

## Attachment C – Software License Agreement

### Software Support and Maintenance Terms and Conditions (“Agreement”)

SolarWinds Worldwide, LLC (“SolarWinds”) will provide the Software Support subject to the terms and conditions set forth below to You (either an individual or an entity), for itself and its affiliates and subsidiaries, if any. In this Agreement and any exhibits pertaining to Software Support, the following defined terms are used:

**Platform** - means the combination of the CPU and other hardware a computer system uses, its exact operating system including the version number, the compiler required, the type of libraries (e.g. libc, glibc), and the type of crypto library available (e.g. libcrypt, pam). Changes to any of these components that break binary compatibility, or prohibit functioning (including recompiling) of Software, unless modified by SolarWinds, constitute a different platform.

**Software** – means software purchased by You from SolarWinds, which may include Orion and modules, ipMonitor, LANSurveyor, Kiwi Syslog, Kiwi CatTools, Profiler, and Toolsets.

**Software Support** - means the standard maintenance and support to be provided by SolarWinds as specifically set forth below.

**Supported Hardware or Platform** - means hardware or a platform that functions with the Software and components contemplated for use with the Software.

### 1. YOUR OBLIGATIONS

1.1. **Entitlement.** In order to access and utilize Software Support, You will be required to provide Your user name and SolarWinds network machine name or SolarWinds network system ID at the time of Software Support.

1.2. **Your Computer System.** You will be responsible for performing all operations on Your computer system. SolarWinds shall have no responsibility to perform operations on Your computer system or for operations performed on Your computer system.

1.3. **No Modification to Platform.** Any modification to a Platform may disqualify You from receiving Software Support.

1.4. **Your Benefit.** The Software Support purchased by You is intended for use by You and only for Your benefit and only for properly licensed Software. Any unauthorized use of the Software or Software Support will be deemed to be a material breach of this Agreement.

1.5. **Designated Software Support Contact.** SolarWinds will provide Software Support to You only by communication with the Your designated technical contact or contacts (the “Contact”).

1.5.1. **Contact Requirements.** The parties agree that the Software Support provided by SolarWinds under this Agreement is intended to be provided to system administrators and other technical personnel performing the daily hands-on administration of the Software on Your machines. At least one of the contacts shall be a system administrator. Each contact must be an individual. You shall make commercially reasonable efforts to maintain consistent designated contacts for the term of this Agreement. You may not use a single contact to act as a mere forwarding service for other personnel. The contact may not use Software Support on the basis of this Agreement to benefit any person or entity other than the You. Each contact must have read and/or write access to all necessary files. Each contact must possess good English language communication skills and the relevant technical knowledge necessary to assist SolarWinds in performing the Software Support contemplated under this Agreement. This knowledge includes familiarity with the Software and the Supported Hardware or Platform associated therewith.

1.5.2. **Change of Contact(s).** You may change contacts if one person previously designated to be a contact has terminated employment or is no longer involved with day-to-day administration of the Platform. You must notify SolarWinds of any change in contacts in writing. You shall allow one calendar week for processing by SolarWinds of any changes in contacts. SolarWinds reserves the right to approve changes to contacts, such approval not to be unreasonably withheld, conditioned, or delayed.

### 2. SOFTWARE SUPPORT.

2.1. **Scope of Coverage.** SolarWinds will provide the Software Support specified herein during the hours specified below. SolarWinds may, at its discretion, decline to provide Software Support for

Software that has been modified or changed by You in any way, except for any modification or change

made by You as directed by SolarWinds. SolarWinds will provide Software Support for Supported Hardware and Platforms only. SolarWinds will not be obligated to provide Software Support beyond any specific release of the Software for a period of two years following the release date, provided however that a new release has occurred within two years following the release date. SolarWinds will only provide Software Support for the entitled Software for which You have purchased from SolarWinds.

**2.2. SolarWinds Standard Maintenance and Support.** If Standard Maintenance and Support is purchased, then the Software Support for the entitled Software includes:

**2.2.1. Email and Telephone Support.**

2.2.1.1. Email responses to questions during the hours of 7 a.m. – 7 p.m. local time Monday-Friday.

2.2.1.2. Telephone support from 7 a.m. – 7 p.m. local time Monday-Friday.

**2.2.2. New Releases.** All new releases of licensed SolarWinds products, including major releases, point releases and service releases.

**2.2.3. Support Portal.** The method of initiation of Support requests is through the web-based support portal located at SolarWinds' main web site: <http://support.solarwinds.net/support/default.cfm>. Your Contact personnel, as identified to SolarWinds, are entitled to open a secure login to the Support Portal and use the Ticket Manager Application to submit a support request for any covered Support. Each submitted service request is given a unique identification number (ID). Services logged through the SolarWinds Support Portal are managed using the English language.

### **3. LIMITATIONS OF SOFTWARE SUPPORT.**

**3.1. Access to Your Computer System.** Upon explicit request by You, You acknowledge that SolarWinds may perform certain Software Support that may be conditioned upon access to Your information and/or access to Your computer system. Information that may be accessed during Software Support may include, but is not limited to, the type of hardware You are using, a description of the problem for which You are seeking Software Support, and additional software You are using that falls outside the scope of coverage. You understand and agree that the completeness and accuracy of the information You provides to SolarWinds may affect SolarWinds' ability to provide Software Support.

**3.2. Maintenance and Modifications.** If You have not paid the fees required for Software Support or to continue Software Support, SolarWinds is not obligated to provide You with Software Support. If You have made modifications or changes to the Platform or Software, except for any modification or change made by You as directed by SolarWinds, SolarWinds may, at its discretion, decline to provide Software Support for Software or the Supported Hardware or Platform.

**4. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SOLARWINDS BE LIABLE TO YOU FOR MORE THAN THE AMOUNT OF LICENSE FEES THAT YOU HAVE PAID TO SOLARWINDS IN THE PRECEDING (12) TWELVE MONTHS OR BE LIABLE TO YOU FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR SOFTWARE PROGRAMS, EVEN IF SOLARWINDS OR A DEALER AUTHORIZED BY SOLARWINDS HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **5. MISCELLANEOUS.**

**5.1.** If any provision of this Agreement is held to be unenforceable, that shall not affect the enforceability of the remaining provisions. 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 shall not apply.

**5.2.** 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 facsimile and such signatures shall be effective to bind the Parties.

**5.3.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

5.4. This Agreement is the complete and exclusive statement of agreement between the parties relating to the matters contemplated herein and supersedes all other written and oral contracts, proposals, and other communications between the parties.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement by its duly authorized representatives on the respective date entered below.

**ACCEPTED AND AGREED TO:**

**COMPANY NAME:** SOLARWINDS WORLDWIDE, LLC

\_\_\_\_\_  
**AUTHORIZED SIGNATURE**      **AUTHORIZED SIGNATURE**

\_\_\_\_\_  
**PRINTED NAME**      **PRINTED NAME**

\_\_\_\_\_  
**TITLE**      **TITLE**

\_\_\_\_\_  
**DATE EXECUTED**      **DATE EXECUTED**

## **SOLARWINDS END USER LICENSE AGREEMENT**

IMPORTANT -- READ CAREFULLY BEFORE USING THIS SOFTWARE: THIS IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY) AND SOLARWINDS WORLDWIDE, LLC COVERING YOUR USE OF ANY SOLARWINDS SOFTWARE APPLICATION ("SOFTWARE") THAT YOU HAVE ACQUIRED. YOU ACKNOWLEDGE UPON INSTALLATION OF ANY SOFTWARE THAT YOU HAVE REVIEWED AND AGREED TO ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS DOCUMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT INSTALL OR USE THE SOFTWARE. IF YOU HAVE ALREADY INSTALLED THIS SOFTWARE AND DO NOT AGREE TO THESE TERMS, PLEASE UNINSTALL THE SOFTWARE AND IMMEDIATELY DISCONTINUE ITS USE. YOU AGREE THAT YOUR USE OF THE SOFTWARE ACKNOWLEDGES THAT YOU HAVE READ THIS LICENSE, UNDERSTAND IT, AND AGREE TO COMPLY WITH ITS TERMS AND CONDITIONS.

BY CLICKING ON THE "ACCEPT" BUTTON, OPENING THE PACKAGE, DOWNLOADING THE PRODUCT, OR USING THE EQUIPMENT THAT CONTAINS THIS SOFTWARE, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "DO NOT ACCEPT" BUTTON AND THE INSTALLATION PROCESS WILL NOT CONTINUE. IN ADDITION: (1) IF YOU PURCHASED THE PRODUCT, RETURN THE PRODUCT TO THE PLACE OF PURCHASE FOR A FULL REFUND; OR, (2) IF YOU ARE OTHERWISE ATTEMPTING TO DOWNLOAD THE PRODUCT AND YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT COMPLETE THE DOWNLOAD; OR, (3) IF YOUR SOFTWARE WAS INCLUDED IN EQUIPMENT WHICH YOU PURCHASED AND YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT USE THE SOFTWARE.

This End User License Agreement (the "EULA") is hereby entered into and agreed upon by You, either an individual or an entity ("You" or "Company") and **SolarWinds Worldwide, LLC** and its Affiliates, directors, officers, agents, employees, and its suppliers and licensors (collectively "SolarWinds") for the Software (as defined below).

### **1. DEFINITIONS.**

**1.1 "Software"** means the object code versions of the product, together with the updates, upgrades, modifications or enhancements owned and provided by SolarWinds to You pursuant to this agreement.

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

### **2. GENERAL USE.**

**2.1 Individual Components.** This Software is an application made up of individual software components, each of which was individually written and copyrighted.

**2.2 Third Party Software and/or Components.** ANY THIRD PARTY SOFTWARE, INCLUDING ANY THIRD PARTY'S PLUG-IN, THAT MAY BE PROVIDED WITH THE SOFTWARE IS INCLUDED FOR USE AT YOUR OPTION. IF YOU CHOOSE TO USE SUCH THIRD PARTY SOFTWARE, THEN SUCH USE SHALL BE GOVERNED BY SUCH THIRD PARTY'S LICENSE AGREEMENT. SOLARWINDS IS NOT RESPONSIBLE FOR ANY THIRD PARTY'S SOFTWARE AND SHALL HAVE NO LIABILITY FOR YOUR USE OF THIRD PARTY SOFTWARE. YOU MAY ACCESS ANY THIRD PARTY LICENSE INCLUDED WITH THE SOFTWARE YOU HAVE PURCHASED AT [WWW.SOLARWINDS.COM](http://WWW.SOLARWINDS.COM).

The third-party software contained in this Software may include or contain software licensed under the following

licenses, GNU General Public License (“GPL”) or Lesser GNU General Public License (“Open Source Programs”). These Open Source Programs are licensed pursuant to a end user license agreement that permits the end user to copy, modify, and redistribute the software, in both source code and binary code forms. These end user license agreements can be located at:

<http://www.solarwinds.com/support/3rdPartySoftware/3rdParty.htm>. Nothing in this EULA limits an end user’s rights under, or grants the end user rights that supersede, the terms of any applicable Open Source Program end user license agreement.

**2.3 Collective Work.** The Software is a collective work under U.S. Copyright Law. Upon installation of this Software, SolarWinds hereby grants You the following license to use the Software in Your facility subject to the terms contained herein subject to the licenses referenced herein.

**3. GRANT OF LICENSE.** Upon payment of the fees applicable under this Agreement, SolarWinds hereby grants to You a perpetual, non-exclusive, nontransferable license to use the Software and any related documentation (“Documentation”), subject to the following terms:

a) For each registered serial number and Software license key that you purchase, You may: (i) use the Software on any single Computer; and (ii) copy the Software for back-up and archival purposes, provided any copy must contain all of the original Software’s proprietary notices within the United States and its territories or any other country to which this program can legally be exported.

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 best efforts to prevent and protect the contents of the Software and Documentation from unauthorized use or disclosure. You agree that You will register this Software and its corresponding serial number only with SolarWinds and that You will only install a Software license key obtained directly from SolarWinds.

#### **4. LICENSE RESTRICTIONS.**

**4.1** You may not: (i) permit other individuals to use the Software or Documentation except under the terms listed above; (ii) modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based upon the Software or Documentation; (iii) copy the Software or Documentation (except for back-up or archival purposes); (iv) rent, lease, transfer, or otherwise transfer rights to the Software or Documentation; or (v) remove any proprietary notices or labels on the Software or Documentation. Any such forbidden use shall immediately terminate Your license to the Software. The recording, playback and download features of the Software are intended only for use with public domain or properly licensed content and content creation tools. You may require a third party license to create, copy, download, record or save third-party media or content files for playback by this Software or to serve or distribute such files to be played back by the Software.

**4.2 SolarWinds Name.** You may not delete, remove, hide, move or alter any 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 to the company name “SolarWinds” must remain as originally distributed regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice requirement.

**4.3 Export Restrictions.** You agree that You will not export or re-export the Software or Documentation to any country, person, or entity subject to U.S. export restrictions. You specifically agree not to export or re-export 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, or production of nuclear, chemical or biological 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.

**4.4 Compliance with Applicable Laws.** You agree that You shall only use the Software and Documentation 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 restrictions concerning copyright and other intellectual property rights.

**4.5 Use by Network Monitoring Services Providers.** SolarWinds strictly prohibits the use of the Software to sell or provide network monitoring services to users who are not individually licensed by SolarWinds except as described herein:

(a) If You represent a Web Hosting company (also referred to as managed service providers, internet service providers, or xSPs), You may use the Software to test and report the applications, servers and equipment resources You use to provide hosting services to Your customers; or

(b) If You operate a data center or provide infrastructure services, You may use the Software to test and report applications, servers and equipment whether such Resources are owned by You or Your customers.

If You are an IT consultant, IT solution provider, or facilities management provider, who deploy or maintains networks, security solutions, communications solutions, hardware, software components, upgrades, etc., You are required to individually license each of Your customers.

**5. RIGHTS, TITLE, AND INTEREST TO INTELLECTUAL PROPERTY.** Unless as conveyed herein, all rights, title, and interest in and to the Software, Documentation, and 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) shall remain in SolarWinds or its suppliers or are publicly available. This EULA does not grant You any rights, title, or interest in or to any trademarks, service marks, or trade secrets of SolarWinds or its suppliers. The Software and Documentation are protected by the copyright and intellectual property laws of the United States and international copyright and intellectual property laws and treaties. All title, rights, and interest in and to content, which may be accessed through the Software ("Content"), is the property of the respective Content owner, shall be retained by the applicable Content owner, and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA gives You no rights to such Content, including use of the same. All rights not expressly granted under this EULA are reserved by SolarWinds, its suppliers, or third parties.

**6. DATA RIGHTS.** SolarWinds agrees that the data and information (including without limitation, computer software, computer database, computer software documentation, specifications, design drawings, reports, blueprints, and the like) generated by the Software from Your proprietary data and information shall be and remain Your sole property. SolarWinds may collect and track non-personally identifiable information about You, including but not limited to Your IP address, the type of hardware You use, and the type of browser You employ, to assist with the necessary operation and function of the Software. SolarWinds reserves the right to compile, save, and use within the scope of SolarWinds' activities and to analyze any and all of Your data (registration data and use history). SolarWinds' use of any such data shall be for internal purposes only, including without limitation for the purposes of responding to Your requests for information, for contacting You, or providing You maintenance and support. Any such use of Your data will be treated as confidential information. SolarWinds may provide aggregated statistics about Your use of the Software to third parties, but such information will be aggregated so that it does not identify a particular individual or company.

**7. LIMITED WARRANTY.** SolarWinds warrants to You that for a period of thirty (30) days following delivery of the Software to You that the Software will perform substantially in conformance with the published documentation. SolarWinds 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; (ii) Software that is otherwise operated in violation of this Agreement or other than in accordance with the published 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 supplier's 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 medium

or Software that fails to meet this limited warranty or, if SolarWinds is unable to repair or replace the medium or 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 will be warranted for 30 days.

SOLARWINDS WARRANTS THAT THE SOFTWARE AND RELATED DOCUMENTATION DO NOT INFRINGE ON ANY PATENTS, COPYRIGHTS OR TRADEMARKS OR CONSTITUTE MISAPPROPRIATION OF THIRD PARTY PROPRIETARY INFORMATION.

EXCEPT AS EXPRESSLY STATED IN THIS SECTION, 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, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

**8. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SOLARWINDS BE LIABLE TO YOU FOR MORE THAN THE AMOUNT OF LICENSE FEES THAT YOU HAVE PAID TO SOLARWINDS IN THE PRECEDING (12) TWELVE MONTHS OR BE LIABLE TO YOU FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR SOFTWARE PROGRAMS, EVEN IF SOLARWINDS OR A DEALER AUTHORIZED BY SOLARWINDS HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9. MISCELLANEOUS.** If any provision of this EULA is held to be unenforceable, that shall not affect the enforceability of the remaining provisions. This EULA 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 shall not apply. You hereby consent to jurisdiction of the courts of both the state or federal courts of Texas.

**10. COMPLETE AGREEMENT.** This EULA constitutes the entire agreement between the Parties and supersedes 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 party EULA contained in the Software or any purchase order issued in connection with this EULA. This EULA shall not be amended or modified except in a writing signed by authorized representatives of each party.

**11. RESTRICTED RIGHTS.** SolarWinds' Software is provided to non-DOD agencies with RESTRICTED RIGHTS and its supporting documentation is provided with LIMITED RIGHTS. Use, duplication, or disclosure by the government is subject to the restrictions as set forth in subparagraph "C" of the Commercial Computer Software – Restricted Rights clause at FAR 52.227-19. In the event the sale is to a DOD agency, the government's rights in software, supporting documentation, and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7015 and DFARS 227.7202. Manufacturer is SolarWinds Worldwide, LLC, 3711 South MoPac Expressway, Building Two, Austin, Texas 78746.