

SOLARWINDS  
END USER LICENSE AGREEMENT

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

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING THIS AGREEMENT OR AN ORDER THAT REFERENCES THIS AGREEMENT, OR BY DOWNLOADING, INSTALLING AND/OR UTILIZING THE SOFTWARE (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 DOWNLOAD, INSTALL, OR USE THE SOFTWARE.

**1. DEFINITIONS.**

**1.1 Affiliates** means an entity now or hereafter 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 but only for so long as such control exists. SolarWinds Affiliates may provide some of the services or ancillary services (such as invoicing) under this Agreement.

**1.2 Agreement** means collectively this End User License Agreement, as well as any applicable Product-Specific Terms and the Order.

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

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

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

**1.6 Fees** means any and all charges payable by You to SolarWinds pursuant to the Order.

**1.7 MSP** means a managed service provider.

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

**1.9 Personal Data** means information relating to an identified or identifiable natural person that is disclosed or otherwise made available to SolarWinds.

**1.10 Software** means the object code versions of the product identified in the Order, together with the updates, new releases or versions, modifications or enhancements, owned and provided by SolarWinds to You pursuant to this Agreement.

**1.11 Subscription Term License** means a license for which You pay a fee to obtain the right to use the Software and Documentation for a period of time as indicated in the Order and in accordance with the terms set forth in this Agreement.

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

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

## **2. LICENSE.**

**2.1 Grant of License.** Upon payment of the applicable Fees for the Software and subject to Your continuous compliance with this Agreement and the Documentation, SolarWinds hereby grants You a limited, worldwide, nonexclusive, nontransferable license to use the object code of the Software and Documentation for the License Term (defined in Section 10.1.1 below) set forth in the applicable Order, in each case, solely for Your own internal business purposes or if You are an MSP, solely on behalf of Your Clients and subject to the terms contained herein. Subject to the terms and conditions of this Agreement, Your Affiliates may use the license granted hereunder, and You are responsible for their compliance with this Agreement.

**2.2.1** For each Software license key that You purchase from SolarWinds, You may: (i) use the Software on any single Device, unless the Documentation clearly indicates otherwise; and (ii) copy the Software for back-up and archival purposes, provided any copy must contain all of the original Software's proprietary notices and a notice that it will not be used for transfer, distribution or sale.

**2.2.2** The Software is in use on a Device when it is loaded into temporary memory or installed in permanent memory (hard drive, CD-ROM or other storage device). You agree to use Your reasonable efforts to prevent and protect the contents of the Software and Documentation from unauthorized use or disclosure, with at least the same degree of care that You use to protect Your own confidential and proprietary information, but in no event less than a reasonable degree of care under the circumstances. You agree that You will register the Software only with SolarWinds and that You will only install a Software license key obtained directly from SolarWinds. You may provide, make available to, or permit Your Users to use or access the Software or Documentation, in whole or in part. During the Term (as defined herein), SolarWinds may update the Software or provide alternative 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 provided any such changes do not materially reduce the functionality of such Software.

**2.3 Software Evaluation, Beta, Tools or No-Fee Licenses.** If the Software is provided to You for evaluation, beta, release candidate purposes, or for use without payment of a license fee (a "No-Fee License"), SolarWinds grants to You a nonexclusive, limited, royalty-free, nontransferable license to use the Software only during the permitted evaluation period and (unless a No-Fee License is provided for support purposes, as outlined below) solely for internal evaluation or if you are an MSP, for demonstrative purposes with Clients, prior to purchase or implementation, where time period and evaluation are applicable. Any use in product of a No-Fee License in a production environment is at Your risk. The No-Fee Licenses that are granted for a term 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, Software provided pursuant to a No-Fee License is provided to You "AS IS" without indemnification, support, or warranty of any kind, statutory, express or implied. Except to the extent such terms conflict with the specific No-Fee License terms set forth in this Section, all other terms of this Agreement shall apply to Software licensed under a No-Fee License. No Fee Licenses include certain SolarWinds tools provided or made available to You without a license fee (each, a "Tool") including Tools made available for support purposes. In particular, any use of any support Tool by You following the conclusion of a SolarWinds support session is undertaken solely at your own risk. To the maximum extent permitted by law, SolarWinds hereby disclaims and excludes any and all liability or further obligation related to Your use of any support Tool by You after Your support session ends.

**2.4 High Availability and/or Disaster Recovery Purpose License.** If You are obtaining a redundant version of the Software solely for high availability and/or disaster recovery purposes for use on Your disaster

recovery Device, You represent and warrant that (i) You may actively run the redundant version of the Software on a Device, provided it is not running on a primary production Device, unless (a) the primary production Device related to the primary production version of the Software fails, (b) the Software or Device associated with the primary production license is being upgraded or replaced, or (c) due to other temporary reasons that disrupt all or a material part of Your business operations; (ii) You will not utilize the redundant version of the Software to monitor any items not being monitored by the primary production Device; and (iii) You will promptly get the primary production Device hosting the primary production license operating correctly in order to support Your daily activities.

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

#### **3.1 License Restrictions.**

**3.1.1 General.** You may not: (i) provide, make available to, or permit individuals other than Your Users to use the Software or Documentation, except under the terms listed above, either in whole or part; (ii) modify, translate, reverse engineer, decompile, disassemble, create derivative works, or otherwise attempt to derive the source code of the Software or Documentation except to the extent reverse engineering is permitted by applicable law; (iii) copy, reproduce, republish, upload, post, or transmit the Software or Documentation (except for back-up or archival purposes, which will not be used for transfer, distribution, or sale); (iv) license, sell, rent, lease, transfer, sublicense, assign, distribute, or otherwise transfer rights to the Software or Documentation; (v) remove any proprietary notices or labels on the Software or Documentation; (vi) license the Software if You are a direct competitor of SolarWinds or for the purposes of monitoring the Software's availability, performance, or functionality or for any other benchmarking or competitive purposes; (vii) use the 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; or (viii) use the Software in a manner that results in excessive use or circumvention of the technical limitations or usage limits of the Software. Any such forbidden use shall immediately terminate Your license to the Software. The Software is intended only for use with public domain or properly licensed third-party materials. All responsibility for obtaining such a license is Yours, and SolarWinds shall not be responsible for Your failure to do so. At least ninety (90) days prior to taking any steps to reverse engineer any Software, You must contact SolarWinds and discuss the scope of any legally permitted reverse engineering.

**3.1.2 SolarWinds Trademarks.** You may not delete, remove, hide, move or alter any trademark, logo, icon, image or text that represents the company name of SolarWinds, any derivation thereof, or any icon, image, or text that is likely to be confused with the same. All representations of the company name or mark "SolarWinds" or any of its Affiliates' names or marks must remain as originally distributed regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice.

#### **3.2 License Obligations.**

**3.2.1** 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 Software and Documentation and notify SolarWinds; (ii) You are legally able to provide Your Data to SolarWinds for use by SolarWinds pursuant to the terms of this Agreement, ; (iii) You will keep your registration information, billing information, passwords and technical data accurate, complete, secure and current; and (iii) You shall use the Software and Documentation solely in a manner that complies with all applicable laws in the jurisdictions in which You use the Software and Documentation, including, but not limited to, applicable local, state, federal, and international laws, including intellectual property and privacy and security laws.

**3.2.2 Export Restrictions.** The Software and Documentation delivered to You under this Agreement are subject to U.S. export control laws and regulations and may also be subject to further import and export laws of jurisdiction(s) in which it is accessed, used or obtained. You shall abide by all applicable export control laws, rules and regulations applicable to the Software and Documentation. You represent and warrant 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 Software or Documentation, and You agree that You will not export, re-export, or transfer the Software or Documentation, in whole or in part, to any country, person, or entity subject to U.S. and other applicable export restrictions. You further represent and warrant that you will not

use the Software or Documentation, in whole or in part, as agent for or on behalf of any country, person, or entity subject to U.S. and other applicable export restrictions. You specifically agree not to export, re-export, or transfer the Software or Documentation (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; (ii) to any person or entity who You know or have reason to know will utilize the Software or portion thereof in the design, development, production or use of nuclear, chemical or biological materials, facilities, or weapons; or (iii) to any person or entity who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. SolarWinds reserves the right to suspend support or other delivery of Software and Documentation as required to comply with export control laws, rules, internal policies, and regulations.

**4. FEES AND PAYMENT.** [Note: where licenses are procured through an authorized partner, all fees and payments are handled directly between You and the partner; only SolarWinds' rights related to failure to pay as indicated by the reseller to SolarWinds shall apply unless You can show evidence of payment made to such partner.] Where the Software functionality permits connectivity including, without limitation, exchange of information with Your cloud services hosted by a third party, any charges related to such relationship are between You and Your third-party provider.

**4.1 Fees and Payments.** Fees will be due and payable net thirty (30) days from the date of invoice, unless set forth otherwise on the Order. You agree to timely pay all Fees. Payment obligations are non-cancelable, and Fees paid are non-refundable. Unless otherwise stated in the Order, all payments made under this Agreement shall be in United States dollars. If You fail to make payments according to the Order, SolarWinds shall be entitled, at its sole discretion, to: (i) suspend provision of the support services until all outstanding payments are made by You; (ii) charge You a late fee and interest at the highest rate permitted by law; and/or (iii) terminate the Agreement with respect to the unpaid Software or support.

**4.2 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 taxes for payments due, You shall gross Your payment 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. For purposes of this Section, "Tax" 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 Tax purposes.

## **5. PROPRIETARY RIGHTS.**

**5.1 Ownership of SolarWinds Intellectual Property.** Use herein of the word "purchase" in conjunction with licenses, license keys, or the Software shall not imply a transfer of ownership. Unless as conveyed herein, this Agreement does not grant You any rights, title, or interest in or to Software, Documentation, trademarks, service marks, or trade secrets, or corresponding intellectual property (including without limitation any images, photographs, animations, video, audio, music, and text incorporated into the Software, the accompanying printed materials, and any copies of the Software) of SolarWinds or its suppliers, and all rights, title, and interest in and to the Software, Documentation, and corresponding intellectual property shall remain the property of SolarWinds, its suppliers, or are publicly available. All rights not expressly granted under this Agreement are reserved by SolarWinds, its suppliers, or third parties. All title, rights, and interest in and to content, which may be accessed through the Software, is the property of the respective owner and may be protected by applicable laws and treaties, including intellectual property laws. This Agreement gives You no rights to such content, including use of the same. SolarWinds agrees that Your Data (including without limitation, computer software, computer database, computer software documentation, specifications, design drawings, reports, blueprints, and the like) shall be and remain Your sole property. By submitting any information, data, suggestions, enhancement requests, recommendations or other feedback to SolarWinds on the SolarWinds products and services ("Feedback"), You agree that: (i) SolarWinds may have similar development ideas to the Feedback; (ii) Your Feedback is not confidential or proprietary information of You or a third party; and (iii) SolarWinds is

hereby granted a royalty-free, fully-paid, worldwide, exclusive, transferable, sub-licensable, irrevocable and perpetual license to use or incorporate the Feedback into its products and services.

**5.2 Additional Terms Applicable to MSPs.** This Section 5.2 applies to You only if You are an MSP.

**5.2.1 License to SolarWinds Content.** Subject to the terms of this Agreement and Your continuous compliance with the same, SolarWinds hereby grants to You a personal, non-exclusive, non-transferable, non-sublicensable license to use, reproduce and distribute the SolarWinds Content (as defined herein) in Company's marketing and advertising materials that are provided to Clients. No right to modify or prepare derivative works of the SolarWinds Content (including any translation into another language) is granted to Company. **"SolarWinds Content"** means, if applicable, SolarWinds marketing documents and other content that are made available by SolarWinds online for MSPs to use in connection with selling to their customers their services that utilize the Software.

**5.2.2 License to SolarWinds Marks.** Subject to Your compliance with this Agreement, SolarWinds hereby grants to You a personal, non-exclusive, non-transferable, non-sublicensable license to use the SolarWinds Marks during this Agreement solely to market and advertise to Clients that Company's services utilize the Software. This license does not include the right to sublicense the use of SolarWinds Marks. Your use of the SolarWinds Marks will strictly comply with SolarWinds's Trademark and Copyright Guidelines and Branding Guidelines communicated to You from time to time. You will obtain SolarWinds's prior written approval of all uses of the SolarWinds Marks. SolarWinds may withdraw any approval of any use of the SolarWinds Marks at any time and at its sole discretion, although no such withdrawal will require the recall of any previously distributed physical printed materials. You shall cooperate with SolarWinds, at SolarWinds's request and reasonable expense, in facilitating SolarWinds's monitoring and control of the nature and quality of the materials bearing the SolarWinds Marks and will supply SolarWinds with specimens of Company's use of the SolarWinds Marks upon request. If SolarWinds notifies You that Company's use of the SolarWinds Marks is not in compliance with this Agreement, then You shall promptly take such reasonable corrective action as reasonably directed by SolarWinds. SolarWinds is the sole and exclusive owner of SolarWinds Marks and is also the owner of all goodwill associated with SolarWinds Marks. Except as prohibited by law, You shall do nothing inconsistent with such ownership, either during the term of this Agreement or afterwards. Without limitation, You shall not attempt to register the SolarWinds Marks or any similar marks in any jurisdiction or challenge SolarWinds's ownership of the SolarWinds Marks. Your use of the SolarWinds Marks shall be on behalf, and inure to the benefit, of SolarWinds. Your utilization of the Marks will not create any right, title or interest in such SolarWinds Marks for Your benefit. Company shall use the SolarWinds Marks so that each SolarWinds Mark creates a separate and distinct impression from any other trademark that may be used or affixed to materials bearing the SolarWinds Marks. All representations of the name or mark of SolarWinds or any of its Affiliates' names or marks must remain as originally distributed regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice. **"SolarWinds Marks"** means the trademarks and service marks that are specifically approved by SolarWinds for MSPs to use in connection with selling to Clients their services that utilize the Software. You may not delete, remove, hide, move or alter any trademark, logo, icon, image or text that represents the company name of SolarWinds, any derivation thereof, or any icon, image, or text that is likely to be confused with the same, and you may not rebrand the Software without SolarWinds' express written consent.

**5.2.3 Support.** 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 are the point of contact for Your Clients, and will provide all 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. For the avoidance of doubt, You are solely responsible for informing Clients that You are their point of contact for use of the Software, including with respect to all problem resolution and support services. If You are licensing the Software for the benefit of a specific Client only, You must identify that to SolarWinds in writing at the time of order. However, in all events You remain the licensee for the Software until such time as Software may be transferred to an identified Client under the limited conditions set forth in the preceding sentence, for which

SolarWinds may require additional documentation in connection with any such transfer. For any other licensed purchased by You, You shall at all times remain the licensee.

## **6. CONFIDENTIALITY.**

**6.1 Confidential Information** means any nonpublic information, in tangible or intangible form, disclosed under this Agreement that a party to this Agreement ("Disclosing Party") designates as being confidential by legends or other markings or in a separate writing provided contemporaneous with the disclosure to the party that receives such information ("Receiving Party"). Confidential Information includes the pricing, discounts, or terms under which the Software is offered to Company. Confidential Information may also include confidential information disclosed to a disclosing party by a third party.

Confidential Information shall not include any information, excluding Personal Data, however designated, that: (i) is (or subsequently becomes through no fault of the Receiving Party) publicly available; (ii) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to the terms of this Agreement; (iii) was lawfully received by the Receiving Party from a third party without such restrictions; or (iv) is independently developed by Receiving Party without breach of this Agreement or access to, reference to, or use of the Confidential Information.

**6.2 Protection of Data.** You agree that SolarWinds will process configuration, performance, usage, and consumption data, which may include hardware identification, operating system, application software, peripheral hardware, internet protocol address, about You and Your Users' use of the Software in order to improve SolarWinds's products and services in accordance with its Privacy Notice. To the extent that this information constitutes Personal Data, SolarWinds shall be the controller of such Personal Data. Each party shall comply with its respective obligations under applicable data protection legislation and will maintain appropriate administrative, physical, technical and organizational measures that provide an appropriate level of security for Confidential Information and Personal Data and in accordance with the [Data Transfer Addendum](#) which is hereby incorporated by reference.

**6.3 Protection of Confidential Information.** Receiving Party may use Confidential Information of Disclosing Party to exercise its rights and perform its obligations under this Agreement; in connection with the parties' ongoing business relationship; or as otherwise set forth herein. Receiving Party will not use any Confidential Information of Disclosing Party for any purpose not permitted by this Agreement and will disclose the Confidential Information of Disclosing Party only to the employees or contractors of Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality respecting the protection of Confidential Information substantially similar to those of this Agreement. Receiving Party will utilize commercially reasonable efforts to protect Confidential Information from unauthorized or unlawful processing by maintaining appropriate technical and organizational measures that help to provide an appropriate level of security for Confidential Information. The parties will each be responsible for any breach of this Agreement by their consultants or agents. Confidential Information shall remain at all times the property of the Disclosing Party. No rights to use, license or otherwise exploit Confidential Information are granted to the Receiving Party or its agents, by implication or otherwise. The obligations set forth in this Section 6 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.

## **7. LIMITED WARRANTY.**

SolarWinds warrants to You that, for a period of thirty (30) days following the initial purchase and delivery of the Software to You, the Software will perform substantially in conformance with the Documentation. SolarWinds does not warrant that the Software will meet all Your requirements or that the use of the Software will be uninterrupted or error-free. The foregoing warranty applies only to failures in operation of the Software that are reproducible in standalone form and does not apply to: (i) Software that is modified or altered by You or any third party that is not authorized by SolarWinds; (ii) Software that is otherwise operated in violation of this Agreement or other than in accordance with the Documentation; or (iii) failures that are caused by other software or hardware products. To the maximum extent permitted under applicable law, as SolarWinds' and its suppliers' entire liability, and as Your exclusive remedy for any breach of the foregoing warranty, SolarWinds will, at its sole option and expense, promptly repair or replace any Software

that fails to meet this limited warranty or, if SolarWinds is unable to repair or replace the Software, refund to You the applicable license Fees paid upon return, if applicable, of the nonconforming item to SolarWinds. The warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement Software under this limited warranty will be warranted for thirty (30) days.

EXCEPT AS EXPRESSLY STATED IN THIS SECTION, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SOLARWINDS IS PROVIDING AND LICENSING THE SOFTWARE TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND AND SOLARWINDS HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

## **8. INTELLECTUAL PROPERTY INDEMNIFICATION.**

**8.1 Indemnity.** SolarWinds will indemnify and hold You harmless from any third party claim brought against You that the Software, as provided by SolarWinds to You under this Agreement and used within the scope of this Agreement, infringes or misappropriates any U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party, provided (i) use of the Software by You is in conformity with the Agreement and Documentation; (ii) the infringement is not caused by modification or alteration of the Software or Documentation made by You or a party at Your direction, other than as specified by SolarWinds in writing; and/or (iii) the infringement was not caused by a combination or use of the Software with products not supplied by SolarWinds.

**8.2 Limitations.** 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; (iii) providing SolarWinds with reasonable assistance, information and authority required for the defense and settlement of the claim; and (iv) using the most up-to-date version (including hotfixes, patches, and updates) of the Software where such version would avoid the claim or potential thereof. This Section states SolarWinds' entire liability (and shall be Company's sole and exclusive remedy) with respect to indemnification to Company.

## **9. LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SOLARWINDS, ITS DIRECTORS, OFFICERS, AGENTS, SUPPLIERS AND LICENSORS BE LIABLE TO YOU (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) FOR MORE THAN THE AMOUNT OF LICENSE FEES THAT YOU HAVE PAID TO SOLARWINDS IN THE (12) TWELVE MONTHS PRECEDING THE DATE UPON WHICH THE CAUSE OF ACTION AROSE FOR THE APPLICABLE SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SOLARWINDS, ITS DIRECTORS, OFFICERS, AGENTS, SUPPLIERS AND LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OFFERING, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF YOUR DATA, LOST SAVINGS, OR OTHER ECONOMIC DAMAGE, ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, EVEN IF SOLARWINDS OR A DEALER AUTHORIZED BY SOLARWINDS HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THESE LIMITATIONS WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

## **10. TERM AND TERMINATION**

### **10.1 License Term.**

**10.1.1.** The initial term of the license for Software and Documentation will begin upon delivery of the Software to You and, unless terminated sooner as provided herein, continue for the period specified in the applicable Order ("License Term"). Unless otherwise set forth in the Order, You authorize SolarWinds to automatically renew Your license for the Software at the rates provided by SolarWinds upon the expiration

of the initial License Term (each “Renewal Term,” and collectively with the initial License Term, the ‘Term’). The Renewal Term will be the same length as the initial License Term unless otherwise specified by SolarWinds at the time of renewal.

**10.1.2** Except as set forth in the Order, You may prevent the auto-renewal of Your license by providing SolarWinds with ninety (90) days prior written notice to terminate this Agreement prior to the end of the then-current License Term.

**10.2 Termination by SolarWinds.** Unless as otherwise set forth herein, SolarWinds may terminate the Agreement immediately (a) if You become subject to bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assign for the benefit of creditors, and/or (b) infringe or misappropriate SolarWinds intellectual property, or breach the license restrictions and obligations, or fail to make any payment due hereunder. Without prejudice to any other rights, upon termination or expiration of this Agreement or Order, You agree to uninstall and cease all use of the Software, and Documentation and/or destroy or return (upon request by SolarWinds) all copies of the Software, and Documentation.

**10.3 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 Software and Documentation and destroy or return (at SolarWinds’ sole discretion) all copies of the Software and Documentation. Sections 1, 3, 4, 5.1, 6, 8, 9, 10.3, 11, 12 and 13 shall survive any termination or expiration of this Agreement except as explicitly set forth therein.

## **11. THIRD-PARTY PROGRAMS.**

To the extent the Software is bundled with third-party software programs; these third-party software programs are governed by their own license terms, which may include open source or free software licenses, and these terms will prevail over this Agreement as to Your use of the third-party programs. Nothing in this Agreement limits an end user’s rights under, or grants the end user rights that supersede, the terms of any such third-party software.

## **12. CHOICE OF LAW AND VENUE.**

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 shall not apply. The parties agree that the provisions of the Uniform Computer Information Transactions Act shall not apply to this Agreement. You hereby consent to jurisdiction of the courts of both the state and/or 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 this English version of this Agreement shall prevail and control.

## **13. GENERAL.**

**13.1 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).

**13.2 Counterparts and Email Signature.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties may exchange signature pages by email and such signatures shall be effective to bind the Parties.

**13.3. Entire Agreement.** This Agreement, along with the Software Support and Maintenance Terms and Conditions (found at <https://www.solarwinds.com/legal/support-and-maintenance-terms-and-conditions>), Your Order, and any applicable product or commercial addenda located at <http://www.solarwinds.com/legal/legal-documents>, constitute the entire agreement between the parties and supersede all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof including without limitation the terms of any purchase order issued in connection with this Agreement. If other SolarWinds terms or conditions conflict with this Agreement, this



Agreement shall prevail and control. Unless expressly stated otherwise, with respect to any inconsistency between this Agreement and an Order, the terms of this Agreement shall supersede and control.

**13.4 Assignment.** Except in the event of a merger, acquisition or sale of all or substantially all of a party's assets, or to an Affiliate, and subject to any applicable export compliance restrictions, neither party shall assign this Agreement without the other party's prior written consent. Each party shall provide timely written notice of any such assignment. You acknowledge that Your failure to provide notice of any assignment may impact the provision of the Software, Documentation and any Support and Maintenance or other materials relevant notices and information to You, for which SolarWinds shall not be responsible.

**13.5 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.

**13.6 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.

**13.7 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.

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

**13.9 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.

**13.10 U.S. Government Use.** (Applies only when licensed by or for the benefit of a U.S. government customer). SolarWinds' Software and Documentation was developed exclusively at private expense and is a "commercial item" as defined in Federal Acquisition Regulation ("FAR") 2.101, and any supplement is provided with no greater than RESTRICTED RIGHTS. Such Software 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 Software and Documentation is restricted by this Agreement and in accordance with Defense Federal Acquisition Regulation Supplement ("DFARS") Section 227.7202 and FAR Section 12.212, and the 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 13.9 is in lieu of, and supersedes, any other FAR, DFARS, or other clause addressing government rights under this Agreement or any other contract which the Software or Documentation is acquired or licensed. Manufacturer is SolarWinds Worldwide, LLC, 7171 Southwest Parkway, Building 400, Austin, Texas 78735.

**13.11 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.

**13.12 Records.** You will maintain and make available to SolarWinds on request all information and records necessary to demonstrate compliance with this Agreement. Upon written request, You shall provide SolarWinds with an affidavit declaring Your usage and installation of the licensed Software and Your compliance herewith. SolarWinds shall have the right, upon reasonable written notice to You, to conduct an inspection and audit of all relevant facilities and records of Yours solely to confirm compliance with this Agreement in relation to use and installation of the licensed Software (and the corresponding quotes relating to the Software). Such audit shall be conducted during regular business hours and shall not interfere with

normal business activities. If SolarWinds determines that the licensed Software is in excess of the purchased Software, SolarWinds will invoice You for any underpayment of fees. If you elect instead, you may authorize SolarWinds to electronically access and audit Your use of the Software and compliance with this Agreement through Your computer systems and network via electronic means.

**14. PRODUCT/COMMERCIAL SPECIFIC TERMS.** Software may be subject to product-specific terms (“Product Specific Terms”) or commercial-specific terms (“Commercial Specific Terms”) that may apply with respect to certain Software products. Product Specific Terms and Commercial Specific Terms are available at <https://www.solarwinds.com/legal/legal-documents> and supersede any conflicting terms set forth herein only with respect to the Software product to which they apply. SolarWinds reserves the right to add or modify Product Specific Terms or Commercial Specific Terms.

If You have licensed products subject to a prior product addendum (“Product Addendum”) in an older agreement, the terms of the Product Addendum shall continue to apply to such products. Please visit the license archive page for prior Product Addenda.