

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

10-615

SAP Number

Information Services Department

Department Contract Representative
Telephone Number

Jennifer Mancebo
909-388-5579

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Cisco Systems, Inc.
Doug Sloan
949-823-6485
7/28/20 through 7/27/25
Non-financial
N/A
Non-financial
1200604048

Briefly describe the general nature of the contract: *Universal Cloud Agreement with Cisco Systems, Inc. for Cisco services for a period of five (5) years.*

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
Bonnie Uphold, Deputy County Counsel

Date 7-15-20

Reviewed for Contract Compliance

►
Date _____

Reviewed/Approved by Department

►
Date _____

UNIVERSAL CLOUD AGREEMENT

This Universal Cloud Agreement, including any [supplemental terms](#) (collectively, the "Agreement") is between You and Cisco and governs Your use of the Cloud Service.

By clicking 'accept,' or using the Cloud Service, You agree to the terms of this Agreement. If You do not have authority to enter into this Agreement, or if You do not agree with its terms, do not click 'accept' and do not use the Cloud Service.

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Section 1. Our Responsibilities

We provide the Cloud Service, including technical support, as described in each Offer Description. We may enhance and refine the Cloud Service provided we do not materially reduce its core functionality other than in accordance with our [End of Life Policy](#). From time to time, we perform scheduled maintenance to update the servers and software used to provide the Cloud Service. You acknowledge that we may, in certain situations, need to perform emergency maintenance of the Cloud Service without providing advance notice to You, during which time, we may temporarily suspend Your access to and use of the Cloud Service.

Section 2. Your Payment Obligations

Fees for the Cloud Service set out in Your purchase terms with Your Approved Source are non-refundable and payment obligations are non-cancelable, except as provided herein, in those purchase terms or where prohibited by law. If Your use of the Cloud Service(s) exceeds Your entitlement rights, You agree to pay for Your excess use as required under Your purchase terms or Cisco buying program.

Section 3. Your Use of the Cloud Service

- a. **Your Use of the Cloud Service and Cisco Content.** You may use the Cloud Service during the applicable term for Your internal use, in accordance with the applicable Offer Description, Order, and Documentation. This right to use extends to Your Authorized Users. You will not intentionally: (i) interfere with the Cloud Service, other customers' access to the Cloud Service, or with its security; (ii) sell, resell, or distribute the Cloud Service; (iii) make the Cloud Service available to third parties as a managed or network provisioned service; (iv) cause an unusual spike or increase in Your use of the Cloud Service that Cisco determines negatively impacts its operating capability; (v) facilitate the attack or disrupt the Cloud Service, including denial of service ("DoS") attack, unauthorized access, pen testing, monitoring crawling, or distribution of malware (including but not limited to viruses, Trojan horses, worms, time bombs, spyware, adware, or cancelbots); (vi) submit any information that is not expressly required and/or contemplated in the applicable Documentation; or (vii) use the Cisco Content with third party products or service offerings that Cisco has not identified as compatible with the Cloud Service, extract Cisco Content or provide Cisco Content to a third party.
- b. **Responsibility for Customer Data and Credentials.** You are responsible for the accuracy and quality of Your Customer Data, the means by which You acquired Your Customer Data and Your use of Your Customer Data with our Cloud Service. You will keep all account information up-to-date, use reasonable means to protect Your account information, passwords and other login credentials for the Cloud Service, and promptly notify Cisco of any known or suspected unauthorized use of or access to Your account.
- c. **Use in China or Russia.** If You use the Cloud Service in China, You acknowledge that You are the entity responsible for: (i) transferring of any data outside of China in connection with the Cloud Service; and (ii) compliance with Chinese law applicable to the collection and overseas transfer of such data. If You use the Cloud Services in Russia, You acknowledge that You are the entity responsible for: (i) collecting of Personal Data from end users in Russia; and (ii) compliance with Russian law applicable to the collection and overseas transfer of Personal Data.

- d. **Use by Authorized Users.** You may allow third parties to use the Cloud Service solely on Your behalf for Your internal operations. You are responsible for ensuring that all Authorized Users comply with the terms of this Agreement and You are liable for any breach of this Agreement by Your Authorized Users. If You have purchased the Cloud Service under a Cisco buying program, further restrictions may apply. To the extent permitted by applicable law, You must ensure that third parties using the Cloud Service on Your behalf bring all claims related to the Cloud Service through You and waive all claims directly against Cisco related to those claims.
- e. **Third Party Products.** If You use the Cloud Service in conjunction with third party products, You are responsible for complying with the third-party providers' terms and conditions and privacy policies, and all such use is at Your risk. Cisco does not provide support or guarantee ongoing integration support for products that are not a native part of the Cloud Service.

Section 4. Confidential Information and Data

- a. **Confidential Information.** Recipient will hold in confidence and use no less than reasonable care to avoid disclosure of any Confidential Information to any third party, except for its employees, affiliates and contractors who have a need to know such information in connection with this Agreement, and are under written confidentiality obligations no less restrictive than the terms set forth in this Section. Recipient will be liable for any breach of this Section by its employees, affiliates and contractors. Recipient's nondisclosure obligation will not apply to information which: (i) is known by Recipient without confidentiality obligations; (ii) is or has become public knowledge through no fault of Recipient; or (iii) is independently developed by Recipient. Recipient may disclose Discloser's Confidential Information if required pursuant to a regulation, law or court order; provided that, Recipient provides prior notice to Discloser (to the extent legally permissible) and reasonably cooperates, at Discloser's expense, regarding protective actions pursued by Discloser. Upon reasonable request of Discloser, Recipient will either return, delete or destroy all Confidential Information of Discloser and certify the same.
- b. **How we use Your data.** Cisco processes and uses Personal Data and Customer Data to deliver, analyze, support and improve the Cloud Service and as otherwise permitted in this Agreement, Cisco's [Privacy Statement](#) and the applicable [Privacy Data Sheets](#). Cisco will maintain appropriate administrative, physical and technical safeguards, which are designed to protect the security, confidentiality and integrity of Personal Data and Customer Data processed by Cisco. Cisco may share Personal Data and Customer Data with third party service providers consistent with Cisco's Privacy Statement in order to assist in providing and improving the Cloud Service as described in the applicable [Privacy Data Sheets](#). Cisco contracts only with third party service providers that can provide the same level of data protection and information security that Cisco provides.
- c. **Telemetry Data.** Cisco processes Telemetry Data to deliver, enhance, improve, customize, support, and/or analyze the Cloud Service and other Cisco offerings and otherwise freely uses Telemetry Data that does not identify You or any of Your Authorized Users. You may have the ability to configure the Cloud Service to limit the Telemetry Data collected, but in some cases, You can only opt out of the Telemetry Data collection by uninstalling or disabling the Cloud Service.
- d. **International Data Transfers.** Cisco may process and store Customer Data and Personal Data outside of the country where it was collected. Cisco will only transfer Personal Data consistent with applicable law. To the extent Cisco processes any Personal Data from the European Economic Area or Switzerland on Your behalf, we will do so in a manner consistent with the relevant EU- or Swiss-US Privacy Shield Principles or successor frameworks ("Principles") (see www.commerce.gov/privacyshield). Where Cisco transfers Personal Data from an APEC Member Economy on behalf of You, Cisco will process such Personal Data in a manner consistent with the APEC Cross Border Privacy Rules Systems requirements ("CBPRs") (see www.cbprs.org) to the extent the requirements are applicable to Cisco's processing of such data. If Cisco is unable to provide at least the same level of protection as required by the Principles or CBPRs, Cisco will promptly notify You and cease processing. You are responsible for providing any required notices to Authorized Users and obtaining all required consents from Authorized Users regarding the processing and transfer of Personal Data by the Cloud Service, including international transfers.

Section 5. Ownership and Software Licensing Rights

- a. **What You Own.** You retain ownership in all intellectual property rights to Your Customer Data. You authorize Cisco to use feedback and ideas You provide in connection with Your use of the Cloud Service for any purpose.

- b. **What We Own.** Cisco and its licensors retain ownership of all intellectual property rights in and to Cisco Content, the Cloud Service and all underlying technology and associated Documentation related thereto.
- c. **Software License & Restrictions.** To use the Cloud Service, You may be required to download and install Cisco software ("Software"). Cisco grants You a limited, non-exclusive, non-sublicensable and non-transferable license to use the Software solely as required to use the Cloud Service. The Software may contain code that is subject to its own license terms. You may not and may not allow a third party to modify, reverse engineer, decompile, or otherwise attempt to derive the source code for the Software, or create derivative works of the Software except as legally permitted for interoperability purposes.
- d. **Beta and Trial Versions.** Beta versions of Cisco products may contain bugs, errors, or other issues. Therefore, they may not be used in Your production environment(s), except as otherwise permitted by Cisco in writing. If we provide You access to generally-available Cisco products for limited, temporary trial use, Your use is permitted for the period limited by the license key or by Cisco in writing. If there is no period identified, any trial use will expire thirty (30) days after the product is available to You. If You fail to stop using the Cloud Service by the end of the trial period, You will be invoiced for the list price of the product. Notwithstanding the foregoing, Cisco, in its discretion, may end the beta or trial at any time, at which point, You will no longer have access to any related data, information, and files and You should immediately cease any further use. Furthermore, beta and trial products are provided "AS-IS" without support or any express or implied warranty or indemnity for any problems or issues, and Cisco will not have any liability relating to Your use of the Cisco products.

Section 6. Indemnification

- a. **Claims.** Cisco will defend any claim or threatened claim against You that any Cloud Service provided under this Agreement infringes a third party's patent, copyright or registered trademark (the "Claim") during the term of Your valid use and will indemnify You against the final non-appealable judgment entered by a court of competent jurisdiction or any settlements arising out of a Claim, provided that You will: (i) promptly notify Cisco in writing of the Claim; (ii) fully cooperate with Cisco in the defense of the Claim; and (iii) grant Cisco the right to exclusively control the defense and settlement of the Claim and any subsequent appeal. Cisco will have no obligation to reimburse You for attorney fees and costs incurred prior to Cisco's receipt of notification of the Claim. You, at Your own expense, may retain Your own counsel.
- b. **Additional Remedies.** If a Claim occurs, or if Cisco reasonably believes a claim is likely to occur, Cisco will procure for You the right to continue using the Cloud Service, or replace or modify the Cloud Service with functionality that is at least equivalent. If Cisco determines those alternatives are not reasonably available, upon Cisco's notice/request, Your right to use will terminate and You will cease using the Cloud Service and Cisco will return any fees You paid Your Approved Source for the remaining term of the Cloud Service.
- c. **Exclusions.** Notwithstanding Sections 6a and 6b, Cisco has no obligation for any Claim based on: (i) compliance with any designs, specifications, or requirements You provide or a third party provides on Your behalf; (ii) Your modification of any Cloud Service or modification by a third party on Your behalf; (iii) the amount or duration of use made of the Cloud Service, revenue You earned, or services You offered; (iv) combination, operation, or use of a Cloud Service with non-Cisco products, software or business processes; or (v) Your failure to modify or replace a Cloud Service as required by Cisco to avoid the alleged infringement.
- d. **Sole and Exclusive Remedy.** This Section 6 states Cisco's sole and exclusive obligation and Customer's exclusive remedy for intellectual property rights infringement.

Section 7. Warranties, Disclaimers and Limitation of Liability

- a. **Warranty.** Unless otherwise provided in an applicable Offer Description, Cisco warrants that it will use commercially reasonable skill and care to provide the Cloud Service in accordance with the Offer Description (including any applicable service level agreement/objective). Upon Your prompt written notification to the Approved Source during the warranty period of Cisco's possible breach of this warranty, to the extent permitted by applicable law, Your sole and exclusive remedy is, at our option, either repair or replacement of the Cloud Service or a refund of the fees paid to Cisco for the period in which the Cloud Service did not comply, inclusive of any fees paid under an applicable service level agreement/objective.
- b. **Disclaimer.** If You are a customer who is a consumer (someone who uses the Software or Cloud Service outside of Your trade, business or profession), You may have legal rights in Your country of residence that prohibit the following limitations from applying to You, and, where prohibited, they will not apply to You. To find out more

about rights, contact a local consumer advice organization. Except as expressly stated in this Section 7 or agreed in writing by Cisco, to the extent allowed by applicable law, Cisco expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition or other implied term as to merchantability, or fitness for a particular purpose or non-infringement.

- c. **Limitation of Liability.** Except for any amounts due to Cisco for the Cloud Service, either party's liability for claims related to, or arising out of Your use of the Cloud Service, shall not exceed, in the aggregate, the total fees attributable to the 12 month period before the initial claim and paid or payable to the Approved Source under the applicable Order. In no event will either party be liable for: (i) indirect, incidental, exemplary, special or consequential damages; (ii) loss or corruption of data or interrupted or loss of business; or (iii) loss of revenues, profits, goodwill or anticipated sales or savings. This limitation of liability applies whether the claims are in warranty, contract, tort, infringement, or otherwise, even if either party has been advised of the possibility of such damages. Nothing in this Section 7 limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.

Section 8. Term and Termination

- a. **Term.** The initial term of the Cloud Service starts on the date the Cloud Service is made available for Your use and continues until the end of the term stated in the Order.
- b. **Renewal.** *In order to provide You with uninterrupted service, the Cloud Service will automatically renew for the renewal period selected on the Order ("Renewal Term") unless: (i) You notify the Approved Source in writing at least thirty (30) days before the end of the then-current term of Your intention not to renew; or (ii) You or Your Approved Source elect on the Order at the time of initial purchase not to auto-renew the Cloud Service; or (iii) the end-of-sale date for the Cloud Service has passed. Your Approved Source will notify You reasonably in advance of any Renewal Term if there are any fee changes. The new fees will apply for the upcoming Renewal Term unless You notify the Approved Source in writing before the applicable renewal date that You do not accept the fee changes. In such event, the Cloud Service will terminate at the end of the then-current term.*
- c. **Termination.** If a party materially breaches this Agreement and does not cure that breach within thirty (30) days after receipt of written notice of the breach, the non-breaching party may terminate this Agreement for cause. Cisco also has the right to immediately suspend or terminate Your use of the Cloud Services if You breach Sections 3a, 5c or 9e. Upon termination or expiration of this Agreement, You must cease any further use of the Cloud Service (and destroy any copies of Software within Your control). Upon any termination for Cisco's material breach of the Agreement, we will refund to You or Your Approved Source any prepaid fees covering the period from the effective date of termination to the end of the term. Upon Cisco's termination for Your material breach of the Agreement, You will pay any unpaid fees covering the period from the effective date of termination to the end of the term.
- d. **End-of-Life.** Cisco reserves the right to end-of-life ("EOL") the Cloud Service by providing prior written notice on Cisco.com. If You or Your Approved Source prepaid the fee for the Cloud Service and it becomes subject to EOL before the expiration of Your then-current term, Cisco will use commercially reasonable efforts to transition You to a substantially similar Cloud Service. If Cisco does not have a substantially similar Cloud Service, then Cisco will credit You any unused portion of the prepaid fee for such Cloud Service, calculated from the last date the EOL Cloud Service is available to the last date of Your then-current term for that Cloud Service. Such credit can be applied towards the future purchase of Cisco products.
- e. **Survival.** The following sections survive the expiration or termination of this Agreement: 2, 3, 4, 5a, 5b, the last sentence of 5c, 7, and 9.

Section 9. General Provisions

- a. **Subcontracting.** We may subcontract the performance of the Cloud Service to third parties. Any such subcontract will not relieve Cisco of any of its obligations under this Agreement.
- b. **Modifications to the Agreement.** As our business evolves, we may modify this Agreement or any of its components (except an Order). Changes to the Agreement will only apply to Orders and renewals received or effectuated after the date of the modification.
- c. **Cisco Partner Transactions.** If You purchase Cloud Services from a Cisco Partner: (i) the terms of this Agreement apply to Your use of the Cloud Services; and (ii) the terms of this Agreement prevail over any inconsistent provisions in Your purchase order with the Cisco Partner.

- d. **US Government End Users.** The Cloud Service and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation” pursuant to FAR 12.212 and DFARS 227.7202. All U.S. Government end users acquire the Cloud Service and Documentation with only those rights set forth in this Agreement. Any provisions that are inconsistent with federal procurement regulations are not enforceable against the U.S. Government.
- e. **Export.** Cisco’s Software, Cloud Services, products, technology and services are subject to U.S. and local export control laws and regulations. You and Cisco each will comply with such laws and regulations governing use, export, re-export, and transfer of such Software, Cloud Services, products and technology and will obtain all required U.S. and local authorizations, permits or licenses. Specific export information may be found at: <http://tools.cisco.com/legal/export/pepd/Search.do>.
- f. **Compliance with Laws.** You will comply with all applicable laws and regulations related to Your receipt and use of the Cloud Service. You must ensure You have the right to use all features of the Cloud Service in Your jurisdiction. Cisco will comply with all applicable laws when providing the Cloud Service. We may restrict the availability of the Cloud Service in any particular location or modify or discontinue features to comply with applicable laws and regulations. Cisco may also share information as necessary to comply with laws and subject to Cisco’s policy on law enforcement requests found at <http://www.cisco.com/c/en/us/about/trust-transparency-center/validation/report.html>.
- g. **Governing Law and Venue.** The Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the applicable governing law below, based on Your primary place of business and without regard to conflicts of laws rules or the United Nations Convention on the International Sale of Goods. If, however, You are a public sector agency or government institution located in the United States, the laws of the primary jurisdiction in which you are located will govern the Agreement and any disputes arising out of or related thereto. For U.S. Federal Government customers, this Agreement shall be controlled and construed under the laws of the United States of America. The courts located in the applicable venue below will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the Agreement or its formation, interpretation or enforcement. Each party hereby consents and submits to the exclusive jurisdiction of such courts. Regardless of the below governing law, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of its intellectual property or proprietary rights.

Your Primary Place of Business	Governing Law	Jurisdiction and Venue
United States, Latin America or the Caribbean	State of California, United States of America	Superior Court of California, County of Santa Clara and Federal Courts of the Northern District of California
Canada	Province of Ontario, Canada	Courts of the Province of Ontario
Europe (excluding Italy), Middle East, Africa, Asia (excluding Japan and China), Oceania (excluding Australia)	Laws of England	English Courts
Japan	Laws of Japan	Tokyo District Court of Japan
Australia	Laws of the State of New South Wales	State and Federal Courts of New South Wales
Italy	Laws of Italy	Court of Milan
China	Laws of the People’s Republic of China	Hong Kong International Arbitration Center
All other countries or territories	State of California	State and Federal Courts of California

- h. **Third Party Beneficiaries.** This Agreement does not grant any benefits to any third party unless it expressly states that it does. In particular, no person other than a party to the Agreement can enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- i. **Notification.** Cisco may provide You with notice via email, regular mail and/or postings on the Cisco.com website or any other website used as part of the Cloud Service. Notices to Cisco should be sent to Cisco Systems, Office of

General Counsel, 170 Tasman Drive, San Jose, CA 95134 unless an applicable Offer Description specifically allows other means of notice.

- j. **Force Majeure.** Except for payment obligations, neither You or we will be responsible for failure of performance due to an event beyond the affected party's reasonable control, including accidents, severe weather events, acts of God, actions of any government agency, pandemic, acts of terrorism, or the stability or availability of the Internet or portions thereof.
- k. **Reservation of Rights.** Failure to enforce any right under this Agreement will not waive that right.
- l. **Integration.** If any term of this Agreement is not enforceable, this will not affect any other terms in this Agreement. Except as expressly stated in a signed agreement, this Agreement is the complete agreement between the parties concerning the Cloud Service and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral) regarding this subject matter. In the event of any conflict the order of precedence is: (i) supplemental terms (including Offer Description); (ii) this general terms of this Agreement; then (iii) any applicable policies referenced in this Agreement. The parties agree that the English version of this Agreement will govern in the event of a conflict between it and any version translated into another language.

Section 10. Definitions

"Approved Source" means Cisco or a Cisco authorized reseller, distributor or systems integrator.

"Authorized User(s)" means the individuals You authorize to access the Cloud Service, including Your employees or third parties that access the Cloud Service solely on Your behalf for Your internal operations.

"Cisco" "we," "our" or "us" means Cisco Systems, Inc. or its applicable affiliate(s).

"Cisco Content" means any Cisco-provided content or data including, but not limited to, geographic and domain information, rules, signatures, threat intelligence or other threat data feeds, suspicious URLs and IP address data feeds.

"Cisco Partner" means a Cisco authorized reseller, distributor or systems integrator.

"Cloud Service" means the Cisco hosted software-as-a-service offering or other Cisco cloud-enabled feature described in the supplemental terms, including the applicable Offer Description. A Cloud Service may include Software.

"Confidential Information" means non-public proprietary information of the disclosing party ("Discloser") obtained by the receiving party ("Recipient") in connection with this Agreement, which: (i) is conspicuously marked; or, (ii) is information which by its nature should reasonably be considered confidential; or (iii) if verbally disclosed, is summarized in writing to the Recipient within 14 days.

"Customer Data" means all information and data that You or an Authorized User provides or transfers to Cisco or that the Cloud Services collects from You, Your Authorized User(s) or Your system(s), in connection with Your use of the Cloud Service or Software, including but not limited to data related to those Authorized Users Customer Data does not include Telemetry Data.

"Documentation" means the Cisco user or technical manuals, training materials, specifications, privacy data sheets, or other information applicable to the Cloud Service. **"Offer Description(s)"** means a description of the applicable Cloud Service (located [here](#)).

"Order" means an ordering document (including a web or other electronic form) submitted to Cisco that specifies at least the duration, type/product ID (PID) and quantity of the Cloud Service to be provided and the associated fees.

"Personal Data" means any information that can be used to identify an individual and may include name, address, email address, phone number, login information (account number and password), marketing preferences, social media account information, or payment card number.

"Telemetry Data" means all information and data that the Cloud Service generates in connection with Your use, including but not limited to, network policy, log and configuration information; threat intelligence data, URLs, metadata or net flow data; origin and nature of malware; the types of software or applications installed on a network or an endpoint; information about the devices connected to a network; information generated by sensors, devices and machinery; information related to the usage, origin of use, traffic patterns or behavior of the users of a network or Cloud Service; and information relating to the existence of cookies, web beacons, and other similar applications.

"You" or "Your" means the individual or legal entity purchasing the Cloud Service.