

## SolarWinds Software Services Agreement

This Software Services Agreement, as of the date that You accept this Agreement (defined below) (“Effective Date”), is hereby entered into and agreed upon by you, either an individual or an entity (“You” or “Company”) and SolarWinds Worldwide, LLC (“SolarWinds”).

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR BY UTILIZING THE SERVICES (DEFINED BELOW), YOU AGREE TO THIS AGREEMENT. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN YOU AND SOLARWINDS AND SETS FORTH THE TERMS THAT GOVERN THE LICENSE PROVIDED TO YOU HEREUNDER. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. ANY CHANGES, ADDITIONS OR DELETIONS BY YOU TO THIS AGREEMENT WILL NOT BE ACCEPTED AND WILL NOT BE A PART OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MUST NOT ACCESS, DOWNLOAD, INSTALL, OR USE THE SOFTWARE OR SERVICES.

SolarWinds may modify this Agreement from time to time and will post the most up-to-date version on its website. Your continued use of the Services and Software following modification to the updated Agreement constitutes Your consent to be bound by the same.

### 1. DEFINITIONS.

**1.1 Affiliates** means an entity controlled by, under common control with, or controlling such party, where control is denoted by having fifty percent (50%) or more of the voting power (or equivalent) of the applicable entity. Subject to the terms and conditions of this Agreement, Your Affiliates may use the license granted hereunder. SolarWinds Affiliates may provide some of the Services or ancillary services (such as invoicing) under this Agreement.

**1.2 Agreement** means the Software Services Agreement, the Data Processing Addendum, and the Order Form.

**1.3 Client(s)** means, if You are an MSP, Your customer(s), if applicable.

**1.4 Data Processing Addendum(a)** means the terms of the data processing addendum, which are incorporated herein by reference.

**1.5 Devices** means (whether physical or virtual) a server, system, workstation, computer, mobile device, or end point upon which or through which the Services are used and/or on which the Software is installed.

**1.6 Documentation** means the official user documentation prepared and provided by SolarWinds to You on the use of the Services or Software (as updated from time to time). For the avoidance of doubt, any online community site, unofficial documentation, videos, white papers, or related media, or feedback do not constitute Documentation.

**1.7 MSP** means a managed service provider, or a company that is using the Services to support a third party.

**1.8 Order Form** means the SolarWinds order page, product information dashboard, or other SolarWinds ordering document that specifies Your purchase of the Services, pricing, and other related information.

**1.9 Personal Data** means any information that can be used to identify an individual as that term is defined under Regulation (EU) 2016/679 (“General Data Protection Regulation” or “GDPR”).

**1.10 Services** means the products and software services, including any application programming interface that accesses functionality, that are provided to You by SolarWinds.

**1.11 Software** means the object code versions of any downloadable software provided by SolarWinds solely for the purpose of accessing the Services, including but not limited to an agent, together with the

updates, new releases or versions, modifications or enhancements, owned and provided by SolarWinds to You pursuant to this Agreement.

**1.12 Support** means the standard maintenance or support provided by SolarWinds or its designated agents as set forth in this Agreement if applicable to You.

**1.13 User** means an individual authorized by You to use the Services, Software, and Documentation, for whom You have purchased a subscription or to whom You have supplied a user identification and password. User(s) may only include Your employees, consultants, and contractors, and if applicable, Your Clients.

**1.14 Your Data or Data** means data, files, or information, including data, files, or information that include Personal Data, accessed, used, communicated, processed, stored, or submitted by You or Your Users related to Your or Your User's use of the Services or Software.

## **2. PROVISION OF SERVICES.**

**2.1 Services License.** Upon payment of fees and subject to continuous compliance with this Agreement, SolarWinds hereby grants You a limited, nonexclusive, non-transferable license to access, use, and install (if applicable) the Services, Software, and Documentation during the Term (defined below). You may provide, make available to, or permit Your Users to use or access the Services, the Software, or Documentation, in whole or in part. You agree that SolarWinds may deliver the Services or Software to You with the assistance of its Affiliates, licensors, and service providers. During the Term (as defined herein), SolarWinds may update or modify the Services or Software or provide alternative Services or Software to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of a third party program. SolarWinds' updates or modifications to the Services or Software or provisions of alternative Services or Software will not materially reduce the level of performance, functionality, security, or availability of the Services or Software during the Term. If SolarWinds decides to end of life the Services or Software, then it shall be in accordance with its end of life policy.

**2.2 Evaluation or Beta License.** If the Services, Software, and Documentation are provided to You for evaluation, beta, or release candidate purposes, SolarWinds grants to You a limited, nonexclusive, non-transferable evaluation license to use the Services, Software, and Documentation solely for evaluation prior to purchase or implementation (an "Evaluation License"). You shall not use the Evaluation License for production use. The Evaluation License shall terminate on the end date of the pre-determined evaluation period or immediately upon notice from SolarWinds in its sole discretion. Notwithstanding any other provision contained herein, the Services, Software, and Documentation provided pursuant to an Evaluation License are provided to You "AS IS" without indemnification, support, or warranty of any kind, express or implied. Except to the extent such terms conflict with this Section, all other terms of this Agreement shall apply to the Services, Software, and Documentation licensed under an Evaluation License.

**2.3 Upgrading/Downgrading Account Type.** If applicable to Your license, You may, at any time, upgrade Your SolarWinds account type. An upgrade will take effect immediately. After an upgrade, You will be billed immediately for the additional fees due under the upgraded account type for the remaining time of the applicable Term. You may downgrade within the parameters communicated to You by SolarWinds for any Renewal Term, upon thirty (30) days prior written notice to SolarWinds to be effective upon the start of the next Renewal Term; however, if the Service allows self-service downgrades, the downgraded functionality may take effect immediately, but no refund will be provided. In the event of a downgraded account type, You will be billed the fees due for the downgraded account type at or before the commencement of the Renewal Term. Downgrading Your license may cause loss of content, features, or capacity as available to You under Your previous license, and SolarWinds is not liable for such loss.

## **3. LICENSE RESTRICTIONS; OBLIGATIONS.**

**3.1 License Restrictions.** You may not (i) provide, make available to, or permit individuals other than Your Users to use or access the Services, the Software, or Documentation, in whole or in part; (ii) copy, reproduce, republish, upload, post, or transmit the Services, Software, or Documentation (except for backup or archival purposes, which will not be used for transfer, distribution, sale, or installation on Your Devices); (iii) license, sell, resell, rent, lease, transfer, distribute, or otherwise transfer rights to the Services, Software,

or Documentation unless as authorized in this Agreement; (iv) modify, translate, reverse engineer, decompile, disassemble, create derivative works, or otherwise attempt to derive the source code of the Services, Software, or Documentation; (v) create, market, distribute add-ons or enhancements or incorporate into another product the Services or Software without prior written consent of SolarWinds; (vi) remove any proprietary notices or labels on the Services, Software, or Documentation, unless authorized by SolarWinds; (vii) license the Services, Software, or Documentation (a) if You (or any of Your Users) are a direct competitor of SolarWinds; (b) for the purposes of monitoring the availability, performance, or functionality of the Services or Software or (c) for any other benchmarking or competitive purposes; (viii) use the Services or Software to store or transmit infringing, libelous, unlawful, or tortious material or to store or transmit material in violation of third party rights, including privacy rights; (ix) use the Services or Software to violate any rights of others; (x) use the Services or Software to store or transmit malicious code, Trojan horses, malware, spam, viruses, or other destructive technology (each, a "Virus"); (xi) interfere with, impair, or disrupt the integrity or performance of the Services or any other third party's use of the Services; (xii) use the Services in a manner that results in excessive use, bandwidth, or storage; (xiii) alter, circumvent, or provide the means to alter or circumvent the Services or Software, including technical limitations, recurring fees, or usage limits, or (xiv) perform or disclose any performance or vulnerability testing of the Services or Software or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Services or Software without SolarWinds' prior written approval.

**3.2 Your Obligations.** You acknowledge, agree, and warrant that: (i) You will be responsible for Your and Your Users' activity and compliance with this Agreement, and if You become aware of any violation, You will immediately terminate the offending party's access to the Services, Software, and Documentation and notify SolarWinds; (ii) You and Your Users will comply with all applicable local, state, federal, and international laws; (iii) You will establish a constant internet connection and electrical supply for the use of the Services, ensure the Software is installed on a supported platform as set forth in the Documentation, and the Services and Software are used only with public domain or properly licensed third party materials; (iv) You will install the latest version of the Software on Devices accessing or using the Services; (v) You are legally able to process Your Data and are able to legally provide Your Data to SolarWinds and its Affiliates, including obtaining appropriate consents or rights for such processing, as outlined further herein, and have the right to access and use Your infrastructure, including any system or network, to obtain or provide the Services and Software and will be solely responsible for the accuracy, security, quality, integrity, and legality of the same; and (vi) You will keep your registration information, billing information, passwords and technical data accurate, complete, secure and current for as long as You subscribe to the Services, Software and Documentation.

If You are an MSP, You further acknowledge, agree, and warrant that: (i) You have sufficient technical infrastructure, knowledge, and expertise to perform Your duties for Your Clients; (ii) You will provide all sales, problem resolution, and support services to Your Clients; (iii) You will be responsible for billing, invoicing, and collection for Your Clients; and (iv) You will operate at Your own expense and risk under Your own name as an MSP.

#### **4. PROPRIETARY RIGHTS.**

**4.1 Ownership of SolarWinds Intellectual Property.** The Services, Software, and Documentation are licensed, not sold. Use of "purchase" in conjunction with licenses of the Services, Software and Documentation shall not imply a transfer of ownership. Except for the limited rights expressly granted by SolarWinds to You, You acknowledge and agree that all right, title and interest in and to all copyright, trademark, patent, trade secret, intellectual property (including without limitation algorithms, business processes, improvements, enhancements, modifications, derivative works, information collected and analyzed in connection with the Services) and other proprietary rights, arising out of or relating to the Services, the Software, the provision of the Services or Software, and the Documentation, belong exclusively to SolarWinds or its suppliers or licensors. All rights, title, and interest in and to content, which may be accessed through the Services or the Software, is the property of the respective owner and may be protected by applicable intellectual property laws and treaties. This Agreement gives You no rights to such content, including use of the same. SolarWinds is hereby granted a royalty-free, fully-paid, worldwide, exclusive, transferable, sub-licensable, irrevocable and perpetual license to use or incorporate into its products and services any information, data, suggestions, enhancement requests, recommendations or

other feedback provided by You or Your Users relating to the Services or Software. All rights not expressly granted under this Agreement are reserved by SolarWinds.

**4.2 Ownership of Your Data.** You and Your Users retain all right, title, and interest in and to all copyright, trademark, patent, trade secret, intellectual property and other proprietary rights in and to Your Data. SolarWinds' right to access and use the same are limited to those expressly granted in this Agreement. No other rights with respect to Your Data are implied.

## **5. TERM; TERMINATION.**

**5.1 Term.** Unless terminated earlier in accordance with this Section, this Agreement will begin on the Effective Date and will continue until the end of the period specified in the applicable Order Form (the "Initial Term"). You authorize SolarWinds to automatically renew the applicable Services upon the expiration of the Initial Term (each a **Renewal Term**, and collectively with the Initial Term, the **Term**). The Renewal Term will be the same length as the Initial Term unless otherwise specified by SolarWinds at the time of renewal.

**5.2 Your Termination Rights.** You may terminate the Agreement by providing SolarWinds with at least thirty (30) days' prior written notice of Your intention to terminate the Agreement. The termination notice shall be effective on the last day of the then-current Term. You may also terminate for cause if SolarWinds remains in material breach that remains uncured at least thirty (30) days after you have provided written notice of such breach.

**5.3 SolarWinds Suspension or Termination Rights.** SolarWinds may suspend or terminate this Agreement upon thirty (30) days' prior written notice or immediately if You become subject to bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors; You infringe or misappropriate SolarWinds' intellectual property; You breach this Agreement or Order Form, including failure to pay fees when due; or pursuant to the receipt of a subpoena, court order, or other request by a law enforcement agency.

**5.4 Effect of Termination.** Termination shall not relieve You of the obligation to pay any fees or other amounts accrued or payable to SolarWinds through the end of the current Term. You shall not receive a credit or refund for any fees or payments made prior to termination. Without prejudice to any other rights, upon termination, You must cease all use of the Services, Software, and Documentation and destroy or return (upon request by SolarWinds) all copies of the Services, Software, and Documentation. You further acknowledge and agree that it is Your obligation to retrieve Your Data or copies of Your Data from SolarWinds within five (5) business days of the termination of this Agreement. Unless in accordance with our internal policies, contractual, legal, or other obligation, You acknowledge and agree that SolarWinds has the right to delete Your Data, including any and all copies thereof. Your Data, once deleted, will not be able to be recovered. Sections 1, 3, 4, 5.4, 6, 8, 9, 10, 11, 12, and 14 shall survive any termination or expiration of this Agreement except as explicitly set forth therein.

## **6. FEES AND PAYMENT; TAXES.**

**6.1 Fees and Payment.** All orders placed will be considered final upon acceptance by SolarWinds. Fees will be due and payable as set forth on the Order Form. Unless otherwise set forth herein, fees shall be at SolarWinds' then-standard rates at the time of invoice or, if applicable, as set forth in the Order Form. For certain Services, you may elect to expand or add additional Services in-product; such orders shall be equivalent to an Order Form. In addition, in some cases you may be able to exceed your licensed parameters and agree to pay for such overages in arrears. If You fail to pay, SolarWinds shall be entitled, at its sole discretion, to: (a) suspend provision of the Services until You fulfill Your pending obligations; (b) charge You an interest rate designated by SolarWinds at the time of invoice; and/or (c) terminate this Agreement. If applicable, if You exceed the license capacity designated in Your Order Form, in addition to SolarWinds' other remedies, You will be charged additional fees, which will be reflected in Your invoice. Fees are non-refundable.

**6.2 Taxes.** All fees are exclusive of taxes, and You shall pay or reimburse SolarWinds for all taxes arising out of transactions contemplated by this Agreement. If You are required to withhold any tax for payments due, You shall gross Your payments to SolarWinds so that SolarWinds receives sums due in full, free of any deductions. As reasonably requested, You will provide documentation to SolarWinds showing that taxes have been paid to the relevant taxing authority. "Taxes" means any sales, VAT, use, and other

taxes (other than taxes on SolarWinds income), export and import fees, customs duties and similar charges imposed by any government or other authority. You hereby confirm that SolarWinds can rely on the name and address that You provide to SolarWinds when You agree to the fees or in connection with Your payment method as being the place of supply for sales tax and income tax purposes or as being the place of supply for VAT purposes where You have established Your business.

## **7. DATA; PROTECTION OF YOUR DATA.**

**7.1 Your Data.** SolarWinds and its Affiliates may remove Your Data or any other data, information, or content of data or files used, stored, processed or otherwise by You or Your Users that SolarWinds, in its sole discretion, believes to be or is: (a) a Virus; (b) illegal, libelous, abusive, threatening, harmful, vulgar, pornographic, or obscene; (c) used for the purpose of spamming, chain letters, or dissemination of objectionable material; (d) used to cause offense, defame or harass or otherwise in a way not intended for appropriate use of the Service; or (e) infringing the intellectual property rights or any other rights of any third party. You agree that You and Your Users are responsible for determining the backup configuration and capabilities which may vary per products, and SolarWinds Worldwide is not responsible for backing up data beyond the capabilities of the particular Service.

You agree that SolarWinds and its Affiliates will process configuration, performance, usage, and consumption data about You and Your Users use of the Services and Software to assist with the necessary operation and function of the Services and Software and to improve SolarWinds products and services and Your and Your Users' experience with SolarWinds and its Affiliates pursuant to the SolarWinds Privacy Notice.

You represent and warrant that You and Your Users, regarding processing of Personal Data hereunder, shall be deemed the data controller (and SolarWinds, the data processor) related to SolarWinds's assistance with the necessary operation and function of the Services and Software and determine the purpose and manner in which such Personal Data is, or will be, processed.

**7.2 Protection of Your Data.** Each party shall comply with its respective obligations under applicable data protection laws. Each party shall maintain appropriate administrative, physical, technical and organizational measures that ensure an appropriate level of security for Confidential Information and Personal Data. SolarWinds and its Affiliates will process Personal Data to provide assistance with the necessary operation and function of the Services and Software in accordance with the [Data Processing Addendum](#). You are responsible for ensuring that the security of the Services is appropriate for Your intended use and the storage, hosting, or processing of Personal Data.

## **8. CONFIDENTIAL INFORMATION.**

As used in this Agreement, **Confidential Information** means any nonpublic information or materials disclosed by either party to the other party, either directly or indirectly, in writing, orally, or by inspection of tangible objects that the disclosing party clearly identifies as confidential or proprietary. For clarity, Confidential Information includes Personal Data, and SolarWinds Confidential Information includes the Services, Software, and any information or materials relating to the Services, Software (including pricing), or otherwise. Confidential Information may also include confidential or proprietary information disclosed to a disclosing party by a third party.

The receiving party will: (i) hold the disclosing party's Confidential Information in confidence and use reasonable care to protect the same; (ii) restrict disclosure of such Confidential Information to those employees or agents with a need to know such information and who are under a duty of confidentiality respecting the protection of Confidential Information substantially similar to those of this Agreement; and (iii) use Confidential Information only for the purposes for which it was disclosed, unless otherwise set forth herein. The restrictions will not apply to Confidential Information, excluding Personal Data, to the extent it (i) is (or through no fault of the recipient, has become) generally available to the public; (ii) was lawfully received by the receiving party from a third party without such restrictions; (iii) was known to the receiving party without such restrictions prior to receipt from the disclosing party; or (iv) was independently developed by the receiving party without breach of this Agreement or access to or use of the Confidential Information.

The recipient may disclose Confidential Information to the extent the disclosure is required by law, regulation, or judicial order, provided that the receiving party will provide to the disclosing party prompt

notice, where permitted, of such order and will take reasonable steps to contest or limit the steps of any required disclosure. The parties agree that any material breach of Section 3 or this Section 8 will cause irreparable injury and that injunctive relief in a court of competent jurisdiction will be appropriate to prevent an initial or continuing breach of these Sections in addition to any other relief to the applicable party may be entitled. The obligations set forth in this Section shall survive for three (3) years after the Term or termination of this Agreement except with respect to trade secrets disclosed hereunder which shall remain subject to this obligation indefinitely.

## **9. DISCLAIMER.**

THE SERVICES, SOFTWARE, DOCUMENTATION, AND ALL OTHER PRODUCTS AND SERVICES PROVIDED HEREUNDER, INCLUDING THIRD PARTY HOSTED SERVICES, ARE PROVIDED ON "AS IS" AND "AS AVAILABLE" BASIS. SOLARWINDS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, RELIABILITY, SECURITY, LOSS OR CORRUPTION OF YOUR DATA, CONTINUITY, OR ABSENCE OF DEFECT RELATING TO THE SERVICES, SOFTWARE, DOCUMENTATION, ANY OTHER PRODUCT OR SERVICES, OR RESULTS OF THE SAME PROVIDED TO YOU UNDER THIS AGREEMENT. SOLARWINDS DOES NOT WARRANT THAT THE SPECIFICATIONS OR FUNCTIONS CONTAINED IN THE SERVICES OR SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT DEFECTS IN THE SERVICES OR SOFTWARE WILL BE CORRECTED.

EACH PARTY SPECIFICALLY DISCLAIMS RESPONSIBILITY OF THIRD PARTY PRODUCTS AND SERVICES WITH WHICH YOU MAY UTILIZE THE SERVICES AND SOFTWARE, AND EACH PARTY SPECIFICALLY DISCLAIMS AND WAIVES ANY RIGHTS AND CLAIMS AGAINST THE OTHER PARTY WITH RESPECT TO SUCH THIRD PARTY PRODUCTS AND SERVICES.

## **10. INDEMNIFICATION.**

**10.1 SolarWinds Indemnification.** SolarWinds will indemnify, defend, and hold You harmless from any third party claim brought against You that the Services, as provided by SolarWinds, infringe or misappropriate any U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party, provided (i) use of the Services by You is in conformity with the Agreement and Documentation; (ii) the infringement is not caused by modification or alteration of the Services; and/or (iii) the infringement was not caused by a combination or use of the Services with products not supplied by SolarWinds. SolarWinds indemnification obligations are contingent upon You: (i) promptly notifying SolarWinds in writing of the claim; (ii) granting SolarWinds sole control of the selection of counsel, defense, and settlement of the claim; and (iii) providing SolarWinds with reasonable assistance, information and authority required for the defense and settlement of the claim. This Section states SolarWinds entire liability (and shall be Your sole and exclusive remedy) with respect to indemnification to You.

**10.2 Your Indemnification.** You agree to indemnify, defend, and hold harmless SolarWinds and its Affiliates, and its directors, employees, and agents from and against any claims arising out of or due to: (i) Your Data; (ii) Your (or Your User's) breach of this Agreement; (iii) Your (or Your User's) use of the Services, Software, or Documentation in violation of third party rights, including any intellectual property or privacy rights, or any applicable laws; or (iv) Your (or Your User's) misuse of the Services, Software, or Documentation.

## **11. LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (I) IN NO EVENT WILL SOLARWINDS AND ITS AFFILIATES, DIRECTORS, EMPLOYEES, OR AGENTS HAVE ANY LIABILITY, CONTINGENT OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICES, SOFTWARE, DOCUMENTATION, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, LOST OR CORRUPTED DATA, LOSS OF GOODWILL, WORK STOPPAGE, EQUIPMENT FAILURE OR MALFUNCTION, PROPERTY DAMAGE OR ANY OTHER DAMAGES OR LOSSES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STATUTE, INDEMNITY OR OTHERWISE) UPON WHICH

ANY SUCH LIABILITY IS BASED; AND (II) THE AGGREGATE LIABILITY OF SOLARWINDS AND ITS AFFILIATES, DIRECTORS, EMPLOYEES, AND AGENTS, AND THE SOLE REMEDY AVAILABLE TO YOU ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICES, SOFTWARE, OR ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO TERMINATION OF THIS AGREEMENT AND DAMAGES NOT TO EXCEED THE TOTAL AMOUNT PAYABLE OR PAID TO SOLARWINDS UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO TERMINATION.

## **12. THIRD-PARTY PROGRAMS.**

You may receive access to third-party programs through the Services or Software, or third-party programs may be bundled with the Services or Software. These third-party software programs are governed by their own license terms, which may include open source or free software licenses, and those terms will prevail over this Agreement as to Your use of the third-party programs. Nothing in this Agreement limits Your or Your Users' rights under, or grants You or Your User rights that supersede, the terms of any such third-party program.

## **13. SUPPORT.**

If applicable to You, SolarWinds shall, during the Term, provide You with Support in accordance with the applicable support terms and conditions. You agree to: (i) promptly contact SolarWinds with all problems with the Services or Software; and (ii) cooperate with and provide SolarWinds with all relevant information and implement any corrective procedures that SolarWinds requires to provide Support. SolarWinds will have no obligation to provide Support for problems caused by or arising out of the following: (i) modifications or changes to the Software or Services; (ii) use of the Software or Services not in accordance with the Agreement or Documentation; or (iii) third-party products that are not authorized in the Documentation or, for authorized third-party products in the Documentation, problems arising solely from such third-party products.

## **14. GENERAL.**

**14.1 Notices.** All notices must be in writing and shall be mailed by registered or certified mail to Legal Department, 7171 Southwest Parkway, Building 400, Austin, Texas 78735, or sent via email to [legal\\_team@solarwinds.com](mailto:legal_team@solarwinds.com) (with evidence of effective transmission).

**14.2 Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the Services, Software, and Documentation provided hereunder and supersedes all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof. If other SolarWinds terms or conditions conflict with this Agreement, this Agreement shall prevail and control with respect to the Services, Software, and Documentation provided hereunder. Any and all additional or conflicting terms provided by You, whether in a purchase order, an alternative license, or otherwise, shall be void and shall have no effect.

**14.3 Export Control Laws.** The Services, Software, and Documentation delivered to You under this Agreement are subject to export control laws and regulations and may also be subject to import and export laws of the jurisdiction in which it was accessed, used, or obtained, if outside those jurisdictions. You shall abide by all applicable export control laws, rules, and regulations applicable to the Services, Software, and Documentation. You agree that You are not located in or are not under the control of or a resident of any country, person, or entity prohibited to receive the Services, Software, or Documentation due to export restrictions and that You will not export, re-export, transfer, or permit the use of the Services, Software, or Documentation, in whole or in part, to or in any of such countries or to any of such persons or entities.

**14.4 Modifications.** This Agreement shall not be amended or modified by You unless agreed in writing and signed by authorized representatives of each party.

**14.5 Severability.** If any provision of this Agreement is held to be unenforceable, illegal, or void, that shall not affect the enforceability of the remaining provisions. The parties further agree that the unenforceable provision(s) shall be deemed replaced by a provision(s) that is binding and enforceable and that differs as little as possible from the unenforceable provision(s), with considerations of the object and purpose of this Agreement.

**14.6 Waiver.** The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver of that right.

**14.7 Force Majeure.** SolarWinds will not be liable for any delay or failure to perform obligations under this Agreement due to any cause beyond its reasonable control, including acts of God; labor disputes; industrial disturbances; systematic electrical, telecommunications or other utility failures; earthquakes, storms, or other elements of nature; blockages; embargoes; riots; acts or orders of government; acts of terrorism; and war.

**14.8 Construction.** Paragraph headings are for convenience and shall have no effect on interpretation.

**14.9 Governing Law.** This Agreement shall be governed by the laws of the State of Texas and of the United States, without regard to any conflict of law provisions, except that the United Nations Convention on the International Sale of Goods and the provisions of the Uniform Computer Information Transactions Act shall not apply to this Agreement. You hereby consent to jurisdiction of the state and federal courts of Texas. If this Agreement is translated into a language other than English and there are conflicts between the translations of this Agreement, You agree that the English version of this Agreement shall prevail and control.

**14.10 Third Party Rights.** Other than as expressly provided herein, this Agreement does not create any rights for any person who is not a party to it, and no person not a party to this Agreement may enforce any of its terms or rely on an exclusion or limitation contained in it.

**14.11 U.S. Government Use. (Applies only when licensed by or for the benefit of a U.S. government customer.)** SolarWinds Services, Software and Documentation were developed exclusively at private expense and are a "commercial item" as defined in Federal Acquisition Regulation ("FAR") 2.101, and any supplement is provided with no greater than RESTRICTED RIGHTS. Such Services, Software, Documentation, and related items consist of "commercial computer software," "commercial computer software documentation," and commercial technical data as defined in the applicable acquisition regulations, including FAR 2.101 and FAR Part 12. Use, duplication, release, modification, transfer, or disclosure ("Use") of the Services, Software, and Documentation are restricted by this Agreement and in accordance with Defense Federal Acquisition Regulation Supplement ("DFARS") Section 227.7202 and FAR Section 12.212, and the Services, Software, and Documentation are licensed (i) only as commercial items; and (ii) with only the rights granted to commercial end users pursuant to this Agreement. Such Use is further restricted by FAR 52.227-14, 252.227-7015, or similar acquisition regulations, as applicable and amended. Except as described herein, all other Use is prohibited. This Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause addressing government rights under this Agreement or any other contract under which the Services, Software, or Documentation is acquired or licensed. Manufacturer is SolarWinds Worldwide, LLC, 7171 Southwest Parkway, Building 400, Austin, Texas 78735.

**14.12 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**14.13 Backup Disclaimer.** IN ADDITION TO THE OTHER TERMS AND CONDITIONS HEREIN, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR DATA MAY NOT BE AVAILABLE OR RESTORABLE IF (1) YOU UTILIZE THE SERVICES IN EXCESS OF THE AMOUNT YOU ORDERED; (2) A COPY OF YOUR DATA WAS NOT COMPLETED OR THE DATA YOU ARE SEEKING TO RECOVER HAD NOT YET BEEN BACKED UP BASED ON THE TIMING OF WHAT WAS DELETED; (3) YOU ATTEMPT TO BACK UP DEVICES, FILES, FOLDERS, OR DRIVES NOT SUPPORTED BY THE SERVICES AS SET FORTH IN THE DOCUMENTATION; (4) YOU DESELECT OR DELETE A DEVICE, FILE, FOLDER, OR DRIVE FROM YOUR SOLARWINDS ACCOUNT, FROM YOUR DEVICE, OR FROM BEING BACKED UP BY THE SERVICES; (5) YOU MODIFY YOUR OPERATING SYSTEM IN A MANNER THAT BREAKS COMPATIBILITY OR INHIBITS THE FUNCTIONALITY OF THE SERVICES OR SOFTWARE; (6) YOUR COMPUTER IS UNABLE TO ACCESS THE INTERNET OR SOLARWINDS INFRASTRUCTURE; (7) YOU FAIL TO COMPLY WITH THE AGREEMENT OR DOCUMENTATION; OR (8) YOU TERMINATE OR DO NOT RENEW YOUR SUBSCRIPTION TO THE SERVICES.

**15. Service-Specific Terms.** SolarWinds may, from time to time, offer a service that is subject to terms that apply to that Service only. If you are purchasing the specific Service listed below, the applicable Service terms set forth in Exhibit A shall apply with respect to that Service only. The Service-specific terms in Exhibit A complement this Agreement and supersede any conflicting terms set forth herein only with respect to the product to which they apply. SolarWinds reserves the right to add additional products to Exhibit A as needed.

Products currently included in Exhibit A:

- SolarWinds Observability

**[Exhibit A follows]**

## *Exhibit A*

### **A1. SolarWinds Observability**

The following terms complement the SolarWinds Software Services associated with the applicable SolarWinds Order Form for SolarWinds Observability:

1. You acknowledge and agree that for any Services in the SolarWinds Observability subscription for which You hold existing subscriptions ("**Existing Subscriptions**"), such Existing Subscriptions shall be converted up the effective date of the Order Form, and access to your Existing Subscription(s) will be terminated at a future date, to correspond with the date that SolarWinds Observability becomes generally available.
2. You will be issued a new log in to the SolarWinds Observability platform.
3. You understand and agree that if You exceed the documented guidelines, it will be at Your own risk and SolarWinds disclaims all liability related to Your use outside of the documented guidelines. You acknowledge that by accepting the SolarWinds Observability subscription, (a) You may be unable to access previously available features from Your Existing Subscription(s) after general availability; (b) You may have access to entitlements that may exceed those to which You are currently subscribing, which may allow for additional capacity and functionality; (c) SolarWinds reserves the right to update the enforcement of entitlements in the future at its discretion to reflect only Your active subscriptions, at which point You may lose access to functionality or entitlements to which you were previously provided access; and (d) to maintain the functionality beyond your current entitlements additional subscriptions(s) may be required or alternatively You may need to reduce Your usage consistent with your active subscription(s).