

# Cisco “WebEx” Terms and Conditions

September 24, 2013 as provided on Cisco.com:

[http://www.cisco.com/web/products/software\\_licensing\\_center.html](http://www.cisco.com/web/products/software_licensing_center.html)

and specifically

<http://contractdocuments.webex.com/webextermsconditions.pdf>

## WebEx Terms and Conditions

**1. WebEx Services.** These WebEx Terms and Conditions (“Agreement”) govern the use by the Subscriber of any services (the “Services”) ordered by Subscriber from WebEx and set forth in one or more Order Forms. “Services” in this Agreement does not refer to or include any professional services. Professional services ordered by Subscriber, if any, will be as set forth in a statement of work governed by separate terms and conditions.

**2. Order Forms.** An “Order Form” is a form signed by Subscriber that identifies the type and quantity of Services being ordered and the associated fees. The Order Form includes a link to the Service Description(s). An Order Form is effective only when signed by Subscriber and either signed or provisioned by WebEx. Subscriber may be required to provide information in order to register for and/or use certain Services. Subscriber warrants that all such information is accurate.

**3. Changes to Services.** WebEx may, at its sole discretion and from time to time, enhance and/or expand the features of a Service at no additional cost to Subscriber. WebEx may also, at its sole discretion and from time to time, make available additional features and/or functionalities to a Service which may, but are not required to, be added to a Service by Subscriber at an additional cost (“Cost Feature”). If Subscriber elects to add a Cost Feature, it may do so by contacting its local WebEx sales representative or WebEx directly at [http://www.webex.com/go/contact\\_sales](http://www.webex.com/go/contact_sales) in order to receive a quote for the Cost Feature. Further, WebEx may elect to discontinue the availability of a Service, provided that such discontinuance will be effective no earlier than expiration of the then-current Initial or Renewal Term as specified in the applicable Order Form. Subscriber agrees that WebEx is free to use and incorporate into WebEx products and services any suggestions, ideas, recommendations, bug reports, or other feedback that Subscriber provides to WebEx without payment of compensation to Subscriber.

**4. Beta Services.** WebEx may, at its sole discretion, make available to Subscriber a “beta” version of any of the Services (the “Beta Services”) for purposes of evaluation and feedback. Subscriber acknowledges that the Beta Service(s) Subscriber is evaluating may contain bugs, errors and other problems and is provided to Subscriber “AS-IS.” WebEx disclaims any warranty or liability obligations to Subscriber of any kind with respect to the Beta Services. Subscriber further acknowledges the importance of communication between WebEx and Subscriber during Subscriber’s use of the Beta Services and hereby agrees to receive related correspondence and updates from WebEx. In the event Subscriber requests to opt-out from such communications, Subscriber’s participation in the Beta Services will also be canceled. Subscriber also hereby acknowledges that WebEx has not made any representations, promises or guarantees that the Beta Services will ever be announced or made available to anyone in the future and that WebEx has no express or implied obligation to Subscriber to announce or introduce the Beta Services. During the WebEx Beta program, Subscriber will be asked to provide feedback regarding Subscriber’s use of the Beta Service(s). Subscriber agrees that WebEx is free to use and incorporate into WebEx products and services any suggestions, ideas, recommendations, bug reports, or other feedback (including, but not limited to, feedback on any Beta Services) that Subscriber provides to WebEx without payment of compensation to Subscriber. WebEx may suspend or terminate access to Beta Services (and delete any Content or data provided to WebEx with respect to such Beta Service(s)) at any time, without notice and without any liability to Subscriber.

**5. Fee Adjustments.** WebEx may, upon at least forty-five (45) days prior written notice and effective at the end of the then-current Initial or Renewal Term, adjust the fees paid by Subscriber for the Services, provided that Subscriber shall have the option, within thirty (30) days of receiving such notice from WebEx, to either (i) modify the quantity or type of Services utilized by Subscriber by a mutual written amendment between the parties, or (ii) terminate the affected Order Forms upon written notice, either of which will become effective at the end of the then current Initial or Renewal Term.

**6. WebEx Training and Support.** Online training and online support will be provided by WebEx at no additional cost, and is specified in the service descriptions included on the applicable Order Form.

**7. Payment.** Subscriber will pay invoices for the Services when due, and in accordance with the Payment Terms set forth on the Order Form. WebEx reserves the right to charge interest at the lower of 1.5% per month or the highest rate permitted by law on any monthly payment (not being reasonably disputed by Subscriber) that is not received when due. Subscriber must notify WebEx in writing of any disputed fees within fifteen (15) days of the invoice date. WebEx may suspend the Services ten (10) business days following WebEx’s written notice to Subscriber that Subscriber’s payment of undisputed fees is ten (10) or more business days delinquent. Additionally, WebEx is entitled to recover any reasonable sums expended in connection with the collection of sums not paid when due. Subscriber shall pay all taxes (exclusive of taxes based on the net income of WebEx), levies, or charges imposed by any governmental authority of any kind whatsoever applicable to any of the materials, goods, Services or related components provided by WebEx to Subscriber.

## 8. Term and Termination.

**a. Term and Termination of Order Forms.** The “Initial Term” of an Order Form will be for the number of months set forth on the Order Form, commencing on the date the Service is available for use by Subscriber. Each “Renewal Term” will begin at the end of the preceding (Initial or Renewal) Term and continue as set forth on the Order Form. Either party may terminate any Order Form at the end of any (Initial or Renewal) Term by providing the other party written notice of termination at least thirty (30) days prior to the end of such term.

**b. Term and Termination of Agreement.** This Agreement will commence on the date Subscriber signs its first Order Form and may be terminated by written notice effective upon the termination of all of Subscriber’s Order Forms. Each party may terminate any Order Form(s) and/or this Agreement by written notice to the other party if the other party is in material breach of its obligations under this Agreement and such breach is not cured within thirty (30) days after written notice thereof from the terminating party.

**c. Surviving Provisions.** The following provisions will survive the expiration or termination of this Agreement: Sections 7 and any payment provisions set forth in the Order Form (as to amounts due and owing as of this Agreement's expiration or termination date), 9, 10, 11, and 12. Upon any termination of this Agreement, Subscriber must cease any further use of the Services and destroy any copies of associated software within its possession and control (to the extent not prohibited by applicable law).

## **9. Subscriber Responsibilities.**

**a. Account Number/Password.** Except when Subscriber's account number/password is obtained by a third party as a result of a material breach of WebEx's physical or computer system security arising from circumstances within WebEx's control, Subscriber agrees that Subscriber is solely responsible for maintaining the confidentiality of Subscriber's username, account number and passwords and solely responsible for any unauthorized usage. Subscriber agrees to immediately notify WebEx of any unauthorized use of Subscriber's account of which Subscriber becomes aware.

**b. Content.** Except when Subscriber's account is accessed by a third party as a result of a material breach of WebEx's physical or computer system security arising from circumstances within WebEx's control, Subscriber agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings, and any other material ("Content") displayed, posted, uploaded, stored, exchanged or transmitted on or through the Service. Under no circumstances will WebEx be liable to Subscriber for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content. Subscriber understands and agrees that by displaying, posting, uploading, storing, exchanging or transmitting Content while using the Services or otherwise providing Content to a WebEx website or space ("Site"), Subscriber automatically grants (and warrants and represents it has a right to grant) to WebEx, solely for the purpose of offering the Sites and/or the Services to Subscriber, a world-wide, royalty-free, sublicensable (so WebEx affiliates, contractors, resellers and partners can deliver the Services) license to use, modify, publicly perform, publicly display, reproduce and distribute the Content, during the course of this Agreement and any delivery of Services. If at any time Subscriber objects to any material on a Site, Subscriber's sole remedy is to cease using it (to the extent not prohibited by applicable law). WebEx does not endorse and has no control over what Subscribers or other users of the Service ("Users") post or submit to a Site. Subscriber shall contact WebEx Customer Support at 866-229- 3239 if Subscriber becomes aware of misuse of the Services by any person. WebEx cannot guarantee the accuracy of any information submitted by any User or Content, nor any identity information about any User. WebEx may without notice or liability investigate any complaints and violations or suspected violations of this Agreement that come to its attention and may take any action that it believes is appropriate, including, but not limited to, to rejecting, refusing to post or removing any profile, posting Content, or other data, or restricting, suspending, or terminating Subscriber or any User's access to a Site or Services. However, because situations and interpretations vary, WebEx also reserves the right not to take any action.

**c. Communications.** Subscriber agrees that Subscriber will not use the Services to send unsolicited email outside Subscriber's company or organization (e.g., "spam") in violation of applicable law, falsify any email header information when sending emails (e.g., "spoofing"), or attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., "phishing"). Subscriber further agrees not to use the Services to communicate any message or material that is harassing, libelous, threatening, obscene, or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful under any applicable law or regulation. Subscriber agrees to indemnify, defend and hold harmless WebEx from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from Subscriber's violation of this Section 9.

**d. Privacy.** Subscriber acknowledges and agrees that WebEx acts as a passive conduit and it will not monitor or disclose Content, except as needed to provide the Services, as instructed by Subscriber, or as otherwise required by law. Use of the Sites and the Services constitutes consent by Subscriber to WebEx's and/or its affiliates' collection and use of such information and, for European Economic Area (EEA) customers, to the transfer of such information to a location outside the EEA, as well as to other countries deemed to have adequate data protection laws. Use of Sites and the Services is also subject to the Cisco Systems, Inc. Online Privacy Statement located at <http://www.cisco.com/web/siteassets/legal/privacy.html>, which is incorporated into this Agreement by this reference. The foregoing notwithstanding, WebEx may contact Subscriber via e-mail or otherwise with information relevant to Subscriber's use of the Services and payment obligations, if any, regardless of whether Subscriber has opted out of receiving such notices. Subscriber also agrees to have Subscriber's name and/or email address listed in the header of certain communications Subscriber initiates through the Services.

**10. Warranty Disclaimer.** SUBSCRIBER UNDERSTANDS AND AGREES THAT THE SERVICES, SITES, AND ANY ASSOCIATED SOFTWARE, ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, WEBEX, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WEBEX, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, MAKE NO WARRANTY OR REPRESENTATION REGARDING THE SERVICES, ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH THE SERVICES OR THE SITES, OR THAT THE SERVICES WILL MEET ANY SUBSCRIBER REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. Without limiting the foregoing, the Services are not designed or licensed for use in environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems, and WebEx, and its suppliers, resellers and affiliates, specifically disclaim any express or implied warranty of fitness for such purposes.

**11. Limitation of Liability.** IN NO EVENT WILL WEBEX, OR ITS SUPPLIERS, RESELLERS OR AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES

WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICES, OR ANY OTHER PECUNIARY LOSS) INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF, OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICES, THE SITES, OR ASSOCIATED SOFTWARE, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF WEBEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, WEBEX'S (AND ITS SUPPLIERS', RESELLERS' AND AFFILIATES') MAXIMUM CUMULATIVE LIABILITY AND SUBSCRIBER'S EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER, IF ANY, FOR THE SUBSCRIPTION SERVICE FEES IN THE PREVIOUS TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT). Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to Subscriber.

## 12. General.

**a. Proprietary Rights.** Excluding Subscriber Marks and Content, WebEx and/or its suppliers, as applicable, retain ownership of all proprietary rights in the Services and Sites and in all trade names, trademarks, service marks, logos, and domain names ("WebEx Marks") associated or displayed with the Services. Subscriber may not frame or utilize framing techniques to enclose any WebEx Marks, or other proprietary information (including images, text, page layout, or form) of WebEx without WebEx's express written consent. Subscriber may not use any meta tags or any other "hidden text" utilizing WebEx Marks without WebEx's express written consent.

**b. Use of Subscriber's Name and Logo.** Subscriber agrees that WebEx may use Subscriber's name, logo and other trademarks or service marks of Subscriber (collectively "Subscriber's Trademarks") to create a co-branded Services website as part of delivery of the Services. Nothing in this Agreement transfers to WebEx any right, title or interest in or to the Subscriber's Trademarks, and all goodwill arising from use of the Subscriber's Trademarks will inure to the Subscriber's benefit.

**c. Copyright Policy.** Subscriber retains copyright and any other rights it already holds in Content which Subscriber submits, stores, posts or displays on or through, the Services. Subscriber may not post, store, modify, distribute, or reproduce in any way copyrighted material, trademarks, rights of publicity or other proprietary rights without obtaining the prior written consent of the owner of such proprietary rights. WebEx may deny access to the Sites or the Services to any User who is alleged to infringe another party's copyright. If Subscriber believes that WebEx or any of its affiliates or any user of WebEx has violated a copyright, please contact us at: DMCAagent@cisco.com for details on how to properly notify us of a potential copyright infringement or other intellectual property rights issue. In the event Subscriber's content is removed pursuant to this process, Subscriber will receive information on how to file a counter-notice. Notices and counter-notices are legal notices distinct from regular Service activities or communications. As such, they are not subject to WebEx's Privacy Policy. This means WebEx may publish or share them with third parties at WebEx's discretion, and WebEx may produce them pursuant to a legal discovery request.

**d. Assignment.** Neither party may assign or delegate their respective obligations under this Agreement either in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign their rights and obligations under this Agreement as the result of a merger, consolidation, acquisition or the sale of all or substantially all of the assets of the assigning party and WebEx may assign its rights and delegate its obligations in whole or in part to an affiliate. Either party may terminate this Agreement upon ten (10) days notice, if the assignee can be reasonably considered a competitor of the non-assigning party.

**e. Interpretation and Conflicting Terms.** This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement has been prepared in the English Language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. This Agreement, including all Attachments and Service-specific Supplemental Terms (if any), constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. To the extent that any provision of this Agreement and any Order Form conflict, the terms of the Order Form shall control. However, WebEx and Subscriber shall not be bound by terms additional to or different from those in this Agreement that appear in Subscriber's or WebEx's acknowledgements, purchase orders, quotations, prior understandings, or in any other communications between the parties, unless such terms are expressly agreed to by amendment to this Agreement, and are executed by both Subscriber and WebEx.

**f. Force Majeure.** Neither party will be responsible for failure of performance due to causes beyond its control. Such causes include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, shortage of materials, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

**g. Waivers.** The waiver of any one breach, default or right granted under this Agreement will not constitute the waiver of any subsequent breach, default or right granted. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.

**h. Use of the Services.** Subscriber may use the Services only as permitted under the terms and conditions of this Agreement or other written agreements between Subscriber and WebEx. Subscriber will not resell, distribute, use on a timeshare or service bureau basis, or otherwise directly generate income from the Services. Subscriber will not modify, make derivative works of, disassemble, decompile or reverse engineer the Sites, Services or any component thereof (except to the

extent expressly permitted by law). For meeting Services, Subscriber may use the Services only for sessions or meetings in which Subscriber is an active participant.

**i. Software.** Subscriber may be required to download and install WebEx software ("Software"). In that event, WebEx agrees to provide Subscriber with a limited, personal, non-exclusive, non-transferable, non-sublicensable license to use the Software in accordance to the terms of this Agreement. Subscriber may not use the Software for anything other than as intended by WebEx in connection with Subscriber's use of the Services. Subscriber may not use the Software with any device, program or service designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by copyright laws. All rights not expressly granted by WebEx are hereby reserved. Subscriber agrees not to take any action to interfere with WebEx's or its supplier's ownership of or rights in the Software. Subscriber agrees that, unless otherwise permitted in this license or by law, Subscriber will not: (i) reproduce, republish, display, frame, download, distribute, or transmit the Software; (ii) to the extent permitted under applicable law redistribute, encumber, sell, rent, lease, loan, sublicense, assign, or otherwise transfer rights to the Software; (iii) modify or create any derivative works based on the Software, including customization, translation, or localization; (iv) copy, reproduce, reuse in another product or service, modify, alter, or display in any manner any software or files, or parts thereof, included as part of the Software; (v) except to the extent expressly permitted by law, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the Software, or in any way ascertain, decipher, or obtain the communications protocols for accessing the Software, or the underlying ideas or algorithms of the Software; (vi) create or use any software other than as authorized by WebEx to access the Software; (vii) attempt to gain unauthorized access to the Software or to any account, application, platform, computer system or network associated with the Software; (viii) use the Software in any way that violates this Agreement, or any other agreements between Subscriber and WebEx or its affiliates, or any law; and (ix) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or associated with the Services.

**j. Legal Compliance.** Subscriber agrees that Subscriber will comply with all applicable laws and regulations in connection with Subscriber's use of the Services, including, but not limited to: (a) with respect to personally identifiable information sent or received by Subscriber, all applicable privacy laws and regulations, (b) laws relating to the recording of communications, including, when required, advising all participants in a recorded WebEx meeting or event that the meeting or event is being recorded, and (c) laws relating to the use of VoIP-based services, if applicable. It is the sole responsibility of Subscriber to ensure it has the right to use all features of the Services in Subscriber's jurisdiction. WebEx may modify or not make available Services or Service features to comply with applicable laws and regulations. Subscriber represents that Subscriber is not an individual less than 18 years of age, or an emancipated minor, or over the age of 13 and possess legal parental or guardian consent to register for and use the Sites and Services. WebEx products, technology and the Services are subject to U.S. and local export control laws and regulations. Subscriber shall comply with such laws and regulations governing use, export, re-export, and transfer of products, technology and Services and will obtain all required U.S. and local authorizations, permits, or licenses. Subscriber certifies that Subscriber and any third parties Subscriber invites will not use the Service from within an embargoed country. Subscriber certifies that they are not on the U.S. Department of Commerce's Denied Persons List or affiliated lists, on the U.S. Department of Treasury's Specially Designated Nationals List or on any U.S. Government export exclusion lists. The export obligations under this clause shall survive the expiration or termination of this Agreement.

**k. Governing Law.** Subscriber's use of the Services is subject to Subscriber entering into the Agreement with the WebEx entity specified below based on where Subscriber or its business is located. Choice of law and the location for resolving disputes with such WebEx entity for Subscriber's region/country is also specified below. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under those applicable laws.

**i.** For North America and South America, the WebEx entity is Cisco WebEx LLC. The websites for this region are webex.com (US and Canada), webex.com.mx (for Latin America) and webex.com.br (for Brazil). Governing law for this region is the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal courts of California shall have exclusive jurisdiction over any claim.

**ii.** For Europe, Africa and the Middle East, the following shall apply. For the United Kingdom, the WebEx entity is WebEx Communications UK, Ltd. and the website is webex.co.uk. For France, the WebEx entity is WebEx Communications France SARL and the website is webex.co.fr. For Germany, the WebEx entity is WebEx Communications Deutschland GmbH and the website is webex.co.de. For the rest of Europe, Africa and the Middle East, the WebEx entity is WebEx Communications B.V. and the websites vary by location, please check webex.com for links to specific local country websites, including webex.es (for Spain). Governing law for these regions/countries is the laws of England. The English Courts shall have exclusive jurisdiction over any claim arising under this Agreement. No person who is not a party to this Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.

**iii.** For Japan, the WebEx entity is WebEx Communications Japan, K.K. The website for Japan is webex.co.jp. Governing law is the laws of Japan. The Tokyo District Court shall have exclusive jurisdiction over any claim arising under this Agreement.

**iv.** For Australia, New Zealand, Oceania, China, India and the rest of Asia, the following shall apply. For Australia, New Zealand and Oceania, the WebEx entity is WebEx Australia Pty Ltd. and the website is webex.com.au. For India, the WebEx entity is WebEx Communications India Private Limited and the website is webex.co.in. For China, the WebEx entity is WebEx (China) Software Ltd. Co. and the website is webex.com.cn. For the rest of Asia, the WebEx entity is WebEx Asia Limited and the websites include webex.com.hk (for Hong Kong) and webex.co.kr (for South Korea). Governing law for these regions/countries is the laws of the State of New South Wales, Australia, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal Courts of New South Wales shall have exclusive jurisdiction over any claim arising under this Agreement.

**v.** Notwithstanding the foregoing, either party shall at all times have the right to commence proceedings in any other court of its choice for interim injunctive relief in the event of threatened or actual breach of intellectual property rights.

**vi.** The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.