



July 28, 2020

SUBJECT: Agreed modifications to Cisco EULA and UCA

This letter agreement ("Letter Agreement") between Cisco Systems, Inc. ("Cisco") and County of San Bernardino ("Customer") sets forth the understanding of the parties with respect to Customer's licensing of Cisco on-premise software ("Software") and Cisco-hosted cloud software-as-a-service ("Cloud Services") purchased from any Cisco-authorized reseller ("Reseller"), whether the Software and Cloud Services are purchased as stand-alone subscriptions or as part of a bundle (e.g., an enterprise agreement). This Letter Agreement will be effective from the date of last signature below and shall extend for a period of five (5) years.

This Letter Agreement modifies the Cisco End User License Agreement ("EULA") and Universal Cloud Agreement ("UCA") under which Cisco Software and Cloud Services are respectively licensed to Customer upon their purchase of a license from a Reseller. All capitalized terms not otherwise defined in this Letter Agreement have the same meaning as provided for in the EULA, or the UCA as applicable. In the event of a conflict between the EULA, or UCA and this Letter Agreement, this Letter Agreement will prevail. Except as modified by the terms of this Letter Agreement, the EULA and UCA remain in full force and effect.

The parties agree as follows:

1. This Letter Agreement, the EULA and UCA will be interpreted according to the laws of the State of California, without regard to conflicts of laws. The courts that shall have jurisdiction over any claim arising from the EULA shall be the Federal District Court situated in the Central District of California, or the Superior Court of San Bernardino County, California.
2. If Customer or their Reseller follow the procedure in the UCA in Section 8.b or in the EULA Section 12.b to prevent automatic renewals, Cisco shall ensure that the Customer's subscriptions do not automatically renew.
3. As relates to Section 4.a (Confidentiality) of the UCA and Section 13.a (Confidential Information) of the EULA, If the Recipient of confidential information receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the Discloser, Recipient will, to the extent legally permissible, promptly notify Discloser and if requested by Discloser, tender to Discloser the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, Recipient will be entitled to comply with the request to the extent permitted by law.
4. For the Software, Cisco will provide intellectual property indemnity as follows:
 - a. **Claims.** Cisco will defend any claim or threatened claim against You that any Software 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 Software, or replace or modify the Software 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 Software and Cisco will return any fees You paid Your Approved Source for the remaining term of the Software.
 - c. **Exclusions.** 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 Software or modification by a third party on Your behalf; (iii) the amount or duration of use made of the Software, revenue You earned, or services You offered; (iv) combination, operation, or use of a Software with non-Cisco products, software or business processes; or (v) Your failure to modify or replace Software as required by Cisco to avoid the alleged infringement.
 - d. **Sole and Exclusive Remedy.** This Section 4 of this Letter Agreement states Cisco's sole and exclusive obligation and Customer's exclusive remedy for intellectual property rights infringement by the Software.
- 5. To the extent applicable to the Software or Cloud Services, Cisco will comply with the California Consumer Privacy Act.
 - 6. During the subscription period of Software or Cloud Services, Cisco will maintain insurance as set forth in Attachment A to this Letter Agreement.
 - 7. In the event of any actual or potential force majeure event that affects either party's ability to substantially perform its obligations contemplated in the EULA or UCA or any "program terms" applicable to Software or Cloud Services, the affected party shall in a timely fashion give notice thereof, including relevant information, to the other party.
 - 8. Subject to public disclosure and open records laws to which Customer is subject, the discussions and negotiations relating to this Letter Agreement are confidential. Neither party may disclose to any third party the existence, intent, or terms of this Letter Agreement, or other information disclosed during discussions about this Letter Agreement, without the prior written consent of the other party.
 - 9. This Letter Agreement represents the entire understanding of the parties with respect to its subject matter, supersedes any prior oral or written communications between the parties, and may be modified only by a written document signed by both parties.
 - 10. This Letter Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Letter Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Letter Agreement upon request.

[SIGNATURE PAGE FOLLOWS]

The parties have caused this Letter Agreement to be duly executed. Each party represents that its respective signatories whose signatures appear below are duly authorized to execute this Letter Agreement.

Cisco Systems, Inc.

County of San Bernardino

Signature: _____

Signature: _____

Name (Printed): _____

Name (Printed): _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A

INSURANCE REQUIREMENTS

Cisco agrees to provide insurance set forth in accordance with the requirements herein. If Cisco uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Cisco agrees to amend, supplement or endorse the existing coverage to do so.

1. **Types and Limits.** Without in anyway affecting any indemnity obligations provided and in addition thereto, Cisco shall secure and maintain throughout the contract term the following types of insurance with limits as shown:
 - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Cisco and all risks to such persons under this contract. If Cisco has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - b. Commercial/General Liability Insurance – Cisco shall carry General Liability Insurance covering all operations performed by or on behalf of Cisco providing coverage for bodily injury and property damage with a combined single limit of one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
 - c. Automobile Liability Insurance – Cisco shall carry Commercial Automobile Liability Insurance covering all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of one million dollars (\$1,000,000) for bodily injury and property damage, per accident and one million dollars (\$1,000,000) annual aggregate. If Cisco is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per accident and annual aggregate. If Cisco owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
 - e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits
or
Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

- f. **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each claim with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall also cover breach response cost as well as regulatory fines and penalties. Cisco may use one and the same insurance policy to satisfy this requirement f. and requirement e. above, provided that such insurance policy has limits of not less than \$2,000,000 per claim and \$4,000,000 annual aggregate.
2. **Additional Insured.** The general liability, auto liability and umbrella liability insurance shall include the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities that fall within Cisco's indemnity obligations under this Agreement and that are covered by such insurance.
3. **Waiver of Subrogation Rights.** Cisco shall, and Cisco shall require the carriers of required coverages to, waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors for liabilities that fall within Cisco's indemnity obligations under this Agreement.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.
5. **Severability of Interests.** Cisco agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Cisco and the County or between the County and any other insured or additional insured under the policy.
6. **Proof of Coverage.** Cisco shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed. Cisco shall maintain such insurance from the time Cisco commences performance of services hereunder until the completion of such services. If any of the insurance required herein is cancelled or nonrenewed, Cisco shall replace such insurance so that no lapse in coverage occurs.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions shall be solely the responsibility of Cisco.
9. **Failure to Procure Coverage.** In the event that any policy of insurance required under this contract is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by Cisco or County payments to Cisco will be reduced to pay for County purchased insurance.
10. **Insurance Review.** Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to request changes to these insurance requirements, in which event the parties shall negotiate changes in good faith changes to these insurance requirements. Any failure, actual or alleged, on the part of the County to monitor or enforce

compliance with any of the insurance requirements will not be deemed as a waiver of any rights on the part of the County.