

End User Subscription Agreement

This End User Subscription Agreement (“Agreement”) is made by and between VeloCloud Networks, Inc. (“VeloCloud”) or its authorized reseller (collectively referred to as “we,” “us,” or “our”) and you, as an end user (“End User,” “you,” or “your”) of the VeloCloud cloud network service (“VeloCloud Service”), and sets forth the terms and conditions under which the VeloCloud Service will be provided to you. You will have accepted this Agreement and shall be bound by its terms if you indicate your affirmative acceptance of such terms, either by acknowledgement in a writing (including by incorporation by reference) or by electronic “click through” as may be required for use of the VeloCloud Service.

1.1 1. Entire Agreement.

This Agreement, together with all ordering documents referencing this Agreement and entered into and validly executed between us and you (each, a “Purchase Order”), and any other documents incorporated herein, constitute the entire agreement between us and you relating to your purchase of subscription(s) to use the VeloCloud Service and to use VeloCloud’s hardware products (“Equipment”) provided to you for use in connection with the VeloCloud Service (together, the “Service”); provided that no conflicting terms or conditions set forth on any Purchase Order or other ordering document (to which notice of objection is hereby given), or in any future correspondence between us and you, shall alter or supplement this Agreement unless VeloCloud agrees in writing to such terms. You may not modify this Agreement by making any typed, handwritten, or any other changes to it for any purpose. This Agreement may only be amended or modified by a writing signed by both parties.

1.2 2. Delivery; Subscription Start Date.

All deliveries of Equipment are FCA our facility. Delivery dates are estimates only and are not of the essence. The start date of your subscription to the VeloCloud Service shall be the earlier of (i) the date of your activation of the VeloCloud Service, and (ii) the date that is 30 days after the date of shipment by VeloCloud of the Equipment associated with the subscription.

1.3 3. Invoicing, Payments and Taxes.

You agree to pay the prices for the Service as set forth in the Purchase Order, together with shipping charges (if applicable) and any taxes, duties, excises and other charges, including VAT, due in connection with the sale, installation, provisioning or use of the Service. Payment is due thirty (30) days from the date of the invoice. All payments are to be made in U.S. dollars. In the event of late payment, we may charge you interest on the unpaid amount at the rate of 1.5% per month or the maximum amount permitted under applicable law, whichever is less; and you agree to pay our collection costs and expenses, including reasonable attorney fees.

1.4 4. Cancellation Policy.

ALL EXECUTED PURCHASE ORDERS ARE NON-CANCELLABLE AND ALL AMOUNTS PAID ARE NONREFUNDABLE.

1.5 5. Use of Service and Equipment.

You agree to abide by any terms of use for the VeloCloud Service published by VeloCloud. You may install and use the Equipment solely for the purposes of accessing and using the VeloCloud Service during the subscription period purchased by you. You agree not to disable or defeat any capacity-limiting feature of the Equipment, or otherwise use the Equipment at a greater capacity rate than the rate for which you have subscribed. You agree not to use the Equipment with any unsupported hardware or software (as described in the applicable documentation provided by VeloCloud); or use the Service other than as described in the documentation provided therewith; or use the VeloCloud Service for any unlawful purpose.

1.6 6. No Life Support.

The Service is not designed, intended, authorized, or warranted for use or inclusion in life support, nor in life endangering applications where failure or inaccuracy might cause death or personal injury; any such use or inclusion by you is fully at your own risk, and you shall indemnify and hold us and our suppliers harmless from all resulting or related costs, loss, liability, and expense (including without limitation court and reasonable attorneys fees).

1.7 7. Protection of Equipment; Return Upon Expiration.

The Equipment belongs to us. You may not sell, lease, abandon, or give away the Equipment; allow anyone other than VeloCloud or its agents to service the Equipment; or permit any other person to use the Equipment, other than on your behalf in connection with your use of the VeloCloud Service. You will be directly responsible for loss of the Equipment. Upon expiration or termination of this Agreement, you must return the Equipment to us in the same condition as when delivered to you, reasonable wear and tear excepted; and if we have not received the Equipment in such condition within 10 days thereafter, you will be deemed to have purchased the Equipment at VeloCloud's list price, and will pay us upon invoice as provided in Section 3 above.

1.8 8. Our Right to Audit; Use of Data.

You grant us the right to audit your use of the VeloCloud Service, in order to confirm compliance with this Agreement and other agreements you have with us. You acknowledge and agree that VeloCloud may use, on an aggregated, non-individually-identifiable basis, all information regarding networking characteristics, usage, performance and related data involved in the use of the VeloCloud Service.

1.9 9. Changes.

You acknowledge that VeloCloud may change the VeloCloud Service, and may change the Equipment, either by physical replacement or by remote changes to its software or firmware, at its discretion at any time. Such change may interrupt your VeloCloud Service.

1.10 10. Proprietary Rights.

Except as explicitly set forth in this Agreement, you do not acquire any rights in or license to any component of the Service or any VeloCloud intellectual property rights. You shall not, and shall not encourage any third party to: (a) modify, adapt, alter, disassemble, reverse-engineer, decompile, disassemble, or attempt to derive the source code for the Service (including the Equipment), except to the extent that such activities are required to be permitted under applicable law; or (b) remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of VeloCloud or its suppliers affixed or contained on or within any Equipment. Without limiting the foregoing, any software provided to you or made available for your use ("Software") is licensed only, is subject to any license agreement provided therewith, and VeloCloud retains title in all copies of the Software, and you do not obtain title to, or ownership of, any intellectual property rights in the Software or any copies thereof. VeloCloud reserves all rights not expressly granted by this Agreement.

1.11 11. Confidential Information.

You agree to treat any confidential information regarding the Service and any other information provided to you by us that would reasonably be understood to be confidential ("Confidential Information") as strictly confidential, and use such Confidential Information only for the purposes of using the Service as permitted hereunder.

1.12 12. Limited Warranty.

VeloCloud warrants to you that the Equipment shall be free from defects in material and workmanship (the “Exclusive Warranty”) during your subscription of the VeloCloud Service. With respect to the Equipment, the Exclusive Warranty shall apply only to the extent it has been installed, used and maintained in the conditions specified by VeloCloud or, in absence thereof, at least in conditions consistent with generally accepted practices for this type of product; and not been subject to any unauthorized modification or repair or attempts thereto; and not been connected to or used in combination with other incompatible equipment or systems.

If any Equipment fails to meet the Exclusive Warranty, then upon your written request and pursuant to any warranty procedure published by VeloCloud, VeloCloud shall, at VeloCloud’s sole option and expense, promptly either repair or replace the Equipment in question. The remedies specified in this Section shall constitute YOUR sole and exclusive remedy and VeloCloud’s sole and exclusive liability for EQUIPMENT and VeloCloud’s breach of the Exclusive Warranty hereunder.

WE make NO other warranties or representations, express or implied, and WE expressly exclude and disclaim any and all warranties which may be implied or otherwise created by operation of law including without limitation all implied warranties of uninterrupted or error-free use or operation, AND merchantability, NON-INFRINGEMENT AND fitness for a particular purpose.

1.1 13. Indemnification.

VeloCloud will defend or at its option settle, any claim, suit or proceeding brought against you by any third party for infringement or misappropriation of a valid U.S. patent, copyright or trade secret by the Equipment (“Claim”), subject to the provisions herein. VeloCloud shall have sole control of any such action or settlement negotiations, and VeloCloud agrees to pay, subject to the limitations herein, any final judgment entered against you or settlement entered into in any such Claim. Further, should such final judgment or settlement require that Equipment be returned and/or the purchase price refunded to End Users, VeloCloud will pay such related costs. You agree that VeloCloud, at its sole option, shall be relieved of the foregoing obligations unless you (a) give prompt, written notice to VeloCloud of all Claims, (b) cooperate reasonably with VeloCloud (at VeloCloud’s reasonable expense), and (c) allow VeloCloud the sole right to defend, or at VeloCloud’s option settle, all such Claims. If VeloCloud becomes aware of a Claim, VeloCloud may, in its sole discretion, obtain the right for you to continue to use the Equipment, modify the Equipment so that it is no longer infringing or misappropriating, or accept return of Equipment from you and refund to you a pro rata amount paid for the Service. VeloCloud shall have no liability for any Claim resulting from: (i) use or combination of the Equipment with any other incompatible goods or services; or (ii) any modification or alteration of Equipment, where such Claim would not have arisen except for such use, combination, modification or alteration. The foregoing expresses your sole remedy, and VeloCloud’s sole liability, for any claim of infringement or misappropriation.

1.2 14. LIMITATION OF LIABILITY.

(A) IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

(B) IN NO EVENT SHALL OUR AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH ANY PURCHASE ORDER OR PRODUCT OR THIS AGREEMENT EXCEED, AND YOU RELEASE ALL CLAIMS AGAINST US (AND ANY OF OUR LIABILITY) IN EXCESS OF, THE AMOUNTS PAID BY YOU TO US IN RELATION TO THE PRODUCT IN CONNECTION WITH WHICH THE LIABILITY ARISES. THE EXISTENCE OF ONE OR MORE SUCH CLAIMS SHALL NOT RAISE OR EXTEND THIS LIMIT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY.

1.3 15. VeloCloud as Beneficiary.

If this Agreement is entered into between you and VeloCloud’s authorized reseller, THE TERMS OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE LIMITED WARRANTY AND LIMITATIONS OF LIABILITY

SET FORTH HEREIN, ARE EXPRESSLY INTENDED TO INURE TO THE BENEFIT OF VELOCLOUD, AND VELOCLOUD SHALL BE A THIRD PARTY BENEFICIARY TO SUCH TERMS.

1.4 16. Export.

You shall comply with all applicable export laws and all applicable restrictions and regulations of any agency or authority, and shall not export, nor permit the export or re-export of any confidential or proprietary information or the Equipment in violation of any such laws, restrictions and regulations, or without all required licenses and authorizations, to any country to which such export laws, restrictions and regulations prohibit exportation.

1.5 17. Governing Law; Forum.

The parties agree that this Agreement shall be construed and regulated under and by the laws of the State of California, without giving effect to provisions related to choice of laws or conflict of laws, and with venue proper in the state and federal courts located in San Francisco County, State of California regardless of the place this Agreement may have been executed or where performance hereunder takes place and the parties submit to the personal jurisdiction of such courts. All disputes between the parties arising out of or related to this Agreement, other than claims arising out of non-payment by you, shall be brought within one (1) year after the accrual of the dispute.

1.6 18. Term and Termination.

The term of this Agreement shall be the period for which you have purchased a subscription to the VeloCloud Service, beginning on the subscription start date determined as set forth above. We may terminate this Agreement with immediate effect upon notice to you if any of the following occurs: (i) a petition in bankruptcy is filed by or against you, you are declared bankrupt, or proceedings are initiated by or against you seeking appointment of a receiver, reorganization, liquidation, dissolution, or other similar relief, or (ii) you materially breach this Agreement and fail to cure such breach within thirty (30) days after written notice thereof, provided, however, that no cure period shall apply to your failure to make timely payments hereunder. In the event of any of the foregoing, we shall be entitled, without prejudice to any other remedies, to terminate your use of the VeloCloud Service without being in breach of this Agreement. Upon expiration or termination, all terms and provisions herein which by their nature should survive expiration or termination of this Agreement shall so survive. Without limiting the foregoing, Sections 8 (Our Right to Audit; Use of Data), 10 (Proprietary Rights), 11 (Confidential Information), 12 (Limited Warranty), 13 (Indemnification), 14 (Limitation of Liability), 15 (VeloCloud as Beneficiary), 16 (Export) and 17 (Governing Law; Forum) shall survive any expiration or termination of this Agreement.

1.7 19. Force Majeure.

Other than for any payment obligations hereunder, neither party shall be liable to the other for default or delay in the performance of any of its obligations hereunder due to events beyond the reasonable control of such party, including without limitation acts of God or of public enemy (collectively, "Force Majeure"). In the case of a Force Majeure event, the affected party's performance is excused for a period equal to the time lost by reason of Force Majeure.

1.8 20. Assignment.

You may not, without prior written consent of VeloCloud, assign or otherwise transfer to a third party this Agreement, except to an entity that acquires all or substantially all of your business or assets. The contract shall be binding and shall inure to the benefit of the permitted legal successors of either party hereto.

1.9 21. Miscellaneous.

Failure by either party to enforce any provisions of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. If any part of this Agreement is found to be unenforceable, the remaining portions of this Agreement will remain in full force and effect.