this Agreement.

2. Definitions

In this Agreement, the capitalized terms listed below are defined as follows:

2.1 “Cloud Computing Provider” means a third-party entity that provides Internet accessible data centers and network infrastructure, through which Crestron provides Customer with access to Cloudware products, for example, Microsoft Azure®.

2.2 “EU Standard Contractual Clauses” means those standard contractual clauses for the transfer of Personal Data to data processors established in third countries outside the European Economic Area (EEA) member states, the territory of Switzerland, and the territory of the United Kingdom (regardless of its



membership status within the European Union), which do not ensure an adequate level of data protection, pursuant to European Commission Decision C(2010)(593), which have been countersigned by Crestron and agreed to by Customer or its authorized representative.

2.3 “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.

2.4 “Personal Data” means any information that identifies or can be used to identify an individual. Examples of Personal Data include, but are not limited to, name, address, telephone number, and email address.

2.5 “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.

3. Ownership; License Grant; and Payment

3.1 Ownership. Crestron is and will remain the sole and exclusive owner of all intellectual property rights, title, and interest in and to the Cloudware and the Documentation, including any modifications and improvements thereto or derivatives thereof, with the exception of any third-party components of the Cloudware. Customer shall have no obligation to provide Crestron with any ideas, suggestions, recommendations, or comments (“**Feedback**”) relating to the Cloudware; however, to the extent Customer provides any Feedback to Crestron, Crestron in its sole discretion may freely use or incorporate such Feedback for any purpose, without any obligation, restriction or payment of royalty.

3.2 Customer Data. The Customer’s electronic information which is collected and processed in the Cloudware database (“**Customer Data**”) belongs to Customer, and Crestron makes no claim to any right of ownership in it. Customer Data may include Personal Data other than Sensitive Personal Information, as defined below. The Customer Data that is collected by each specific Crestron Cloudware product is described in the Crestron Privacy Statement Regarding Internet Data Collection, available at: <https://www.crestron.com/legal-data-collection-privacy>.

3.3 License Grant. Customer is granted a subscription license, as described in the applicable Order and/or Registration Form, to use the Cloudware subject to the terms and conditions set forth in this Agreement and the EU Standard Contractual Clauses and/or International Data Transfer Agreement, where applicable (the “**Subscription License**”). For each Subscription License, Crestron grants to Customer a non-exclusive, non-transferable, and limited right to access and use the Cloudware and the Documentation for Customer’s internal business purposes only. Subject to the terms of the Agreement, Customer may access and use the Cloudware and the Documentation: (a) in the number of rooms; (b) at the specific locations; (c) on the devices called out in the Order and / or registration; or (d) as otherwise called out in the Order and/or Registration Form. Customer may copy the Documentation for back-up and archival purposes

only. Customer may access and use the Cloudware but has no right to receive a copy of the object code or source code of the Cloudware.

3.4 Device Software License. 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, as set forth at: <http://www.crestron.com/legal/software-license-agreement>.

3.5 Reservations. Customer is not granted any proprietary right, title, interest, or ownership of the Cloudware and Documentation and Crestron reserves all rights not expressly granted to Customer under this Agreement. Further, this Agreement does not authorize Customer to use, alter, modify, remove or conceal any name, trademark or logo of Crestron.

3.6 Payment. For each Subscription License, Customer or its Authorized Integrator shall be responsible for payment to Crestron of the fees associated with the applicable Order. In the event such fees are not paid, the Agreement is terminated, or a Subscription License expires, the right to use the Cloudware and Documentation will terminate.

4. Conditions of Use

4.1 Restrictions. Customer shall use the Cloudware only for its own internal business purposes and shall make the Cloudware available only to its employees, representatives, independent contractors or invitees, who agree to be bound by the terms and restrictions set forth in this Agreement with regard to their use of the Cloudware. Customer may not (and shall ensure that its employees, contractors and agents do not): **(a)** sell, rent or lease the Cloudware; **(b)** make the Cloudware or Documentation available to anyone who is not an authorized user; **(c)** create any derivative works or improvements based upon the Cloudware or the Documentation; **(d)** copy any feature, design or graphic in, or reverse engineer the Cloudware or the Documentation; **(e)** access the Cloudware in order to build a competitive solution or to assist someone else to build a competitive solution; **(f)** use the Cloudware in a way that violates any criminal or civil law; **(g)** perform any security scan or load test on the Cloudware; or **(h)** exceed the usage limits listed in the Order and/or Registration Form.

4.2 Customer Obligations. It is the Customer's responsibility to configure Cloudware on Customer's IT infrastructure in a manner compatible with the Cloudware Documentation and consistent with all applicable Privacy and Data Protection Laws and security requirements. It is the Customer's responsibility to coordinate with an authorized Crestron dealer, distributor, or service provider (an "**Authorized Integrator**") to the extent applicable and as agreed to by the Customer and Authorized Integrator. The Customer shall provide network capability, along with hardware and software that is compatible with the Cloudware, as described in the Documentation.

4.3 Technical Safeguards. Customer agrees that it will use all commercially reasonable technical safeguards to prevent Crestron from any access to personal or non-public information resident on any Customer IT infrastructure, the compromise of which could result in tangible harm to an individual, including but not limited to 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 ("**Sensitive Personal Information**"). Crestron refuses to accept and Customer agrees not to provide Crestron with any access to such Sensitive Personal Information in connection with any use of the Cloudware.

4.4 Cloudware Upgrades and Updates. Crestron regularly upgrades and updates the Cloudware. This means that the Cloudware products offered by Crestron 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 will need to upgrade its equipment in order to make continued efficient use of the Cloudware. Customer may have legitimate business reasons for not upgrading Crestron Fusion Cloudware to a new version as soon as it becomes available, however, one (1) year after the release of a new version, Crestron may remove Customer's access to an older version and upgrade Customer to the latest version of Crestron Fusion Cloudware.

5. Warranty

5.1 Crestron represents and warrants that: **(a)** the Cloudware will function substantially as described in the Documentation; and **(b)** Crestron owns or otherwise has the right to provide access to the Cloudware and Documentation to Customer under this Agreement.

5.2 If the Cloudware does not function substantially in accordance with the Documentation, Crestron shall, at its option, either: **(a)** modify the Cloudware 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 License under this Agreement, in which case Crestron shall refund to Customer all fees pre-paid to Crestron under the relevant Order for the unused portion of the Subscription License term.

5.3 If the normal operation, possession, or use of the Crestron Cloudware 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 Cloudware so that the Cloudware no longer infringes. If neither of these options is commercially feasible, either party may terminate the relevant Subscription License, in which case Crestron shall refund to Customer, as its sole remedy, all fees pre-paid to Crestron under the relevant Order for the unused portion of the Subscription License term .

5.4 Crestron has no warranty obligations for: **(a)** Customer's use of a version other than the most recent version of Cloudware (see **Section 4.4**); **(b)** issues caused by any third party software or hardware; **(c)** issues caused by the actions of any third party; or **(d)** other matters beyond Crestron's reasonable control.

6. Customer Data

6.1 The operation of the Cloudware requires the processing of Customer Data. If Customer does not consent to such processing, they shall not license, access or use the Cloudware. Opting out of the processing of Customer Data will prevent the Cloudware from functioning.

6.2 Customer shall provide all data for use in the Cloudware, 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 as detailed in the Crestron Privacy Statement Regarding Internet Data Collection and by Crestron's selected Cloud Computing Provider, in accordance with their applicable privacy and security policies, in the United States and/or other locations; 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 its Cloud Computing Provider, and to

permit the processing of 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 7**.

6.3 Crestron shall only process the Customer Data as reasonably necessary to provide the Subscription License to the Cloudware under this Agreement, and for no other purpose. Customer consents to such processing. As a part of the Subscription License, Crestron may: (a) observe and report back to Customer on Customer's usage of the Cloudware; and / or (b) make recommendations for Customer's improved usage of the Cloudware.

6.4 Crestron will take appropriate technical and organizational measures to maintain the security of Customer Data and protect it against accidental loss or unlawful destruction, alteration, disclosure or access. All Internet communication containing Customer Data in-transit to and from Crestron and/or a Cloud Computing Provider is encrypted using then-current industry standard strong encryption technologies, such as Secure Socket Layer (SSL) standard security technology and all Customer Data stored at-rest is encrypted using then current industry strong encryption technology. However, no security system is impenetrable. Crestron cannot guarantee the security of its databases or those of its selected Cloud Computing Provider, nor guarantee that the Customer Data will not be intercepted while being transmitted over the Internet.

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

7. Privacy and Data Protection Laws

7.1 Both Crestron and Customer shall comply with Privacy and Data Protection Laws applicable to the performance of their respective obligations pursuant to this Agreement. To the extent applicable to each Order and / or Registration Form, Customer acknowledges and agrees to the associated EU Standard Contractual Clauses and / or International Data Transfer Agreement, each of which are countersigned by Crestron, available at: <https://www.crestron.com/en-US/Legal/software-products-on-premises-cloudware>.

7.2 Notwithstanding any other provision herein, any Customer that processes the Personal Data of natural persons from the European Economic Area (EEA) member states, the territory of Switzerland, and the territory of the United Kingdom (regardless of its membership status within the European Union) hereby unambiguously consents to the transfer of such Personal Data included in the Customer Data 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.

7.3 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.

8. Term and Termination

8.1 Term. This Agreement starts on the date that Crestron accepts an Order and/or Registration Form for a Subscription License and ends when Crestron no longer is obligated to provide Customer with access to Cloudware under any Subscription License.

8.2 Termination for Cause. Either party may terminate rights granted under a particular Subscription License if the other breaches any material term of this Agreement and the breach is not cured within thirty (30) days of written notice.

8.3 Effect of Termination. Upon termination of a Subscription License, Crestron shall, upon request, either: (a) provide Customer with all Customer Data associated with the relevant Order in a commercially reasonable electronic and interoperable format which allows for further use by the Customer; or (b) destroy all Customer Data associated with that Order and confirm such destruction in writing. Crestron reserves the right to require the Customer to reimburse Crestron for its reasonable costs incurred in providing the Customer Data. Notwithstanding the above, Crestron may retain Customer Data in backup media for an additional period of up to twelve (12) months, or longer if required by law.

8.4 Survival. 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.

9. Warranty Disclaimer and Limitation of Liability

9.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE CLOUDWARE IS 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 CLOUDWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

9.2 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.

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

10. General

10.1 Entire Agreement. This Agreement, together with the applicable Order and Registration Form, along with the EU Standard Contractual Clauses and / or International Data Transfer Agreement if applicable, constitutes the complete and exclusive statement of the agreement among the parties regarding the described subject matter. It supersedes all prior written and oral statements, including any prior representation or statement. If there is a conflict between the Agreement and an Order, the Agreement will prevail.

10.2 Waiver, Amendment, and Severability. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or any other provision of this Agreement. This Agreement may not be modified, amended, or waived except by an instrument in writing signed by the party to be bound. 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.

10.3 Assignment. Customer shall 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).

10.4 Compliance with Laws. Crestron and Customer shall each comply with all applicable laws, rules, and regulations applicable to its performance under this Agreement including, but not limited to, the U.S. Commerce Department's Export Administration Regulations. The Cloudware is of U.S. origin for purposes of U.S. export control laws.

10.5 Force Majeure. Neither party shall be liable for delays caused by fire, accident, labor dispute, war insurrection, riot, act of government, act of God, or any other cause reasonably beyond its control (including delays caused by Customer or Customer's employees, agents, faculty or students). Each party shall use commercially reasonable efforts to minimize the extent of any such delay.

10.6 Statute of Limitations. 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.

11. Governing Law and Dispute Resolution

11.1 Governing Law and Dispute Resolution. 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. 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. If binding arbitration is not allowable in a particular jurisdiction, then: (a) before initiating any legal proceeding, Customer agrees to report any issue or concern to Crestron; (b) Customer agrees to negotiate with Crestron in good faith to resolve each issue or concern; and then (c) either Customer or Crestron may initiate a legal proceeding if Customer's issue or concern is not resolved within fifteen (15) days of receipt of notice by Crestron.

11.2 Injunctive Relief. 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.

11.3 NO CLASS ACTIONS. CUSTOMER MAY ONLY RESOLVE DISPUTES WITH CRESTRON ON AN INDIVIDUAL BASIS. CUSTOMER MAY NOT BRING A CLAIM AS A PLAINTIFF OR A CLASS MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. CUSTOMER UNDERSTAND AND AGREE THAT CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER LEGAL PROCEEDINGS IS NOT PERMITTED.

11.4 The provisions of this **Section 11** are applicable to this Agreement, except to the extent prohibited by law or by international data transfer agreements, including the EU Standard Contractual Clauses.

12. Translations

This document has been originally drafted in the English language. The parties expressly agree and acknowledge that the English version of the document will prevail over any other language translation of this document.

13. Contact Crestron

If you have any questions, please contact Crestron.

Via e-mail: satisfaction@crestron.com, or support@crestron.com

Via post:

The Americas:

Crestron Electronics, Inc.
15 Volvo Dr.
Rockleigh, NJ 07647 USA

EMEA:

Crestron Europe BV
Oude Keerbergsebaan 2,
2820 Rijmenam, Belgium
VAT No. BE0699.717.121

Australia and New Zealand:

Crestron ANZ PTY. Ltd.
Level 5, 15 Help Street,
Chatswood NSW 2067, Australia

Asia:

Crestron Singapore Pte. Ltd.
30 Cecil Street
#21-05, Prudential Tower
Singapore 049712



Via phone:

Please visit www.crestron.com to find the phone number for Crestron support in your region.

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