

## **SOLARWINDS END USER LICENSE AGREEMENT**

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING AN ORDER FORM 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 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.

This End User License Agreement (the "Agreement") is hereby entered into and agreed upon by you, either an individual or an entity, and its Affiliates ("You" or "Company") and SolarWinds Worldwide, LLC ("SolarWinds Worldwide") for the Software. This Agreement sets forth the obligations of each party.

### **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, and all references to Company, You, or Your shall be deemed to be references to Company and its Affiliate(s).

**1.2 Computer** means the hardware, if the hardware is a single computer system, whether physical or virtual, or means the computer system with which the hardware operates, if the hardware is a computer system component.

**1.3 Documentation** means the official user documentation prepared and provided by SolarWinds Worldwide to You on the use of the Software. For the avoidance of doubt, any online community site; unofficial documentation, videos, white papers, or related media; or feedback does not constitute Documentation.

**1.4 Personal Data** means information that may be used to readily identify an individual person.

**1.5 Product Addendum(a)** means additional terms and conditions set forth in Section 12 that relate to the applicable Software.

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

**1.7 User(s)** mean an individual authorized by You to use the Software and Documentation. User(s) may include Your employees, consultants, and contractors, and, if applicable, Your customers.

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

### **2. GRANT OF LICENSE.**

**2.1 Production License.** Upon payment of the applicable fees for the Software and continuous compliance with the terms and conditions of this Agreement and the Documentation, SolarWinds Worldwide

hereby grants You a limited, worldwide, perpetual, nonexclusive, nontransferable license to use the object code of the Software and Documentation subject to the terms contained herein:

a) For each Software license key that You purchase from SolarWinds Worldwide, You may: (i) use the Software on any single Computer, 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.

b) The Software is in use on a Computer 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 this Software only with SolarWinds and that You will only install a Software license key obtained directly from SolarWinds.

**2.2 Software Evaluation or Beta License.** If the Software is provided to You for evaluation, beta, or release candidate purposes, SolarWinds Worldwide grants to You a nonexclusive, limited, royalty-free, nontransferable evaluation license to use the Software 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 at its sole discretion. Notwithstanding any other provision contained herein, Software provided pursuant to an Evaluation License is provided to You "AS IS" without indemnification, support, or warranty of any kind, express or implied. Except to the extent such terms conflict with the specific Evaluation License terms set forth in this Section, all other terms of this Agreement shall apply to Software licensed under an Evaluation License.

**2.3 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 Computer, You represent and warrant that (i) You may actively run the redundant version of the Software on a Computer, provided it is not running on a primary production Computer, unless (a) the primary production Computer related to the primary production version of the Software fails, (b) the Software or Computer 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 Computer; and (iii) You will promptly get the primary production Computer 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 other individuals 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 based upon the Software or Documentation; (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, 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.

**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 process Your Data and provide Your Data to SolarWinds, 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 Software and will be solely responsible for the accuracy, security, quality, integrity, and legality of the same; (iii) You will keep your registration information, billing information, passwords and technical data accurate, complete, secure and current; and (iv) 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 import and export laws of the jurisdiction in which it was obtained, if outside the U.S. You shall abide by all applicable export control laws, rules and regulations applicable to the Software and Documentation. 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. 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.

## **4. RIGHTS RESERVED. THE SOFTWARE IS LICENSED, NOT SOLD.**

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 the 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.

## **5. CONFIDENTIALITY; PERSONAL DATA.**

**5.1 Confidential Information** means any nonpublic or proprietary information, in tangible or intangible form, 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 Software, Documentation and any other intellectual property or proprietary rights thereto, as well as Personal Data.

Confidential Information may also include confidential or proprietary 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.

**5.2 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 accordance with its Privacy Notice. 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. When we process Personal Data on Your behalf to provide the Software, You expressly agree that You are the data controller (and SolarWinds, the data processor) and shall determine the purpose and manner in which such Personal Data is, or will be processed. To the extent that SolarWinds processes Personal Data as a controller, it will comply with the relevant obligations under applicable data protection legislation. SolarWinds and its US Affiliates have certified their adherence to the EU-US and Swiss-US Privacy Shield Frameworks and will process Personal Data subject to Swiss or European data protection laws in accordance with Privacy Shield and its corresponding principles.

**5.3 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 Recipient 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 the Confidential Information are granted to the Receiving Party or its agents, by implication or otherwise.

## **6. LIMITED WARRANTY.**

SolarWinds Worldwide 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 Worldwide does not warrant that the Software will meet all of 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 Worldwide; (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 Worldwide will, at its sole option and expense, promptly repair or replace any Software that fails to meet this limited warranty or, if SolarWinds Worldwide 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 Worldwide. 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, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

## **7. INTELLECTUAL PROPERTY INDEMNIFICATION.**

SolarWinds Worldwide will indemnify and hold You harmless from any third party claim brought against You that the Software, as provided by SolarWinds Worldwide 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; and/or (iii) the infringement was not caused by a combination or use of the Software with products not supplied by SolarWinds. SolarWinds Worldwide's indemnification obligations are contingent upon You: (i) promptly notifying SolarWinds Worldwide in writing of the claim; (ii) granting SolarWinds Worldwide sole control of the selection of counsel, defense, and settlement of the claim; and (iii) providing SolarWinds Worldwide with reasonable assistance, information and authority required for the defense and settlement of the claim. This Section states SolarWinds' entire liability (and shall be Company's sole and exclusive remedy) with respect to indemnification to Company.

## **8. 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) (I) FOR MORE THAN THE AMOUNT OF LICENSE FEES THAT YOU HAVE PAID TO SOLARWINDS IN THE PRECEDING (12) TWELVE MONTHS FOR THE APPLICABLE SOFTWARE, OR (II) 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.

## **9. 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.

## **10. 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.

## **11. GENERAL.**

**11.1 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).

**11.2 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.

**11.3. Complete Agreement.** This Agreement along with the Software Support and Maintenance Terms and Conditions, the SolarWinds Privacy Notice and any applicable product 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.

**11.4 Modifications.** This Agreement shall not be amended or modified except in a writing signed by authorized representatives of each party.

**11.5 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.

**11.6 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.

**11.7 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.

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

**11.9 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.

**11.10 Government Use.** 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 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.

**11.11 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.

**12 PRODUCT ADDENDA.** If you are purchasing any of the below-listed Software products, the addendum to this Agreement identified below and located at <http://www.solarwinds.com/legal/legal-documents> shall complement this Agreement and supersede any conflicting terms set forth herein.

Product(s)	Addendum
<b>Network Operations Manager</b>	Network Operations Manager / Network Automation Manager / Application Centric Monitor End User License Agreement Addendum
<b>Network Automation Manager</b>	Network Operations Manager / Network Automation Manager / Application Centric Monitor End User License Agreement Addendum
<b>Application Centric Monitor</b>	Network Operations Manager / Network Automation Manager / Application Centric Monitor End User License Agreement Addendum