

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 Worldwide”).

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 WORLDWIDE 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, AND YOU MAY NOT USE THE SERVICES.

SolarWinds Worldwide 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 Services or Software or updated Agreement constitutes Your consent to be bound by the modified Agreement.

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, Affiliates may use the license granted hereunder. All references to SolarWinds shall be deemed to be references to SolarWinds Worldwide and its Affiliates.

1.2 “Agreement” means the Software Services Agreement, any applicable Product Addendum, and the Order Form.

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

1.4 “Documentation” means the official user documentation prepared and provided by SolarWinds Worldwide 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.

1.5 “Order Form” means the relevant SolarWinds Worldwide order page, product information dashboard, or other SolarWinds Worldwide ordering or invoicing document that specifies Your purchase of the Services, pricing, and other related information.

1.6 “Product Addendum(a)” means additional terms and conditions set forth in Section 16 that relate to the applicable Services, Software, or Documentation.

1.7 “Services” means the products and software services, including any application programming interface that accesses functionality, that are provided to You by SolarWinds Worldwide.

1.8 “Software” means the object code versions of any downloadable software provided by SolarWinds Worldwide 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 Worldwide to You pursuant to this Agreement.

1.9 “Support” means the standard maintenance or support to be provided by SolarWinds or its designated agents as set forth in this Agreement.

1.10 “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, agents, and authorized customers.

1.11 “Your Data” means data, files, or information accessed, used, communicated, stored, or submitted by You or Your Users related to Your or Your Users’ 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 Worldwide 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). SolarWinds Worldwide may deliver the Services or Software to You with the assistance of its Affiliates, licensors, and service providers. 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.

2.2 Evaluation or Beta License. If the Services, Software, and Documentation are provided to You for evaluation, beta, or release candidate purposes, SolarWinds Worldwide 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 Services, Software, and Documentation licensed under an Evaluation License.

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 back-up or archival purposes, which will not be used for transfer, distribution, sale, or installation on Your or Your Users’ 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 Worldwide; (vi) remove any proprietary notices or labels on the Services, Software, or Documentation, unless authorized by SolarWinds Worldwide; (vii) license the Services, Software, or Documentation if You (or any of Your Users) are a direct competitor of SolarWinds, including for the purposes of monitoring the availability, performance, or functionality or 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 any applicable laws or 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 (“Virus” or “Viruses”); (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 exceeds the license that You have received or results in excessive use, bandwidth, or storage; or (xiii) alter, circumvent, or provide the means to alter or circumvent the Services or Software, including technical limitations, recurring fees, or usage limits.

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 processing and have sufficient consent (if applicable) and rights to access, use and store Your Data and any other system or network 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, and technical data accurate, complete, and current for as long as You subscribe to the Services, Software and Documentation.

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 Worldwide 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”).

5.2 SolarWinds Suspension or Termination Rights. SolarWinds may suspend or terminate this Agreement upon thirty (30) day 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 make any payment of fees when due or exceeding Your license; or pursuant to the receipt of a subpoena, court order, or other request by a law enforcement agency.

5.3 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. You will retrieve Your Data or copies of Your Data from SolarWinds prior to the effective termination date. Upon termination of this Agreement, You acknowledge and agree that SolarWinds will delete Your Data. Your Data, once deleted, is not able to be recovered. 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. Sections 1, 4.1, 5.3, 6, 7, 9, 10, 11.2(iii), 12, 15, and 16 shall survive any termination or expiration of this Agreement.

6. 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. If You fail to pay, SolarWinds shall be entitled, at its sole discretion, to: (i) suspend provision of the Services until You fulfill Your pending obligations; (ii) charge You an interest rate designated by SolarWinds at the time of invoice; (iii) 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. Unless otherwise stated, all payments made under this Agreement shall be in United States dollars. Fees are non-refundable.

7. 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. 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.

8. DATA; DATA PROTECTION.

8.1 Data. SolarWinds agrees that Your Data, if categorized in accordance with Section 9, shall be treated as confidential by SolarWinds. You agree that You and Your Users are responsible for maintaining and protecting backups of Your Data directly or indirectly processed using the Services and that SolarWinds is not responsible for exportation of, the failure to store, the loss, or the corruption of Your Data. You agree that SolarWinds will collect, access, process, and use technical and related information about You, Your Users and Your and Your Users' use of the Services and Software, including Your internet protocol address, the hardware and software that You utilize, and various usage statistics, to assist with the necessary operation and function of the Services and Software and to facilitate in the provision of updates, support, invoicing, marketing, and research and development in accordance with the SolarWinds Privacy Policy located on SolarWinds' website. SolarWinds 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 (e) infringing the intellectual property rights or any other rights of any third party.

8.2 Data Protection. Each party shall comply with its respective obligations under applicable data protection laws. You and Your Users warrant that through Your use of the Services during the Term: (i) in respect of the personal data You or Your Users collect, use, process, access, or disclose, You alone shall determine the purpose for and manner in which personal data is, or will be, processed, if any; (ii) You warrant that You have the legal ability to process the data and, where applicable, have obtained all necessary consents from Your Users or any other third party required under applicable law: (a) to disclose or process their personal data to SolarWinds or its agents and (b) for SolarWinds or its agents to collect, use, process, access, or disclose the personal data as set forth herein or as otherwise designated by You or Your Users; (iii) in the event You are located in the European Union or process personal data obtained from the European Union, (x) You are the data controller of all personal data You or Your Users may process and (y) SolarWinds is the data processor in respect of the personal data processed as provided by You. You agree that Your, Your Users', and any third party personal data provided to SolarWinds may be stored, transferred, and processed by SolarWinds in any country in which SolarWinds maintains facilities or personnel, and You and Your Users consent to any such transfer of the personal data outside of Your (or Your Users') country. You warrant and undertake that any instructions given by You to SolarWinds will be in accordance with applicable law.

9. 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. 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 of its employees or agents with a need to know such information and who are under a duty of confidentiality respecting the protection of confidential information, which is substantially similar to those of this Agreement and which would extend to the disclosing party's Confidential Information; (iii) use such Confidential Information only for the purposes for which it was disclosed, unless otherwise set forth herein. The restrictions will not apply to Confidential Information 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; (iv) was known to the receiving party without such restrictions prior to receipt from the disclosing party; (v) 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 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 this Section in addition to any other relief to the applicable party may be entitled.**

10. 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 IS 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, 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. YOUR ACCESS, INSTALLATION, AND USE OF THE SOFTWARE AND SERVICES ARE AT YOUR SOLE DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR DEVICE(S) OR THE LOSS OR CORRUPTION OF YOUR DATA. SOLARWINDS ALSO SPECIFICALLY DISCLAIMS RESPONSIBILITY OF THIRD PARTY PRODUCTS AND SERVICES WITH WHICH YOU MAY UTILIZE THE SERVICES AND SOFTWARE, AND YOU SPECIFICALLY DISCLAIM AND WAIVE ANY RIGHTS AND CLAIMS YOU MAY HAVE AGAINST SOLARWINDS WITH RESPECT TO SUCH THIRD PARTY PRODUCTS AND SERVICES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

11. INDEMNIFICATION.

11.1 SolarWinds Worldwide Indemnification. SolarWinds Worldwide will indemnify, defend, and hold You harmless from any third party claim brought against You that the Services, as provided by SolarWinds Worldwide, 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 or Your Users 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 Worldwide. SolarWinds Worldwide indemnification obligations are contingent upon You: (i) promptly notifying SolarWinds Worldwide 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.

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

12. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (I) IN NO EVENT WILL SOLARWINDS, ITS 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 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.

13. 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.

14. SUPPORT.

14.1 SolarWinds Support. If applicable to You, SolarWinds shall, during the Term, provide You with Software Support. 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.

14.2 Provision of Support. During the Term, You may receive:

14.2.1 Online Support. Your contact(s) may submit support and related requests via an online portal that is available on the Support website 24 hours a day, 7 days a week, 363 days a year (Support is not available on December 25 or January 1). Each request is given a unique identification number for Your convenience and reference. All online support submissions are managed using the English language.

14.2.2 Telephone Support. Telephone support is generally available 24 hours a day, 7 days a week, 363 days a year.

14.3 Limitations. 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.

15 GENERAL.

15.1 Notices. All notices must be in writing and shall be mailed by registered or certified mail, or sent via email to legal_team@solarwinds.com (with evidence of effective transmission). All notices must be addressed to SolarWinds, Attn: Legal Department, 7171 Southwest Parkway, Building 400, Austin, Texas 78735.

15.2 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. In addition, 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.

15.3 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.

15.4 Modifications. Unless as otherwise set forth herein, this Agreement shall not be amended or modified by You except in a writing signed by authorized representatives of each party.

15.5 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 shall be deemed replaced by a provision that is binding and enforceable and that differs as little as possible from the unenforceable provision with considerations of the object and purpose of this Agreement.

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

15.7 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.

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

15.9 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 laws 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.

15.10 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.

15.11 U.S. Government Use. SolarWinds' Services, Software and Documentation were developed exclusively at private expense and are a "commercial item" as defined in 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 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.

16. PRODUCT ADDENDA.

16.1 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; (3) YOU ATTEMPT TO BACKUP 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 COMPATABILITY 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 FAIL TO RENEW YOUR SUBSCRIPTION TO THE SERVICES.

Last updated January 1, 2018