

On-Premises Software License & Maintenance Agreement

Crestron Electronics, Inc.

Last updated: 13 February 2024

1. Scope and Acceptance

1.1 This On-Premises Software License and Maintenance Agreement (the “**Agreement**”) is entered into between Crestron Electronics, Inc., with a principal place of business at 15 Volvo Drive, Rockleigh, NJ 07647 (“**Crestron**”) and you (“**Customer**”, “**you**”, and “**your**”) with respect to your use of Crestron On-Premises Software, including but not limited to Crestron Fusion® On-Premises and Crestron Virtual Control™ Server-Based Control System. This Agreement is incorporated by reference and made a part of each Customer order identifying applicable Crestron On-Premises Software products and services (the “**Order**”). Subject to the descriptions and/or limitations set forth in the applicable Order, this Agreement governs Customers’ order, access and use of certain Crestron software products that may be installed and operated on non-Crestron servers, whether on-premises or cloud-based, which are under the control of Customer (the “**On-Premises Software**”), and all related documentation provided in print and/or electronic form by Crestron for use with the On-Premises Software, as periodically updated (the “**Documentation**”). The On-Premise Software may be used in connection with the control, automation, management, and monitoring of building and room automation, including but not limited to media and audiovisual rooms, and devices such as projectors and 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, accessing, or using the On-Premises Software, in whole or part, you: (a) represent and warrant that you have the proper legal authority to enter into this Agreement; (b) acknowledge that you have read this Agreement in its entirety; and (c) 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 of use the On-Premises Software. IF YOU DO NOT INTEND TO BE LEGALLY BOUND BY THIS AGREEMENT, DO NOT ACCESS OR USE THE ON-PREMISES SOFTWARE.

1.3 If you are installing the On-Premises Software 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. Ownership; License Grant; and Payment

2.1 Ownership. Crestron is and will remain the sole and exclusive owner of all intellectual property rights, title, and interest in and to the On-Premises Software and the Documentation, including any modifications and improvements thereto or derivatives thereof, with the exception of any third-party components of the On-Premises Software. Customer shall have no obligation to provide Crestron with any ideas, suggestions, recommendations, or comments (“**Feedback**”) relating to the On-Premises Software; 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.

2.2 License Grant. The On-Premises Software may be made available by Crestron, in its sole discretion, for license hereunder: (a) for an indefinite time period (“**One-Time License**”); and/or (b) for a fixed,



recurring time period (“**Subscription License**”). Customer is granted a license, as described in the applicable Order, to use the On-Premises Software subject to the terms and conditions set forth in this Agreement (the “**License**”). For each License, Crestron grants to Customer a non-exclusive, non-transferable, non-sublicensable and limited right to use, store, and execute the On-Premises Software (in executable code format) on Customer-owned or operated computer and server equipment, whether physically located on Customer premises or on Customer controlled cloud servers. Customer understands that the availability and use of some or all of the features or functionality of On-Premises Software made available under a License may be dependent on Customer maintaining a subscription to one or more additional Crestron cloudware and/or software components. Subject to the terms of the Agreement, Customer may install and use the On-Premises Software and the Documentation in the number of rooms specified in the Order and copy the On-Premises Software and the Documentation for back-up and archival purposes only.

2.3 Reservations. Customer is not granted any proprietary right, title, interest, or ownership of the On-Premises Software 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.

2.4 Payment. For each 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 On-Premises Software and Documentation will terminate.

3. Conditions of Use

3.1 Restrictions. Customer shall use the On-Premises Software only for its own internal business purposes and shall make the On-Premises Software 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 On-Premises Software. Customer shall not **(a)** lease, rent, distribute, or sublicense the On-Premises Software to third parties; **(b)** use the On-Premises Software to provide, or in connection with, any commercial service or application that is for the benefit of third parties; **(c)** use the On-Premises Software in a way that violates any criminal or civil law; or **(d)** exceed the usage limits listed in the Order and related Documentation. Except as expressly authorized by this Agreement, Customer is prohibited from any and all uses of the On-Premises Software and the Documentation. Customer has no right to receive a copy of the source code to the On-Premises Software.

3.2 No Reverse Engineering. Customer shall not reverse engineer, decompile, disassemble or otherwise attempt to discern the source code, operational flow, data structures, and object structures of the On-Premises Software or any of Software’s components, data files, libraries or modules. Customer shall not **(a)** create any derivative works based upon the On-Premises Software or Documentation; **(b)** copy any feature, design or graphic in the On-Premises Software; or **(c)** access the On-Premises Software in order to build a competitive solution or to assist someone else to build a competitive solution.

3.3 Obligations. It is the Customer’s responsibility to use an authorized Crestron dealer or service provider (an “**Authorized Integrator**”) to install and configure On-Premises Software on Customer’s IT infrastructure, whether local or cloud-based. The Customer shall provide network capability, along with hardware and software that is compatible with the On-Premises Software, as described in the Documentation.

3.4 Protection of Private and Proprietary Information. The Software may receive, process, store, or generate output containing private and proprietary information. Customer understands and agrees that it is Customer's sole responsibility to select and implement the process, procedure and technology for protecting access to, and use of, such information. Customer is solely responsible for maintaining the confidentiality of passwords associated with the On-Premises Software.

3.5 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 On-Premises Software and/or Maintenance Services.

3.6 Default Internet Communication. When connected to the Internet, certain Crestron products, including Crestron Virtual Control™ Server-Based Control System, which functions as a 4-Series Processor, will attempt to automatically establish communication with Crestron servers, as detailed at: <http://www.crestron.com/legal/crestron-privacy-statement-regarding-internet-data-collection>.

3.7 Third Party Software. In order to operate, On-Premises Software may require that the Customer accept separate terms that govern the use of third-party technology that is licensed under separate license terms and not under the terms of this Agreement. Customer is responsible for accepting (e.g., by clicking to accept a EULA agreement) and complying with these separate terms. Crestron may provide certain notices to Customer regarding the use of such third-party technology in the Documentation.

3.8 Crestron Device Software EULA. Other 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 the terms of a separate Crestron Software End User License Agreement: <http://www.crestron.com/legal/software-license-agreement>.

4. Warranty

4.1 Crestron represents and warrants that the On-Premises Software will function substantially as described in the Documentation. Crestron has no obligations for: **(a)** Customer's use of a version of the On-Premises Software that has passed its end-of-life date; **(b)** problems caused by any third party software or hardware; **(c)** problems caused by the actions of any third party, including an Authorized Integrator; or **(d)** other matters beyond Crestron's reasonable control.

4.2 If the On-Premises Software does not function substantially in accordance with the Documentation, Crestron shall, at its sole option, either: **(a)** modify the On-Premises Software to conform to the Documentation; or **(b)** provide a workaround solution that will reasonably meet Customer's requirements. If neither of these options is commercially feasible, either party may terminate the relevant License or Maintenance Services under this Agreement, in which case Crestron shall refund all fees pre-paid to Crestron under the relevant Order for the unused portion of such License or Maintenance Services.

4.3 If the normal operation, possession or use of the On-Premises Software by Customer is found to infringe any third party U.S. 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 On-Premises Software so that it no longer infringes. If neither of these options is commercially feasible, either party may terminate the relevant License or Maintenance Services under this Agreement, in which case Crestron shall refund all fees pre-paid to Crestron under the relevant Order for the unused portion of the License or Maintenance Services.

5. Maintenance Services and Subscription Maintenance Services

5.1 Crestron will provide customer with “**Maintenance Services**” consistent with the support program offered by Crestron, as set forth in the Documentation, in connection with the specific On-Premises Software product set forth in the Order. Maintenance Services may include (a) software updates periodically made available by Crestron in its sole discretion; (b) support resources and (c) technical resources. Unless otherwise specified in an Order or in the Documentation, the Maintenance Services provided in connection with the License will be consistent with Crestron True Blue Support and Satisfaction programs, as described on Crestron’s website, www.crestron.com.

5.2 Crestron warrants that the Maintenance Services will be performed with reasonable skill, care and diligence. Customer shall provide Crestron with all information, access, and full good faith cooperation reasonably necessary to enable Crestron to deliver the Maintenance Services and if Customer fails to do this, Crestron will be relieved of its Maintenance Services obligations to the extent that the obligations are dependent upon Customer’s performance. Maintenance Services for products subject to One-Time Licenses hereunder are included to the extent set forth in the Documentation. Maintenance Services - for products subject to Subscription Licenses hereunder are included for the term of each Subscription License. Customer will receive applicable software updates offered by Crestron for products licensed hereunder during the term of the Maintenance Services.

5.3 Subscription Maintenance Services. Crestron, in its sole discretion, may offer “**Subscription Maintenance Services**” in connection with One-Time Licenses for On-Premises Software products, as set forth in the applicable Order and/or Documentation. Subscription Maintenance Services, where made available, may entitle Customers with One-Time Licenses to receive additional levels of updates or support beyond that set forth in the Documentation. In the event this Agreement expires or is terminated, or the associated fee is not paid, the right to receive Subscription Maintenance Services will terminate. Should Customer allow coverage under this paragraph to lapse, then coverage can only be restored by making retroactive payments for the entire lapsed time period.

5.4 Software Versions. Crestron regularly changes, enhances, revises, updates, and upgrades the On-Premises Software. This means that the On-Premises Software is continually evolving and in order to make efficient use of these changes, the Customer may need to upgrade its equipment, including but not limited to servers and other network equipment. Crestron recognizes that Customer may have legitimate business reasons for not upgrading to a new version of the On-Premises Software as soon as the updated version becomes available. However, at the end of Subscription License or Maintenance Services term, as set forth in the applicable Order and / or Documentation, Crestron may discontinue support for certain older versions of the On-Premises Software.

6. Term; Termination; and Survival

6.1 This Agreement starts on the date that Crestron accepts an Order and ends when Crestron no longer is obliged to provide Customer with License and/or Maintenance Services under any Order.

6.2 Termination for Cause. Either party may terminate rights granted under this Agreement if the other breaches any material term hereof and the breach is not cured within thirty (30) days of written notice. Crestron has the right to immediately terminate a Subscription License or Subscription Maintenance Services related to a One-Time License if the associated fee is not received by Crestron.

6.3 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.

7. Warranty Disclaimer and Limitation of Liability

7.1 WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ON-PREMISES SOFTWARE AND MAINTENANCE 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, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES OF TITLE. CRESTRON DOES NOT WARRANT THAT THE USE OF THE MAINTENANCE SERVICES WILL RESULT IN UNINTERRUPTED OR ERROR-FREE OPERATION OF THE ON-PREMISES SOFTWARE.

7.2 NO INDIRECT DAMAGES. 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.

7.3 MAXIMUM LIABILITY. CRESTRON'S MAXIMUM LIABILITY FOR ALL CLAIMS AND/OR DAMAGES ARISING OUT OF OR RELATED TO THE ON-PREMISES SOFTWARE, AND/OR MAINTENANCE SERVICES, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO CRESTRON FOR THOSE ON-PREMISES SOFTWARE LICENSES AND/OR MAINTENANCE SERVICES UNDER THE ORDER THAT WAS IN EFFECT AT THE TIME OF THE EVENT GIVING RISE TO SUCH CLAIM. THE FOREGOING LIMITATION, EXCLUSION AND DISCLAIMER SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

8. General

8.1 Entire Agreement. This Agreement, together with the Order, constitutes the complete and exclusive statement of the agreement among the parties about 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.

8.2 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.

8.3 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).

8.4 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 On-Premises Software is of U.S. origin for purposes of U.S. export control laws.

8.5 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.

8.6 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.

9. Governing Law and Dispute Resolution

9.1 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.

9.2 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.

9.3 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.

10. 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
Stephensonstraat 20, bus 0001,
2800 Mechelen Belgium.
VAT No. BE0699.717.121

ANZ:

Crestron ANZ PTY LIMITED
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.

* * * * *