

Version: 10/25/2018

## SOLACE CORPORATION

### LICENCE AGREEMENT FOR SOLACE SOFTWARE

THIS LICENCE AGREEMENT and any documents expressly referred to in this agreement (the “**Agreement**”) between **SOLACE CORPORATION**, a company incorporated under the laws of the Province of Ontario (“**SOLACE**”) and licensee, the party identified in the Order (as defined below) or that otherwise accepts this Agreement (the “**Licensee**”) (together the “**Parties**”, and each a “**Party**”), is made on the Effective Date (as defined below).

**BY ACCEPTING THE TERMS OF THIS AGREEMENT, EITHER BY: A) ACCEPTING THE AGREEMENT ONLINE, B) SIGNING THE ORDER (AS DEFINED BELOW) WHICH REFERENCES THIS AGREEMENT, OR C) INSTALLING OR USING THE SOFTWARE AFTER BEING MADE AWARE OF THIS AGREEMENT, THE LICENSEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD ALL OF THE PROVISIONS, AND HAS THE AUTHORITY TO AGREE TO, AND IS CONFIRMING THAT IT IS AGREEING TO, COMPLY WITH AND BE BOUND BY, ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN, TOGETHER WITH THE TERMS SET FORTH IN ANY ORDER. IF, AFTER READING THIS AGREEMENT, THE LICENSEE DOES NOT ACCEPT OR AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN, THE LICENSEE SHALL NOT INSTALL OR USE THE SOFTWARE.**

**IF YOU ARE AN AGENT OR EMPLOYEE OF ANOTHER ENTITY THEN YOU HEREBY REPRESENT AND WARRANT THAT: (I) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH ENTITY’S BEHALF AND TO BIND SUCH ENTITY, AND (II) SUCH ENTITY HAS FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER.**

#### **1 INTERPRETATION**

**1.1 Definitions.** In this Agreement the following terms shall have the following meanings:

“**Core**” means (i) a single physical processor core or hyper-thread when Solace PubSub+ software is deployed on either a bare-metal server or a cloud or virtualization environment that presents physical cores to the software, and (ii) a single virtual core when deployed in a cloud or virtualization environment that presents virtual cores to the VMR.

“**Documentation**” means the documentation made accessible by SOLACE via a URL provided to Licensee.

“**Order**” means (i) an electronic form provided by SOLACE on its website for ordering Software Subscriptions, Professional Services, and/or Support and Maintenance Services, or (ii) a written document, including a Licensee purchase order, executed by SOLACE and Licensee pursuant to which Licensee purchases of Software Subscriptions, Professional Services, and/or Support and Maintenance Services from SOLACE.

“**Products**” means the Software, Documentation, Support and Maintenance Services, Professional Services and other products and services that are ordered by Licensee from SOLACE.

“**Software**” means the SOLACE software product(s) described in an Order.

“**SOLACE Quotation**” means SOLACE’s sales quotation document provided by SOLACE to a prospective customer which sets out the fees for SOLACE’s Products.

“**Subscription**” means the right granted by SOLACE to Licensee to install and use the Software in accordance with the terms of this Agreement and the applicable Order, for the Subscription Term specified in the applicable Order.

“**Subscription Fee**” means the fee payable by Licensee for a Subscription in accordance with the terms hereof and the applicable Order.

“**Subscription Term**” means the period of time that Licensee is authorized by SOLACE to install and use the Software (including the Documentation).

“**Support and Maintenance Services**” means the support services provided by SOLACE for the Software in accordance with the Support and Maintenance Terms.

“**Support and Maintenance Terms**” means SOLACE’S policies, terms and conditions for the provision of Support and Maintenance Services to its customers, a copy of which is available on the SOLACE website at <https://solace.com/support>.

“**Statement of Work**” or “**SOW**” shall mean a statement of work in the form attached hereto as Schedule B pursuant to which the parties agree upon the Professional Services to be provided by SOLACE to Licensee, the fees to be charged, milestones, deliverables and such other terms and conditions as the parties may agree upon.

**1.2 Currency.** Unless otherwise specified, all dollar amounts in this Agreement, including the symbol “\$”, refer to United States currency.

## **2 LICENSE GRANT**

### **2.1 General License to Software.**

(a) Provided Licensee complies with this Agreement, SOLACE hereby grants to Licensee a non-exclusive, non-sublicensable (except as permitted in accordance with Section 2.6 below), non-transferable, license, during the term of this Agreement, to install and use the Software in object code form during the applicable Subscription Term for the number of Cores specified in the Order, solely for the Licensee’s internal business purposes and in accordance with the terms of this Agreement.

(b) If Licensee requires a license from SOLACE to enable Licensee to bundle or otherwise make available a Product with Licensee’s own software, such bundling will be pursuant to separate terms to be agreed.

**2.2 Documentation.** Provided Licensee complies with this Agreement, Licensee may reproduce the Documentation, for use on an internal basis only, and solely in support of the Licensee’s licensed use of the Software. Distribution of the Documentation outside of Licensee is prohibited without

the express written permission of SOLACE. Licensee must reproduce all copyright and other proprietary notices that are on the original copy of the Documentation.

- 2.3 Back-up Copy.** In addition to the number of copies of the Software installed and used pursuant to Section 2.1 and paid for in accordance with Section 5, Licensee may make one copy of each licensed Product per Subscription solely for back-up purposes, provided that Licensee reproduces all copyright and other proprietary notices that are on the original copy of the Software and such back-up copy is not installed or used other than for back-up and recovery purposes. Back-up copies that are used as part of a live or 'hot' back-up will be subject to additional fees.
- 2.4 Use Restrictions.** Licensee will not: (a) reverse engineer, disassemble, decompile, or translate the Software (other than Sample Applications), or otherwise attempt to derive the source code version of the Software, except if and only to the extent expressly permitted by applicable law, and provided that Licensee first approaches SOLACE and seeks permission in writing; (b) except as expressly permitted in this Agreement, use the Products or any portion thereof to create or develop any developer tools (including plug-ins and middleware) or any software; (c) except as expressly permitted in this Agreement, rent, lease, loan or otherwise in any manner provide, transfer or distribute the Products or any part thereof to any third party; (d) use the Software in violation of applicable laws; (e) circumvent any user limits or other license timing or use restrictions that are built into the Software; (f) except as expressly permitted in this Agreement, reproduce, distribute, publicly perform, publicly display or create adaptations or derivative works of or based on the Products.
- 2.5 Publicly Available Software.** Portions of the Software include software programs that are distributed by SOLACE pursuant to the terms and conditions of a license granted by the copyright owner of such software programs and which governs Customer's use of such software programs ("**Publicly Available Software**"). The Licensee's use of Publicly Available Software in conjunction with the Software in a manner consistent with the terms of this Agreement is permitted, however, the Licensee may have broader rights under the applicable license for Publicly Available Software and nothing contained herein is intended to impose restrictions or limitations on the Licensee's use of the Publicly Available Software. The warranty, indemnity and limitation of liability provisions in this Agreement will apply to all of the Software, including Publicly Available Software included in the Software. Copies of such Publicly Available Software license agreements are available by contacting Licensor at support@solace.com. The source code for certain portions of the Publicly Available Software included in the Software (as specified in the copyright notices) is available by contacting SOLACE at support@solcae.com within a three (3) year period from the original date of receipt of the applicable Software or Adapter and for a fee that shall not exceed Licensor' costs associated with the shipping of such software source code.
- 2.6 Sub-licensing.** Any sub-licensing of the Software under this Agreement must be expressly authorized by SOLACE pursuant to an Order or otherwise in writing. Any attempt by Licensee to sub-license or otherwise transfer the Products to a third party in breach of this restriction will be void. Any sub-licensing that may be permitted under this Agreement by SOLACE will be subject to such sub-licensee agreeing to substantially similar restrictions and obligations set out in this Agreement. Licensee will be fully liable for any breach by a sub-licensee of any restriction or

obligation, and SOLACE may bring a Claim against Licensee if SOLACE suffers any Losses arising from such breach.

## **2.7 Evaluation Licenses.**

- (a) If the Software provided to Licensee under this Agreement is designated by SOLACE in an Order or otherwise as an evaluation release (indicated by terms such as “pre-commercial”, “alpha,” “beta,” “trial,” “draft,” “early access,” “EA” or “evaluation”) (each an “**Evaluation Software Release**”), Licensee will have the limited right under this Agreement to download and install the Software on the number of Cores identified in the Order or, if not identified, one Core, for the Licensee’s internal and non-commercial evaluation of the Software.
- (b) Licensee acknowledges that the Evaluation Software Release may not meet performance and compatibility standards of a production version. The Evaluation Software Release may not operate correctly, may be substantially modified by SOLACE prior to first commercial shipment, and may be withdrawn completely and never issued for commercial use.
- (c) If Licensee desires other rights for the Evaluation Software Release, Licensee must request from SOLACE a commercial release of the Software.
- (d) The limited use license granted in subsection (a) will automatically expire on the earlier of: (i) the date when the Software is made available to Licensee as a commercially available product, and (ii) the date specified in the Order or, if no such date is identified in the Order, the date that is 30 days after the date of delivery or provision of the Evaluation Software Release to Licensee. Following license expiry Licensee will permanently delete or otherwise purge such Evaluation Software Release from Licensee’s systems and, if requested by SOLACE, certify the same.

**2.8 License of APIs.** Provided Licensee complies with this Agreement and any terms that SOLACE provides, SOLACE grants to Licensee a non-exclusive, royalty free license, during the term of this Agreement, to download, install and use, the applicable application programming interfaces that may be made available by SOLACE with the Software (“**APIs**”) solely to create interfaces between the Software and the Licensee’s software or third party software on Licensee’s systems.

## **2.9 License to Sample Applications.**

- (a) SOLACE may, in its sole discretion, provide certain sample Software in source code or object code form for the purposes of demonstrating certain features enabled by the Software, including demonstrating to Licensees how to build applications using APIs, and for use by Licensees with such APIs (each, a “**Sample Application**”).
- (b) Whether provided separately or together with other Software, if SOLACE provides such Sample Application to Licensee, then SOLACE hereby grants to Licensee a non-sublicensable, non-transferable, non-exclusive, revocable license, to install such Sample Application for Licensee’s evaluation for the same duration as the Software with which

the Sample Application is associated or such other duration as specified by SOLACE upon delivery of the Sample Application.

### **3 OPTIONAL SERVICES AND SUPPORT**

**3.1 Optional Services.** Licensee acknowledges that certain optional services, such as training, integration and development services may be provided by SOLACE in association with the Products, and access to such services will be provided only pursuant to a Statement of Work executed by SOLACE and Licensee and may include separate and additional fees.

#### **3.2 Support.**

- (a) Provided Licensee complies with this Agreement, SOLACE will provide Support and Maintenance Services the Software in accordance with SOLACE's then standard Support and Maintenance Terms. The level of support will be dependent on whether Licensee has procured either the 'Premium Support Plan' or 'Standard Support Plan' defined in SOLACE's Support and Maintenance Terms and as specified in the applicable Order.
- (b) SOLACE may enhance such standard Support and Maintenance Services from time to time in its discretion.
- (c) For greater clarity, SOLACE's then standard Support and Maintenance Terms do not apply to Evaluation Software Releases, Sample Applications or any free versions of the Software that may be made available. SOLACE may make available support related information on a free basis for such Software on its publicly accessible website or otherwise, and such support related information will, for greater clarity, be subject to the limitations and exclusions in this Agreement.

### **4 PROPRIETARY RIGHTS**

**4.1 Intellectual Property Rights.** In this Agreement "Intellectual Property Rights" means: (a) any and all proprietary rights anywhere in the world provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trademark law; (iv) design patent or industrial design law; or (v) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, that may provide a right in either hardware or information generally or the expression or use of such hardware or information; (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing. Except for the licenses expressly granted herein, nothing in this Agreement or the provision of the Products conveys or otherwise provides to Licensee title, interest or any Intellectual Property Rights in or to: (a) the Products, or (b) know-how, ideas, or any other subject matter protectable under laws applicable to Intellectual Property Rights of any jurisdiction. As between Licensee and SOLACE, SOLACE and its affiliates and licensors are the sole and exclusive owners of the Products, including Intellectual Property Rights therein.

**4.2 Feedback.** Licensee is encouraged to provide to SOLACE suggestions, comments and feedback related to the Products (including reporting bugs) (the "Feedback"). Licensee hereby grants to SOLACE a license to use, copy, distribute, modify or otherwise adapt, incorporate into any software and documentation, including the Products, and sublicense, without attribution or compensation to Licensee, all Feedback which SOLACE receives or otherwise obtains from

Licensee, in any form, to improve, enhance or modify the Products or otherwise. Licensee waives or will cause all moral rights to be waived in any Feedback.

**4.3 Third Party Licenses.** The Software may contain or require third party software that is licensed under third party terms. SOLACE may direct Licensee to such third party terms, and in some instances the Software cannot be used or further distributed without Licensee's acceptance of such terms. Any failure of Licensee to agree to the terms applicable to such third party software may undermine certain functionality of or prevent Licensee from using the Software.

**4.4 Open Source Software.**

(a) Licensee will not represent to third parties, or use any third party software or code in conjunction with: (i) the Software; or (ii) any software, products, documentation, content or other materials developed using the Software, in such a way that: (A) creates, purports to create or has the potential to create, obligations for SOLACE with respect to the Software; or (B) grants, purports to grant, or has the potential to grant to any third party any rights to or immunities under any Intellectual Property Rights of SOLACE, as such rights exist in or relate to the Products.

(b) Licensee will not use any Software in any manner, including through incorporation, linking, distribution or otherwise, that will cause any Products and any Intellectual Property Rights therein to become subject to any encumbrance or terms and conditions of any third party or open source license, including any open source license listed on <http://www.opensource.org/licenses/alphabetical> (each an "**Open Source License**").

(c) The restrictions, limitations, exclusions and conditions referred to under subsection (b) will apply even if SOLACE becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by SOLACE that is undertaken under this Agreement in respect to any Products will be construed as intending to cause any Intellectual Property Rights that are owned or controlled by SOLACE or any of its affiliates (or for which SOLACE or any of its affiliates has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

**4.5 Use of Name and Logo.** Licensee will not display or make any use of SOLACE's or its affiliates' names, marks or logos without the prior written approval of SOLACE.

**5 FEES AND TAXES**

**5.1 Fees.** Licensee shall pay the applicable Subscription Fees and support fees specified in the applicable Order. Except as otherwise specified herein or in an Order, Subscription Fees are based on Subscriptions purchased and not actual usage. Payment obligations are non-cancellable, Subscription Fees paid are non-refundable, and the number of Subscriptions purchased cannot be decreased during the relevant Subscription Term.

**5.2 Invoices and Payment.** Subscription Fees will be invoiced in advance and otherwise in accordance with the relevant Order. All invoices issued by SOLACE are due and payable within 30 days of the invoice date unless otherwise agreed in an Order. Licensee will be responsible for

any and all sales, use, excise, import, value-added, services, consumption, and other taxes assessed on the receipt of the Products, and any related services as a whole.

- 5.3 Overdue Charges.** Any payment not received from Customer by the due date may accrue (except with respect to charges then subject to a reasonable and good faith dispute), at Licensor' discretion, late charges at the rate of 1.5% of the outstanding balance per month (19.57% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

## **6 CONFIDENTIALITY**

### **6.1 Definition of Confidential Information.**

In this Agreement “**Confidential Information**” of a Party means any information of a Party (including in respect to SOLACE any of its affiliates, licensors, customers, employees or subcontractors) (the “**Disclosing Party**”), whether oral, written or in electronic form, which has or will come into the possession or knowledge of the other Party (the “**Receiving Party**”) in connection with or as a result of entering into this Agreement that can reasonably be considered to be confidential in the circumstances of disclosure or which is designated as confidential. The Products, any performance information, service levels, support terms, and results of testing of the Software, and the terms of this Agreement are Confidential Information of SOLACE. Notwithstanding the foregoing, “Confidential Information” does not include information that is:

- (a) publicly available when it is received by or becomes known to the Receiving Party or that subsequently becomes publicly available other than through a direct or indirect act or omission of the Receiving Party (but only after it becomes publicly available);
- (b) established by evidence to have been already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind;
- (c) independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party as established by evidence that would be acceptable to a court of competent jurisdiction;
- (d) received by the Receiving Party in good faith without an obligation of confidence of any kind from a third party who the Receiving Party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, but only until the Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received; or
- (e) Feedback provided by Licensee or a representative of Licensee.

### **6.2 Confidentiality Obligations.**

- (a) Each Party will, in its capacity as a Receiving Party: (i) not use or reproduce Confidential Information of the Disclosing Party for any purpose, other than as may be reasonably necessary for the exercise of its rights or the performance of its obligations set out in

this Agreement; and (ii) not disclose, provide access to, transfer or otherwise make available any Confidential Information of the Disclosing Party to any third party except as expressly permitted in this Agreement.

- (b) Each Party may, in its capacity as a Receiving Party, disclose Confidential Information of the Disclosing Party: (i) if and to the extent required by a governmental authority or otherwise as required by applicable law, provided that the Receiving Party must first give the Disclosing Party notice of such compelled disclosure (except where prohibited by applicable law from doing so) and must use commercially reasonable efforts to provide the Disclosing Party with an opportunity to take such steps as it desires to challenge or contest such disclosure or seek a protective order. Thereafter, the Receiving Party may disclose the Confidential Information of the Disclosing Party, but only to the extent required by applicable law and subject to any protective order that applies to such disclosure; and (ii) to: (A) its accountants, internal and external auditors and other professional advisors if and to the extent that such persons need to know such Confidential Information in order to provide the applicable professional advisory services relating to the Receiving Party; and (B) employees of the Receiving Party and its subcontractors if and to the extent that such persons need to know such Confidential Information to perform their respective obligations under this Agreement;

provided that any such person is aware of the provisions of this Section 6.2 and has entered into a written agreement with the Receiving Party that includes confidentiality obligations in respect of such Confidential Information of the Disclosing Party that are no less stringent than those contained in this Section 6.2.

- 6.3 Consent to Injunctive Relief.** Any unauthorized use or disclosure of the Confidential Information of SOLACE, its affiliates or licensors may cause irreparable harm and significant injury to SOLACE that would be difficult to ascertain or quantify; accordingly Licensee agrees that SOLACE will have the right to seek and obtain injunctive or other equitable relief to enforce the terms of this Agreement and without limiting any other rights or remedies that SOLACE may have.

## **7 WARRANTY AND DISCLAIMER OF WARRANTIES.**

- 7.1 Warranty.** SOLACE warrants that the Software will materially comply with the Documentation during the Subscription Term. If the Software does not materially conform with the warranty in the prior sentence, provided that Licensee is in compliance with the terms of this Agreement, and all Subscription Fees are fully-paid up, SOLACE will provide the support to Licensee in respect to the applicable Software to the extent set out in SOLACE's then current Support and Maintenance Terms, and the provision of support to correct the non-compliance with the warranty in this Section will be Licensee's sole and exclusive remedy in the event of non-compliance with the warranty in this Section by SOLACE. All other support will be dependent on the plan procured by Licensee, as defined in the Support and Maintenance Terms.

- 7.2 Disclaimers.**



- (a) EXCEPT AS SET OUT IN SECTION 7.1, THE PRODUCTS AND SUPPORT THAT MAY BE PROVIDED BY SOLACE UNDER THIS AGREEMENT, IS PROVIDED 'AS-IS' AND 'AS AVAILABLE'.
- (b) Except as set out in Section 7.1, the Products and support are without any additional warranties of any kind, whether express, implied, collateral, statutory or otherwise. SOLACE does not warrant or make any representations regarding the use, or the results of the use, of the Products in terms of its correctness, accuracy, reliability, or otherwise.
- (c) SOLACE does not represent or warrant that the functionality of the Products will meet Licensee requirements, or that the operation of the Products will be uninterrupted or error-free, or that the Products or any service enabled by the use of the Software will always be available, or that defects in the Products will be corrected.
- (d) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SOLACE ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND LICENSOR(S) EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES, AND CONDITIONS OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
- (e) Some jurisdictions do not allow the exclusion of implied warranties, so exclusions in this Article 7 will apply only to the extent permitted by applicable law.

## **8 LICENSEE INDEMNITY AND EXCLUSION.**

### **8.1 Licensee Indemnity.**

- (a) Without limiting SOLACE's rights and remedies under this Agreement, Licensee will indemnify, defend and hold SOLACE, its licensors, affiliates or any of their respective directors, officers, employees or agents (together, the "**Solace Indemnitees**") harmless from and against any and all third party Claims and Losses incurred or otherwise suffered by each SOLACE Indemnitee arising out of, resulting from or related to:
  - (i) any use, reproduction or distribution of the Products (notwithstanding the restrictions and obligations in this Agreement), as modified or integrated by Licensee in Licensee application, which causes an infringement or misappropriation of any Intellectual Property Right, publicity or privacy right of any third parties arising in any jurisdiction anywhere in the world, except and solely to the extent such infringement is caused by the unmodified Software, or portions thereof, as supplied to Licensee by SOLACE under this Agreement; or
  - (ii) any use, downloading, distribution, installation, storage, execution, or transfer of the Products in breach of this Agreement.
- (b) SOLACE may enforce the indemnity under this Article 8 on behalf of any or all of the SOLACE Indemnitees. Licensee may only bring a Claim against SOLACE and not any SOLACE Indemnitees under this Agreement.

## 8.2 SOLACE Indemnity.

- (a) SOLACE will defend Licensee from and against any and all Claims by a third party incurred or otherwise suffered by Licensee arising out of, resulting from or related to a Claim that the Products licensed pursuant to Section 2.1 infringe or misappropriate third party copyright or patent rights in Canada or the United States of America, and indemnify Licensee from any damages awarded by a court of final determination.
- (b) Without limitation, Section 8.2 will not be applicable and SOLACE will not be liable to defend a Claim to the extent that such Claim is based on: (i) Licensee's use of the Products after SOLACE notifies Licensee to discontinue using them; (ii) Licensee combining the Products with non-SOLACE services, products, programs or data; or (iii) Licensee altering or modifying the Products.
- (c) If SOLACE receives information concerning an infringement or misappropriation Claim related to the Products, SOLACE may, at its expense and without obligation to do so, either: (i) procure the Intellectual Property Rights or other right(s) to continue to use the Product; or (ii) replace or modify the Product to make it non-infringing; or (iii) immediately terminate this Agreement on written notice to Licensee, in which case SOLACE will refund to Licensee, on a pro-rata basis, any pre-paid fees in respect to such Product from the date of such termination to the end of the then current Subscription Term for such Product; and this Section 8.2(c) states the sole and exclusive remedy of Licensee and the entire liability of SOLACE for third party infringement claims and actions.

**8.3 Indemnification Procedures.** Each Party's obligations under this Article 8 are contingent on all of the following: (i) the Party seeking the indemnity (the "Indemnified Party") must notify the other Party (the "Indemnifying Party"), in a timely manner and in writing of the Claim; (ii) the Indemnified Party must give the Indemnifying Party sole control over defense and settlement of the Claim; (iii) the Indemnified Party must provide the Indemnifying Party with reasonable information and assistance, at the Indemnifying Party's request, as needed in defending the Claim (the Indemnifying Party will reimburse the Indemnified Party for reasonable expenses that the Indemnified Party incurs in providing that assistance). The Indemnified Party may choose to have its counsel, monitor or participate in the defense of such a Claim provided that the Indemnified Party will be responsible for the cost of its own counsel and the Indemnifying Party's obligations in this Article 8 do not extend to the Indemnified Party's legal costs should it wish to exercise such right. The Indemnifying Party will not be responsible for any settlement made by the Indemnified Party without its prior written consent. The Indemnifying Party may not settle or publicize any Claim without the Indemnified Party's prior written consent.

## 9 LIMITATIONS OF LIABILITY.

### 9.1 Definition and Limitations of Liability.

- (a) In this Agreement: "**Claim**" means any actual, threatened or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation, action, suit, investigation or proceeding or any other claim or demand; and "**Losses**" means any and all damages, fines, penalties, deficiencies, losses, liabilities (including settlements and

judgments), costs and expenses (including interest, court costs, reasonable fees and expenses of lawyers, accountants and other experts and professionals or other reasonable fees and expenses of litigation or other proceedings or of any Claim, default or assessment).

- (b) SUBJECT TO SECTION 9.1(d), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL SOLACE INDEMNITEES BE LIABLE FOR (A) ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES; OR (B) ANY DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, IN EACH CASE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY DOWNLOAD, INSTALLATION OR USE OF, OR INABILITY TO USE, THE PRODUCTS; EVEN IF SUCH DAMAGES WERE FORESEEABLE, AND REGARDLESS OF WHETHER THE SOLACE INDEMNITEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (c) SUBJECT TO SECTION 9.1(d), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SOLACE INDEMNITEES' TOTAL AGGREGATE LIABILITY IN RESPECT OF THIS AGREEMENT, INCLUDING THE PRODUCTS AND ANY SERVICES THAT MAY BE PROVIDED HEREUNDER, FOR ANY AND ALL LOSSES AND CLAIMS EXCEED THE AMOUNTS PAID TO SOLACE IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
- (d) **Certain Damages Not Excluded or Limited.** NOTWITHSTANDING THE FOREGOING, SECTIONS 9.1 (b) AND (c) DO NOT APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (II) INDEMNIFICATION CLAIMS, (III) DAMAGES ARISING FROM INFRINGEMENT OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; (IV) ANY CLAIMS FOR NON-PAYMENT, (V) FRAUD OR WILLFUL MISCONDUCT, OR (VI) BODILY INJURY OR DEATH.
- (e) This Article 9 will apply irrespective of the nature of the cause of action, demand or Claim, including, breach of contract (including fundamental breach), negligence (including gross negligence), tort or any other legal theory, and will survive a fundamental breach or breaches of this Agreement or of any remedy contained herein.

## **10 TERM AND TERMINATION.**

**10.1 Term and Renewal.** This Agreement will be effective from the Effective Date and will continue until the expiry of the Subscription Term set out in the Order or the Agreement terminates in accordance with its terms. Subject to payment of the applicable Software Fees, Software Subscriptions shall automatically renew for additional periods equal to the expiring Subscription Term or one (1) year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days prior to the end of the then-current Subscription Term. The Subscription Fees during any automatic renewal term will be as set forth in the applicable Order.

**10.2 Termination for Cause.** A party may terminate this Agreement for cause (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in

bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

- 10.3 Termination by SOLACE.** SOLACE may terminate this Agreement for cause with immediate effect on written notice if Licensee commits a breach of Articles 4 or 5 by Licensee.
- 10.4 Termination of Sample Application and Evaluation Software Release Licenses for Convenience by SOLACE.** SOLACE may terminate the licenses in respect to the Sample Applications, Evaluation Software Releases, and any other Products that may be licensed by SOLACE on a trial basis, at any time for convenience, upon written notice to Licensee.
- 10.5 Termination of Licenses of Trial Software.** Subject to Section 10.4, if any Software is licensed for use by a Licensee on a trial basis, the license to use such Software during a trial period will continue for such duration set out in an Order.
- 10.6 Effects of Termination.** Upon termination or expiry of this Agreement or specific licenses granted hereunder for any reason, and without limiting SOLACE's other rights or remedies under this Agreement: (a) Licensee must permanently delete or destroy, or otherwise purge, all copies (electronic or otherwise) of the applicable Products from Licensee's systems, and any other Confidential Information of SOLACE, in Licensee's possession or control, and, if requested by SOLACE, certify the same, and the license and other rights granted to Licensee in this Agreement will terminate; (b) termination or expiration of this Agreement or an individual Subscription will result in termination of any applicable Support and Maintenance Services; and (c) Licensee will not receive a return of any pre-paid fees in respect to the applicable Products, on a pro-rata basis or otherwise, except where expressly stated in this Agreement.
- 10.7 Survival.** Neither the expiration nor the earlier termination of this Agreement will release either of the Parties from any obligation or liability that accrued prior to such expiration or termination. The provisions of this Agreement requiring performance or fulfillment after the expiration or earlier termination of this Agreement, including Articles 4, 5, 5, 7, 9, 8, 9, 10, 11, 12, and 13, and such other provisions as are necessary for the interpretation thereof and any other provisions hereof, the nature and intent of which is to survive termination or expiration of this Agreement, will survive the expiration or earlier termination of this Agreement.

## **11 AUDIT AND REMEDIATION**

- 11.1 Audit.** During the term of this Agreement and for two years thereafter, SOLACE or any internal or external audit representative acting on behalf of SOLACE (the "**SOLACE Audit Representatives**") will have the right, and Licensee will provide access to SOLACE Audit Representatives during regular business hours and upon reasonable prior written notice to Licensee, to audit and inspect on a mutually agreed upon date and location any system or facility or part of a system or facility to which Licensee has downloaded the Software or is receiving any services (or both) in order to verify the performance by Licensee of its obligations under this Agreement, including the Licensee's usage of the Products in accordance with the restrictions and terms in this Agreement.
- 11.2 Remediation.** Without limiting SOLACE's rights and remedies under this Agreement, if an audit conducted pursuant to this Agreement reveals any error, deficiency or other failure to perform on the part of Licensee including use of the Software contrary to the licenses in this Agreement

or installed on systems, computers or processors for which the Licensee has not paid applicable Subscription Fees: (a) Licensee will immediately pay to SOLACE any fees due and payable for Software used in breach of the restrictions in this Agreement, plus interest at the lesser of: (i) the rate of 1.5 percent per month compounded monthly (19.562 percent per annum); or (ii) the maximum rate allowed by applicable law, in each case, on the amount outstanding from the date when payment is due until the date payment in full is received by SOLACE; and (b) pursue any other right or remedy SOLACE may have under this Agreement.

## 12 EXPORT COMPLIANCE ASSURANCES

- (a) All Products obtained from SOLACE are subject to the export control and economic sanctions laws and regulations of Canada, including the *Exports and Import Permits Act*, R.S.C. 1985, c. E-19, *Area Control List*, *Export Control List*, and the United States, including the *Export Administration Regulations* (“**EAR**”, 15 CFR 730 et seq., <http://www.bis.doc.gov/>) administered by the Department of Commerce, Bureau of Industry and Security, and the *Foreign Asset Control Regulations* (31 CFR 500 et seq., <http://www.treas.gov/offices/enforcement/ofac/>) administered by the Department of Treasury, Office of Foreign Assets Control (“**OFAC**”), each as may be amended and updated from time to time.
- (b) Licensee will not, and will ensure that Licensee will not directly or indirectly export, re-export, transfer or release (collectively, “**export**”) any Products to any destination, person, entity or end use prohibited or restricted under Canadian or US law, or the laws of the jurisdiction in which Licensee is resident or in which Licensee uses the Products, without prior government or regulatory authorization to the extent required by applicable laws and regulations.
- (c) The US government maintains embargoes and sanctions against the countries listed in Country Groups E:1/2 of the EAR (Supplement 1 to part 740), including, as at the Effective Date, Cuba, Iran, North Korea, Sudan and Syria, as amended from time to time. Licensee will not directly or indirectly employ any Product received from SOLACE in missile technology, sensitive nuclear or chemical biological weapons activities, or in any manner knowingly transfer any Product to any party for any such end use. Licensee will not export Products listed in Supplement 2 to part 744 of the EAR for military end-uses, as defined in part 744.21, to the People’s Republic of China. Licensee will not transfer any Product to any party listed on any of the denied parties lists or specially designated nationals lists maintained under said regulations without appropriate US government authorization to the extent required by regulation. Licensee acknowledge that other countries may have trade laws pertaining to import, use, export or distribution of Products, and that compliance with same is Licensee responsibility.
- (d) Licensee may not use the Products if Licensee is barred from receiving the Products under the laws of Canada, the United States or any other country including the country in which Licensee are resident or in which Licensee use the Products.

## 13 GENERAL

- 13.1 U.S. Government Users.** If Licensee are acting on behalf of an agency or instrumentality of the U.S. federal government, the Product, as applicable, are “commercial computer software” and “commercial computer software documentation” developed exclusively at private expense by SOLACE. Pursuant to FAR 12.212 or DFARS 227 7202 and their successors, as applicable, use, reproduction and disclosure of the Products is governed by the terms of this Agreement.
- 13.2 Entire Agreement.** This Agreement, and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire and exclusive agreement between SOLACE and Licensee, and sets out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement, and supersedes all prior agreements (whether written or oral, pre-contractual or otherwise) and other communications between SOLACE and Licensee. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, whether statutory or otherwise, between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.
- 13.3 Amendments.** This Agreement may be modified only by a written amendment agreed to by both Licensee and SOLACE, except that SOLACE may modify the Documentation from time to time, provided that SOLACE does not materially lessen the description of the functionality of the Products as a result of such modification.
- 13.4 English Language.** This Agreement is entered into solely in the English language, and if for any reason any other language version is prepared by any Party, it will be solely for convenience and the English version will govern and control in all respects. If Licensee are located in the province of Quebec, Canada, the following applies: The Parties hereby confirm they have requested this Agreement and all related documents be prepared in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.
- 13.5 Waiver.** To be effective, any waiver by a Party of any of its rights or any other Party’s obligations under this Agreement must be made in a writing signed by the Party to be charged with the waiver. No failure or forbearance by any Party to insist upon or enforce performance by any other Party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement or otherwise at law or in equity will be construed as a waiver or relinquishment to any extent of such Party’s right to assert or rely upon any such provision, right, or remedy in that or any other instance; rather, the same will be and remain in full force and effect. A Party’s waiver of a breach of any term will not be a waiver of any subsequent breach of the same or another term.
- 13.6 Cumulative Rights.** The rights of each Party hereunder are cumulative and no exercise or enforcement by a Party of any right or remedy hereunder will preclude the exercise or enforcement by such Party of any other right or remedy hereunder or which such Party is otherwise entitled by law to enforce.

- 13.7 Severability.** If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, the provision will, as to that jurisdiction, be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction, or without affecting its application to other Parties or circumstances.
- 13.8 Assignment.** SOLACE may assign this Agreement or any of the benefits, rights or obligations under this Agreement without the prior written consent of the Licensee. Licensee may not assign this Agreement or any of the benefits, rights or obligations under this Agreement without the prior written consent of SOLACE. Any attempt by Licensee to so assign or transfer is null and void. If SOLACE does consent to an assignment of this Agreement, the transferee/assignee must be acceptable to SOLACE and agree to the terms and conditions of this Agreement.
- 13.9 Further Assurances.** The Parties will, with reasonable diligence, do all things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party will provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.
- 13.10 Governing Law and Jurisdiction.** This Agreement is governed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without giving effect to its conflict of laws provisions. Any Claim arising out of or related to this Agreement must be brought exclusively in a federal or provincial court located in Ottawa, Canada, and Licensee hereby consents to the jurisdiction and venue of such courts. Each of the Parties irrevocably waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum to the maintenance of such action, application or proceeding. The Parties will not raise any objection to the venue of any action, application, reference or other proceeding arising out of or related to this Agreement in the federal or provincial courts sitting in Ottawa, including the objection that the proceedings have been brought in an inconvenient forum. A final judgment in any such action, application or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner specified by law. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and will not apply.