

SOLACE CORPORATION

PUBSUB+ CLOUD™ End-User License Agreement

PUBSUB+ CLOUD™ Terms of Service

Solace Corporation (“**Solace**”) owns certain Software (as defined herein) that it has developed and makes commercially available to its customers for use as a cloud based, hosted service offering (the “**Service**”, as more fully defined below).

In connection with the use of the Service you and/or your organization or corporation (the “**Customer**”) hereby agree to the terms of service and conditions contained herein (collectively, the “**Terms of Service**”).

BY ACCEPTING THE TERMS OF SERVICE, EITHER BY: A) ACCEPTING THE TERMS OF SERVICE ONLINE, B) SIGNING THE ORDER FORM (AS DEFINED BELOW) WHICH REFERENCES THE TERMS OF SERVICE, OR C) USING, OR ACCESSING THE SERVICE AFTER BEING MADE AWARE OF THESE TERMS OF SERVICE, THE CUSTOMER 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 ANY ORDER FORM AND INCLUDING SOLACE’S PRIVACY STATEMENT LOCATED AT <https://solace.com/privacy>, ALL OF WHICH ARE INCORPORATED BY REFERENCE AND DEEMED TO BE PART OF THE ENTIRE AGREEMENT ENTERED INTO BETWEEN COMPANY AND THE CUSTOMER. IF, AFTER READING THE TERMS OF SERVICE, THE CUSTOMER DOES NOT ACCEPT OR AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN, THE CUSTOMER SHALL NOT USE, OR ACCESS THE SERVICE.

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. Definitions

1.1 In this Agreement:

“**Agreement**” means the Order Form and these Terms of Service.

“**Cloud Use**” means use of the Service by Customer and its Users when the Event Brokers reside on servers operated by leading public cloud service providers such as AWS, Google and Microsoft regardless of whether the deployment of Event Brokers is in a public cloud controlled by the cloud service provider or a virtual private cloud controlled by the Customer.

“**Committed Purchase(s)**” means Customer’s commitment to spend a specified amount for use of the Services over a specified period of time, whether Customer uses those Services or not. A Committed Purchase may be made using the Order Form (if applicable).

“**Customer**” means the customer named in the applicable Order Form.

“**Customer Data**” means the data submitted by Customer to Solace or to the PubSub+ Cloud Console, including the Personal Data of Customer’s Users, but specifically excluding Customer Message Data.

“**Customer Message Data**” means all data that Customer and its Users and End Users process through one or more PubSub+ Event Brokers via Customer applications.

“**Data Controller**” shall mean the natural or legal person who alone or jointly with others determines the purposes and means of the processing of Personal Data.

“**Data Processor**” shall mean the natural or legal person who processes Personal Data on behalf of the Data Controller.

“Data Protection Laws” means all laws and regulations, including laws and regulations of Canada (including the *Personal Data Protection and Electronic Documents Act* (Canada) and the Canadian Anti-Spam Legislation), the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under this Agreement.

“Data Subject” means the identified or identifiable person to whom Personal Data relates.

“Documentation” means the written or electronic documentation, including user manuals, reference materials and/or release notes, if any, that Solace generally makes available to subscribers to the Service, as the case may be.

“Fee Accrual Period” means a calendar month or another period specified by Solace in the PubSub+ Console or the Order Form.

“Fee Threshold” means the threshold at which usage fees begin to apply as set out in the PubSub+ Console or Order Form.

“Fees” mean Subscription Fees, Support Services Fees, and/or Usage Fees, as applicable.

“GDPR” means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“On Premise” means the Customer’s information technology platform upon which the Service may be located for On Premise Use.

“On Premise Use” means the deployment of the Service upon servers either owned or operated by Customer.

“Order Form” means (i) an electronic form provided by Solace on its website for ordering the Service, or (ii) a written document executed by Solace and Customer in respect to Customer’s purchases of the Services and Support Services from Solace.

“Personal Data” means any information relating to an identified or identifiable natural person as defined under applicable Data Protection Laws.

“Processing” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“PubSub+ Cloud Console” means the following Solace proprietary applications: PubSub+ Event Portal, PubSub+ Insights and PubSub+ Mission Control that the Customer accesses to use, manage and view the Service.

“PubSub+ Event Broker” means the Solace proprietary software event and message routing application that is a component of the Services and may be deployed for Cloud Use or On Premise Use.

“PubSub+ Event Portal” means the Solace proprietary application that permits the Customer to design, create, discover, catalog, share, visualize, secure and manage events and event-driven applications.

“PubSub+ Insights” means the Solace proprietary application that monitors the Event Brokers. PubSub+ Insights provides active monitoring, alerting and centralized logging in connection with the Event Brokers.

“**PubSub+ Mission Control**” means the Solace proprietary application that provides a central place to create, operate, and manage the Customer’s PubSub+ Event Brokers.

“**Service**” means Solace’s proprietary PubSub+ Cloud event distribution platform including PubSub+ Cloud Console, PubSub+ Event Broker(s), PubSub+ Event Portal, PubSub+ Insights and PubSub+ Mission Control for which Customer is granted rights of access and use in accordance with this Terms of Service for either On Premise Use or Cloud Use, as such Service may be updated from time to time by Solace in its sole discretion.

“**Software**” means Solace’s proprietary software applications underlying the Service provided to Customer pursuant to these Terms of Service.

“**Subscription**” means the right granted by Solace to Customer to access and use the Service in accordance with these Terms of Service and the applicable Order Form, for the Subscription Term specified in the applicable Order Form.

“**Subscription Fee**” means the fees payable by Customer for a Subscription as set out in the Order Form.

“**Subscription Term**” means the period of time that Customer is authorized by Solace to access and use the Service (including the Documentation) as set out in the applicable Order Form.

“**Support Services**” means the technical support services for the Service provided by Solace as described in, and in accordance with, the Support Terms.

“**Support Terms**” means the terms on which Solace, or an authorized support partner, provides Support Services to Customer and which are available at <https://solace.com/support>.

“**Usage Fees**” means the fees payable for use of the Service as described in Section 8.1(b).

“**User**” means an employee or contractor of Customer to whom Customer (or Solace at Customer’s request) has supplied a user identification and password.

“**Website**” means any website used by us to provide the Services, including the website located at <https://cloud.solace.com>.

2. **The Service**

2.1 **Right to Use the Service.** Subject to the terms and conditions of this Agreement (including the applicable Order Form) and payment of the applicable Fees, Solace hereby grants to Customer a non-exclusive, worldwide, non-transferable, non-sublicensable, internal right to (a) access and use (and to permit Users to access and use) the Service, solely, in the case of a Subscription, during the Subscription Term; and (b) access and use, and to permit Users to access and use, the Documentation as reasonably necessary to support the Customer’s permitted use of the Service solely, in the case of a Subscription, during the Subscription Term.

2.2 **Reservation of Rights.** Solace and its licensors own and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trade-mark rights, trade secret rights and all other intellectual property rights), in and to the Software, Service and Documentation and any copies, corrections, bug fixes, enhancements, modifications or new versions thereof, all of which shall be deemed part of the Software and subject to all of the provisions of this Agreement. Customer shall keep the Service, Software and Documentation free and clear of all liens, encumbrances and/or security interests. Subject to the limited rights expressly granted in this Agreement, Solace reserves all rights, title and interest in and to the Service, Software and Documentation. No rights are granted to Customer pursuant to this Agreement other than as expressly set forth in this Agreement.

2.3 **Restrictions.** Customer shall not (and shall not allow Users or any third party to): (a) possess, download or copy the Service or any part of the Service, including but not limited to any component which comprises the Service, but not including any output from the Service; (b) knowingly interfere with service to any of Solace’s users, host or network, including by means of intentionally submitting a virus, overloading, flooding, spamming,

mail bombing or crashing; (c) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Software, Service and/or Documentation; (d) circumvent any timing restrictions that are built into the Service; (e) sell, rent, lend, transfer, distribute, license, or grant any rights in the Service, Software or Documentation in any form to any person; (f) remove any proprietary notices, labels, or marks from the Service, Software or Documentation; (g) create any “links” to or “frame” or “mirror” of the Service or any portion thereof; or (h) use the Service to create, collect, transmit, store, use or process any Customer Data that: (i) Customer does not have the lawful right to create, collect, transmit, store, use or process, or (ii) violates any applicable laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity).

2.4 **Rights in Derivative Data.** The Service may send information and data to Solace to provide aggregated usage, analytics and diagnostic statistics of Customers’ use of the Service. Customer hereby grants to Solace a non-exclusive, transferable, assignable, irrevocable, worldwide, perpetual fully paid-up and royalty-free license to collect, process and aggregate such information and data and create anonymized, aggregated data records and use such anonymized and aggregated data, and all modifications thereto and derivatives thereof (“**Derivative Data**”) to improve the Service, develop new products and services, to understand usage, and for any other business purpose and Solace may disclose Derivative Data solely in aggregated and anonymized form in connection with its business.

3. **User Accounts**

Users shall provide accurate and complete registration when creating an account to use the Service (each a “**User Account**”). Customer hereby acknowledges and agrees that it is responsible for the compliance by all of its Users with these Terms of Service, any guidelines and policies published by Solace from time to time, and the activities of all Users using the Service. Customer shall ensure that all Users only use the Service through the User Account(s) and will not share the User Account with any other person who is not a Customer employee or contractor. Customer will promptly notify Solace of any actual or suspected unauthorized use of the Service. Solace reserves the right to suspend, deactivate, or replace any User Account if Solace determines that the User Account may have been used for an unauthorized purpose.

4. **Support Services and Service Level Agreement**

4.1 **Support.** During the Subscription Term, Customer will have access to Support Services in accordance with the Support Terms through email at support@solace.com or through the technical support sections of the Website.

4.2 **Service Levels.** Solace will use commercially reasonable efforts to provide the service levels set forth in the Service Level Agreement.

4.3 **Disaster Recovery.** Solace will be responsible for establishing, implementing, testing, and maintaining an effective business continuity plan (including without limitation disaster recovery and crisis management procedures) to provide continuous access to, and support for, the Service. At a minimum, Solace shall, at all times, (i) back up, archive and maintain duplicate or redundant systems that can fully recover the Service and all Customer Data on a daily basis; and (ii) establish and follow procedures and frequency intervals for transmitting backup data and systems to Solace’s backup location. Such back up storage and systems will be located at a secure physical location and be updated and tested at least annually.

5. **Customer Data**

5.1 **Ownership.** As between Solace and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data and Customer Message Data. Solace does not acquire any rights, title or ownership interest of any kind whatsoever, express or implied, in any Customer Data or Customer Message Data.

5.2 **Customer Obligations.** Customer is responsible for properly configuring and using the Service in a manner that (i) provides security and redundancy of its Customer Message Data, (ii) prevents unauthorized access to its Service account and Customer Message Data and (iii) ensures the appropriate level of backup to prevent any loss of its Customer Message Data.

5.3 Customer Data Portability and Deletion. Upon request by Customer made during the term hereof or within 30 days after the end of the Subscription Term, Solace will make the Customer Data available to Customer for export or download as provided in the Documentation. After such 30-day period, Solace will have no obligation to maintain or provide any Customer Data and will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control as provided in the Documentation, unless legally prohibited.

6. Protection of Personal Data

6.1 Solace's Processing of Personal Data. Solace shall secure Personal Data with all necessary safeguards appropriate to the level of sensitivity of the Personal Data. Solace shall only Process Personal Data on behalf of and in accordance with Customer's documented instructions and Data Protection Laws for the following purposes: (i) Processing in accordance with these Terms of Service; (ii) Processing initiated by Customer's Users or customers in their use of the Service; and (iii) Processing to comply with other documented reasonable instructions provided by Customer where such instructions are consistent with the terms of these Terms of Service.

6.2 Relationship of the Parties. In relation to all Personal Data provided by or through Customer to Solace under this Agreement, Customer will at all times remain the Data Controller and will be responsible for compliance with all applicable data protection or similar laws. To the extent that Solace Processes Personal Data in the course of providing the Service, it will do so only as a Data Processor acting on behalf of the Customer (as Data Controller) and in accordance with the requirements of these Terms of Service.

6.3 Subprocessors. Solace may engage third party subcontractors to assist in the provision of the Service under this Agreement. Customer authorizes Solace to subcontract the processing of Personal Data under this Agreement provided that Solace shall maintain a list of such subprocessors and will provide a copy of that list to Customer upon request.

6.4 Customer Data Subject Request. Solace shall, to the extent legally permitted, promptly notify Customer if Solace receives a request from a Customer Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or its right not to be subject to an automated individual decision making ("**Data Subject Request**"). Solace shall use commercially reasonable efforts to assist Customer by appropriate technical and organizational measures, to fulfill Customer's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. Customer shall be responsible for any costs arising from Solace's provision of assistance with a Customer Data Subject Request.

6.5 Technical and Organizational Safeguards. In connection with the provision of the Service, Solace will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Personal Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Personal Data by Solace personnel except (a) to provide the Service and prevent or address service or technical problems, (b) as compelled by law and upon identification of lawful authority, or (c) as expressly permitted in writing by Customer. Solace shall, in connection with the provision of the Service, comply with Data Protection Laws, as well as Solace's Privacy Policy. Solace shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data and have received appropriate training on their responsibilities and Solace shall take commercially reasonable steps to ensure the reliability of any Solace personnel engaged in the Processing of Personal Data.

6.6 Data Breach. Upon becoming aware of any unlawful access to any Personal Data, any unauthorized access to such facilities or equipment resulting in loss, disclosure or alteration of any Personal Data, or any actual loss of or suspected threats to the security of Personal Data (including any physical trespass on a secure facility, computing systems intrusion/hacking, loss/theft of a computing device, storage media or printed materials, or other unauthorized access) (each a "**Security Incident**"), Solace will promptly notify Customer of the Security Incident (and in all circumstances at least as soon as it reports to similarly situated customers as Customer, but in any event as soon as reasonably possible in the circumstances), and will investigate or perform required assistance in the investigation of the Security Incident and provide Customer with detailed information about the Security Incident. Solace will take all commercially reasonable steps to mitigate the effects of the Security Incident, or assist Customer in doing so; and will provide prior notice to Customer of, and, subject to any obligation under applicable privacy laws, it will not undertake any, proposed communications to third parties related to a

Security Incident involving Personal Data without Customer's prior written approval, not to be unreasonably withheld, conditioned or delayed. Solace will comply with this Section 6.6 at Solace's cost unless the Security Incident arose from Customer's negligent or willful acts or Solace's compliance with Customer's express written instructions.

6.7 GDPR. Solace shall (a) Process Personal Data in accordance with the GDPR requirements directly applicable to Solace and its provision of the Service and related services, and (b) upon Customer's request, provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer use of the Service, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to Solace. Solace shall provide reasonable assistance to Customer in the cooperation or prior consultation with Customer's authorized representative in the performance of its tasks under this Section 6.7, to the extent required under the GDPR.

7. Customer Responsibilities

7.1 Users. Customer is responsible for all activities that occur in User accounts and for its and its Users' compliance with this Agreement. Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data and Customer Message Data and the means by which Customer acquired Customer Data and Customer Message Data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software or the Service, and notify Solace promptly of any such unauthorized access or use; and (c) use the Service only in accordance with the Documentation and applicable laws and government regulations.

7.2 Use Guidelines. Customer shall use the Service solely for its internal business purposes as contemplated by these Terms of Service and shall not interfere with or disrupt the integrity or performance of the Service or the data contained therein.

7.3 Processing of Personal Data. Customer shall, in its use of the Service, Process Personal Data in accordance with the requirements of Data Protection Laws. For the avoidance of doubt, Customer's instructions to Solace for the Processing of Personal Data shall comply with Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data. Customer hereby represents and warrants to, and covenants with Solace that Customer Data will only contain Personal Data in respect of which Customer has provided all notices and disclosures, obtained all applicable third party consents and permissions and otherwise has all authority, in each case as required by applicable laws, to enable Solace to provide the Service, including with respect to the collection, storage, access, use, disclosure and transmission of Personal Data, including by or to Solace and to or from all applicable third parties.

7.4 Equipment. Customer is solely responsible for acquiring, servicing, maintaining and updating all equipment, computers, software and communications services (such as Internet access) that are required to allow Customer to access and use the Service and for all expenses relating thereto. Customer agrees to access and use, and shall ensure that all Users access and use, the Service in accordance with any and all operating instructions or procedures that may be issued by Solace from time to time.

7.5 Feedback. Customer may provide reasonable feedback to Solace including, but not limited to, suitability, problem reports, suggestions and other information with respect to the Service ("Feedback"). Customer hereby grants to Solace a fully paid-up, royalty-free, worldwide, assignable, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Software, Service, Documentation and any other Solace products or services, or for any other purposes, any Feedback provided by Customer or its Users.

8. Fees and Payment

8.1 Fees.

- (a) *Subscription*. Customer shall pay all Subscription Fees specified in each Order Form. Except as otherwise specified herein or in an Order Form, (i) Subscription Fees are based

on Subscriptions purchased and not actual usage, (ii) payment obligations are non-cancellable, (iii) Fees paid are non-refundable, and (iv) the number of Subscriptions purchased cannot be decreased during the relevant Subscription Term stated in an Order Form. Fees for Subscriptions will be invoiced in advance and otherwise in accordance with the relevant Order Form.

- (b) *Usage.* At the end of the applicable Fee Accrual Period, Solace will issue an electronic bill to Customer for all charges accrued above the Fee Threshold based on (i) Customer's use of the Services during the previous Fee Accrual Period; (ii) any Committed Purchases selected; and/or (iii) any Subscriptions selected.

8.2 Payment. Unless otherwise stated in the Order Form, charges are due thirty (30) days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information with Solace.

8.3 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 Solace's 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.

8.4 Suspension for Non-Payment. Solace may immediately suspend the Service if Customer fails to make any payment due in respect of the Service and does not cure such non-payment within ten (10) business days after receiving notice of such failure. Any suspension of the rights hereunder by Solace under the preceding sentence shall not excuse Customer from its obligation to make all payment(s) under this Agreement.

8.5 Payment Disputes. Solace will not exercise its rights under Sections 8.3 or 8.4 hereof if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

8.6 Taxes. Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, HST, GST, sales, value-added, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Solace has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Solace will invoice Customer and Customer will pay that amount unless Customer provides Solace with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Solace is solely responsible for taxes assessable against it based on its income, property and employees.

9. Confidentiality Obligations

9.1 Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (including pricing and other terms reflected in all Orders hereunder), the Service and Documentation, Customer Data (which is the Confidential Information of the Customer), business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

9.2 Confidentiality. Subject to Section 9.4, and unless the Disclosing Party expressly agrees in writing otherwise, the Receiving Party will: (a) use the Disclosing Party's Confidential Information only during the Subscription Term and only as necessary to perform the Receiving Party's obligations under these Terms of Service; (b) disclose the Disclosing Party's Confidential Information only to the Receiving Party's directors, officers, agents, employees and authorized subcontractors and their employees and only to the extent that such disclosure is necessary to perform the Receiving Party's obligations or exercise the Receiving Party's rights under

these Terms of Service. Customer shall not disclose any performance, benchmarking, or feature-related information about the Service.

9.3 Protection. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

9.4 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

9.5 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.

9.6 Return of Confidential Information. Upon Disclosing Party's written request upon expiration or termination of these Terms of Service (or at any earlier time upon written request by the Disclosing Party), the Receiving Party will: (a) promptly deliver to the Disclosing Party all originals and copies, in whatever form or medium, of all the Disclosing Party's Confidential Information and all documents, records, data and materials, in whatever form or medium, containing such Confidential Information in the Receiving Party's possession, power or control and the Receiving Party will delete all of the Disclosing Party's Confidential Information from any and all of the Receiving Party's computer systems, retrieval systems and databases; and (b) request that all persons to whom it has provided any of the Disclosing Party's Confidential Information comply with this Section 9.6.

10. Limited Warranties and Disclaimers

10.1 Limited Warranties. Solace hereby represents and warrants to Customer that:

- (a) During the Subscription Term, the Service will perform materially in accordance with the Documentation;
- (b) the Service will not contain any Malicious Code; and
- (c) it owns or otherwise has sufficient rights in the Service and Documentation to grant to Customer the rights to access and use the Service and Documentation granted herein.

10.2 General Warranty Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED HEREIN, THE SERVICE AND THE SUPPORT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND SOLACE MAKES NO REPRESENTATIONS OR WARRANTIES, AND THERE ARE NO CONDITIONS, ENDORSEMENTS, UNDERTAKINGS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, (INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF QUALITY, PERFORMANCE, RESULTS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF THE TRADE) AS TO, ARISING OUT OF OR RELATED TO THE FOLLOWING: (I) THESE TERMS OF SERVICE; (II) THE SERVICE AND SOFTWARE; AND/OR (III) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION, CUSTOMER DATA OR CUSTOMER MESSAGE DATA TRANSMITTED TO OR FROM SOLACE OR TO OR FROM THE SERVICE. SOLACE DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT THE SERVICE WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT ALL PROGRAMMING ERRORS IN THE SOFTWARE CAN BE FOUND IN ORDER TO BE CORRECTED. SOLACE DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

10.3 Internet Connectivity Disclaimer. Solace makes the Service available for access via the Internet. Customer shall provide, at Customer's own expense, all necessary hardware, applications and Internet

connectivity necessary to access the Service over the Internet. Customer is responsible for and shall ensure that Customer's computer equipment and an internet connection meets the minimum specifications published by Solace in the Documentation and updated from time to time on Solace's website, and Customer shall periodically update Customer's computer equipment and/or Internet connection to meet such minimum specifications. Customer hereby acknowledges that the Service may be interrupted due to (a) website downtime for scheduled maintenance at Solace's sole discretion, or (b) interruptions in Internet connectivity or other website downtime caused by circumstances beyond Solace's control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, viral pandemic, civil unrest, acts of terror, strikes or other labor problems, computer or telecommunications failures, or delays involving hardware or software not within Solace's control or network intrusions. Customer hereby acknowledges and agrees that Solace shall not, in any way, be liable for, or have responsibility with respect to, any such service interruptions and releases Solace from any claims relating thereto.

11. **Intellectual Property Infringement Indemnification**

11.1 **Indemnification by Solace.** Subject to these Terms of Service, Solace shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable legal fees) incurred in connection with claims, demands, suits, or proceedings made or brought against Customer by a third party alleging that the use of the Service and Documentation as contemplated hereunder infringes the intellectual property rights of a third party (each an "Infringement Claim"); provided, that Customer (a) promptly gives written notice of the Infringement Claim to Solace; (b) gives Solace sole control of the defense and settlement of the Infringement Claim (provided that Solace may not settle or defend any Infringement Claim unless it unconditionally releases Customer of all liability); and (c) provides to Solace, at Solace's cost, all reasonable assistance and information.

11.2 **Other Remedies.** If (a) Solace becomes aware of an actual or potential Infringement Claim, or (b) Customer provides Solace with notice of an actual or potential Infringement Claim, Solace may (or in the case of an injunction against Customer, shall), at Solace' sole option and determination: (i) procure for Customer the right to continue to use the Service; or (ii) replace or modify the Service with an equivalent or better Service so that Customer's use is no longer infringing; or (iii) if (i) and (ii) are not commercially reasonable, as determined by Solace in its sole discretion, terminate the rights granted hereunder to the Customer to access and use the Service and refund to Customer that portion of any prepaid Subscription Fees that is applicable to the period following the termination of the Subscription pursuant to this Section 11.2, less any outstanding fees owed on such affected portion of the Service.

11.3 **Exclusions.** The indemnity in Section 11.1 does not extend to (1) any Infringement Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the Service with other products, software or services not provided or approved by Solace, if such infringement would have been avoided but for such combination; (2) any Infringement Claim in respect to any version of the Service other than the most current version; or (3) any use, distribution, sublicensing or exercise of any other right outside the scope of these Terms of Service.

11.4 **Limitation.** Notwithstanding any other provision of these Terms of Service, the liability of Solace to Customer under this Section 11 shall not exceed \$500,000. Solace agrees to obtain Customer's consent for any settlement in excess of \$500,000. In no event shall Solace be responsible for any cost, expense or compromise incurred or made by Customer without Solace' prior written consent.

11.5 **Sole Remedies.** THIS SECTION 11 CONTAINS SOLACE'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, FOR INFRINGEMENT CLAIMS.

12. **Indemnification by Customer.**

Customer shall defend, indemnify and hold Solace harmless against any loss, damage or costs (including reasonable legal fees) incurred in connection with any claims, demands, suits, or proceedings made or brought against Solace by a third party (a) alleging that the Customer Data or Customer's use of the Service in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party; (b) based on a breach of any Data Protection Laws or a breach of this Agreement; or (c) caused by any negligent act or omission of Customer or its employees, contractors or agents (each a "**Customer Indemnified Claim**"); provided, that Solace (a) promptly gives written notice of the Customer Indemnified Claim to Customer; (b) gives Customer

sole control of the defense and settlement of the Customer Indemnified Claim (provided that Customer may not settle or defend any Customer Indemnified Claim unless it unconditionally releases Solace of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance and information.

13. **Limitation of Liability**

13.1 **Exclusion of Indirect and Consequential Damages.** SUBJECT TO SECTION 13.3 HEREOF, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS).

13.2 **Limitation of Liability.** SUBJECT TO SECTION 13.3 HEREOF, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR RELATING TO THE SUBJECT MATTER HEREOF FOR ALL CLAIMS, COSTS, LOSSES AND DAMAGES EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER IN THE TWELVE MONTHS PRECEDING THE DATE OF THE INCIDENT GIVING RISE TO LIABILITY.

13.3 **Certain Damages Not Excluded or Limited.** NOTWITHSTANDING SECTIONS 13.1 AND 13.2, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (II) INDEMNIFICATION CLAIMS SUBJECT TO THE LIMITATION CONTAINED IN SECTION 11.4 HEREOF, (III) ANY CLAIMS FOR NON-PAYMENT, (IV) FRAUD OR WILLFUL MISCONDUCT, OR (V) BODILY INJURY OR DEATH.

13.4 **Application of Exclusions and Limitations.** The foregoing limitations and exclusions of liability shall apply even if a party had been advised of the possibility of any such costs, losses or damages or knew or ought to have known of such costs, losses or damages and shall apply regardless of whether the action arose in contract, including, without limitation, from a fundamental breach, or breach of a condition, fundamental term or warranty, or in tort (including, without limitation negligence) or otherwise. The foregoing provisions limiting the liability of Solace shall also apply to its officers, directors, employees, and agents as trust provisions for the benefit of such officers, directors, employees, and agents and shall be enforceable by such persons as trust beneficiaries.

14. **Insurance**

During the term of this Agreement, Solace shall continuously maintain insurance against such risks and in such amounts that could reasonably be expected to be carried by persons acting prudently and in a business similar to that of Solace. Such insurance shall be issued and maintained with an insurance company having a rating of "A" or better by A.M. Best Solace.

15. **Term**

15.1 **Term, Renewal.** These Terms of Service commence on the date of the initial Order Form and shall continue until terminated earlier in accordance with the provisions of these Terms of Service or applicable law (the "**Term**"). This Agreement shall remain in effect and govern all Order Forms until (i) the end of the Subscription Term under such Order Form, (ii) such Order Form is terminated by the parties, or (iii) there has been full performance of the parties' respective obligations under such Order Form.

15.2 **Subscriptions.** Service Subscriptions commence on the earlier of the start date specified in the relevant Order Form and continue for the Subscription Term specified therein unless terminated earlier as provided for in these Terms of Service. Unless otherwise agreed upon in the applicable Order Form, Subscriptions shall automatically renew for additional periods of one (1) year at the list price then in effect at the time of renewal unless Customer gives Solace written notice of non-renewal at least sixty (60) days prior to the end of the applicable Subscription Term.

15.3 **Termination.** A party may terminate these Terms of Service or a Subscription 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.

15.4 **Refund or Payment upon Termination.** If these Terms of Service or a Subscription is terminated by Customer in accordance with Section 15.3, Solace will refund Customer any prepaid Subscription Fees covering the remainder of the Subscription Term after the effective date of termination. If this Agreement is terminated by Solace in accordance with Section 15.3, Customer will pay any unpaid Subscription Fees covering the remainder of the Subscription Term for any current Subscriptions. In no event will termination relieve Customer of its obligation to pay any Fees payable to Solace for the period prior to the effective date of termination.

15.5 **Suspension of Access to Service.** In addition to any termination rights of Solace pursuant to this Agreement, extraordinary circumstances may require Solace to suspend or terminate (where appropriate), as determined in Solace's reasonable discretion, Customer's access to and/or use of, or otherwise modify, the Service in order to: (a) prevent material damages to, or material degradation of the integrity of, Solace's or its provider's Internet network; or (b) comply with any law, regulation, court order, or other governmental order. In respect of any suspension or termination under clause 15.5, Solace shall provide prior written notice as far in advance of such suspension or termination as reasonably possible, and if such advance notice is not possible, then as soon as possible after such suspension or termination. In the event of a suspension, Solace will limit such suspension to that which is minimally required and will promptly restore Customer's access to the Service as soon as the event giving rise to the suspension has been addressed (including by Customer agreeing to accept the risks associated with such suspension) or resolved. Unless caused by a breach of this Agreement by Customer, all Fees related to the suspended Services shall be waived for the duration of the suspension and any such waived Fees which have been pre-paid shall be refunded to Customer.

16. **Export Restrictions; US Government Licenses**

Customer hereby represents and warrants that Customer is not located in, under the control of, and is not a national or resident of, any country to which the use of the Service or the export of the Software or related information would be prohibited by the laws and/or regulations of Canada and/or the United States. Customer also represents and warrants that Customer is not an individual to whom the use of the Service or the export of the Software or related information would be prohibited by the laws and/or regulations of Canada and/or the United States. Customer shall comply with the export laws and regulations of Canada and the United States that are applicable to the Software and related information and Customer shall comply with any local laws and/or regulations in Customer's jurisdiction that may impact Customer's right to export, import, or use the Software or related information, and Customer represents and warrants that Customer has complied with any such applicable laws and/or regulations. Notwithstanding any agreement with a third-party or any provision of law, regulation or policy, if Customer is an agency of the government of the United States of America, then Customer's rights in respect of the Service, Software and Documentation shall not exceed the rights provided under these Terms of Service, unless expressly agreed upon by Solace in a written agreement between Customer and Solace and signed by the Chief Legal Officer of Solace.

17. **Assignment**

Customer may not assign any of its rights or obligations hereunder, whether by operation of law, change of control or otherwise, without the prior written consent of Solace. Notwithstanding the foregoing, Solace may assign these Terms of Service in its entirety (including all Order Forms and Statements of Work), without consent of the Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets to which these Terms of Service relate. Any attempt by Customer to assign its rights or obligations under these Terms of Service in breach of this section shall be void and of no effect. Subject to the foregoing, these Terms of Service shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

18. **General**

18.1 **Force Majeure.** Neither Solace nor Customer shall be deemed to be in default of any provision of these Terms of Service (other than Customer's obligation to pay amounts due to Solace hereunder) for any failure in

performance resulting from acts or events beyond its reasonable control, including acts of God, acts of civil or military authority, civil disturbance, strikes, fires or other catastrophes.

18.2 Waiver. The failure of a party to claim a breach of any term or condition of these Terms of Service shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term. No failure or delay by either party in exercising any right under these Terms of Service shall constitute a waiver of that right.

18.3 Unenforceable Provisions. If any provision of these Terms of Service is held to be unenforceable or illegal, such decision shall not affect the validity or enforceability of such provisions under other circumstances or the remaining provisions of these Terms of Service and these Terms of Service shall be reformed only to the extent necessary to make it enforceable under such circumstances.

18.4 Independent Contractors. The relationship of Solace and Customer established by this Agreement is that of independent contractors, and nothing contained in these Terms of Service will be construed to (i) give either party the power to direct and control the day to-day activities of the other, (ii) constitute the parties as legal partners, joint venturers, co-owners or otherwise as participants in a joint undertaking, or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. All financial and other obligations associated with the businesses of the parties are their sole respective responsibilities.

18.5 Governing Law. These Terms of Service shall be governed by the laws of the Province of Ontario, without regard to its conflict of law principles. The courts located in the Province of Ontario shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to these Terms of Service and each party hereby consents to the exclusive jurisdiction of such courts. The application of the *United Nations Convention on Contracts for the International Sale of Goods* to these Terms of Service is expressly excluded and does not apply to these Terms of Service.

18.6 Entire Agreement. These Terms of Service in conjunction with the related Service Level Agreement is the entire agreement between Customer and Solace in respect to the subject matter hereof, superseding any other agreements or discussions, oral or written, and may not be changed except by a written agreement with Solace.

18.7 Purchase Orders etc. The terms and conditions of these Terms of Service, any Order Forms and Statements of Work shall prevail over any pre-printed terms on any quotes, orders, purchase orders, or purchase order acknowledgements, and shall prevail over any other communications between the parties in relation to the Service, the Software and the Documentation and the right to access and use the Service, the Software and the Documentation shall be deemed to be pursuant to the terms and conditions of these Terms of Service, unless Customer has executed a written agreement with Solace, in which case the Service, the Software and the Documentation shall be deemed to have been licensed pursuant to the terms and conditions of such written agreement.

18.8 Remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

18.9 Amendments. EXCEPT WHERE PROHIBITED BY APPLICABLE LAW OR AS OTHERWISE AGREED IN THE ORDER FORM, SOLACE MAY UNILATERALLY AMEND THESE TERMS OF SERVICE, IN WHOLE OR IN PART (EACH, AN "AMENDMENT"), BY: (I) GIVING CUSTOMER PRIOR NOTICE OF SUCH AMENDMENT; OR (II) POSTING NOTICE OF SUCH AMENDMENT ON THE WEBSITE. UNLESS OTHERWISE INDICATED BY SOLACE, ANY SUCH AMENDMENT WILL BECOME EFFECTIVE AS OF THE DATE THE NOTICE OF SUCH AMENDMENT IS PROVIDED TO CUSTOMER OR IS POSTED ON THE SOLACE WEBSITE (WHICHEVER IS THE EARLIER).

18.10 Language of Agreement. The parties hereto confirm that they have requested that this agreement and all related documents be drafted in English. Any French translation hereof has been provided for information purposes only and does not have any legal value nor create any contractual relationship between the parties. *Les parties aux présentes ont exigé que la présente entente et tous les documents connexes soient rédigés en anglais. Toute traduction de celle-ci est non-officielle, est fournie à des fins d'information seulement et ne crée aucun lien contractuel entre les parties.*

Last update: October 1, 2020

PubSub+ Cloud™ Service Level Agreement

This Solace PubSub+ Cloud Service Level Agreement (this “**SLA**”) is our SLA governing the use of the Services (defined below) by you or the entity you represent (“**you**” or “**Customer**”) under the terms of the Solace PubSub+ Cloud Terms of Service (the “**Terms of Service**”) between Solace Corporation (“**Solace**”, “**us**” or “**we**”) and you. This SLA applies separately to each account using the Services. Unless otherwise provided herein, this SLA is subject to the Terms of Service and capitalized terms will have the meaning specified in the Terms of Service. We reserve the right to change the terms of this SLA in accordance with the Terms of Service.

1. **Support Services.** During the Subscription Term, Customer will have access to Support Services in accordance with the Support Terms. “**Support Terms**” means the terms provided by Solace, or an authorized support partner, to Customer and which are available at <https://solace.com/support>.
2. **Limitations.** Solace shall not be responsible for providing Support Services for software, firmware, hardware not supplied by Solace. Services described herein do not include any support of any failure or defect in the Services solely caused by Customer, or if any Services (or any component of the foregoing) has been used in a manner not materially conforming to the requirements or suggestions in Documentation or in this SLA, or if any Services (or any component of the foregoing) is used by Customer on an unsupported platform or hardware or has been altered or modified by Customer without Solace’s approval or otherwise in a manner reasonably contemplated by this SLA.
3. **Service Level Commitment**
 - (a) **Service Level.** During the Term, Solace agrees that the online components of Solace PubSub+ Cloud will be operational and available to Customer as follows:

Component	Configuration	Service Level Commitment
Event Broker Services	High Availability	99.95% or higher
Event Broker Services	Single Node	99.5% or higher
Solace PubSub+ Cloud (Console, Event Portal, Insights and Mission Control)		99.95% or higher

except for: (i) Scheduled Downtime, or (ii) unavailability of the Services due to the exclusions described in Section 6 below (“**Service Level Commitment Exclusions**”). If Solace does not meet the above Service Level Commitment, Customer will receive the Service Credit described below. This SLA states Customer’s sole and exclusive remedy for any failure by Solace to provide the Services in accordance with the Service Level Commitment.

- (b) **Definitions.** The following definitions shall apply to the Solace Performance Commitment.
 - (i) “**Downtime**” means, for a Customer, if the Service is not accessible to or functional for the Customer.
 - (ii) “**Monthly Uptime Percentage**” means total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month. If the Terms of Service are for a partial month, then the numerator and denominator of the Monthly Uptime Percentage shall only include those days during which Customer received the Services.

- (iii) **"Scheduled Downtime"** means a period of time, typically lasting less than 4 hours, during which Solace conducts regular maintenance and upgrades.
- (iv) **"Services"** means the Solace PubSub+ Cloud software made available to the Customer as a service and purchased by the Customer from time to time.
- (v) **"Service Credit"** means the following:

1. Event Broker Service with High Availability

Monthly Uptime Percentage	Service Credit
99.95% or higher	None
98.0% to 99.949%	5%
under 98%	15%

2. Event Broker Service Single Node

Monthly Uptime Percentage	Service Credit
99.5% or higher	None
98% to 99.49%	5%
under 98%	15%

3. Solace PubSub+ Cloud (Console, Event Portal, Insights and Mission Control)

Monthly Uptime Percentage	Service Credit
99.95% or higher	None
98.0% to 99.949%	5%
under 98%	15%

4. **Scheduled Downtime.**

- (a) Solace shall publish or notify Customers in advance of periods of Downtime: (i) for scheduled maintenance, typically at least seven (7) days advance notice; and (ii) for emergency maintenance, typically at least twenty-four (24) hours advance notice.
- (b) Scheduled Downtime will typically be scheduled during non-business hours in the region in which the Component resides. When Scheduled Downtime occurs in accordance with this Section, such Scheduled Downtime is not considered Downtime for purposes of the Performance Commitment.
- (c) During Scheduled Downtime, which requires upgrades or maintenance, Services may experience brief periods of downtime or minor degradation in performance.

5. **Remedies.** If Customer wishes to claim a Service Credit from Solace, the Customer shall submit to Solace a written claim, within two months of the Downtime, notifying Solace of the applicable Downtime. Solace shall review Customer's claim and calculate the applicable Service Credit, if any, in accordance with the terms of this SLA. Except as set forth herein, Service Credits may not be exchanged for, or converted to, monetary amounts. In addition, in the event the Monthly Uptime Percentage falls below 98% for two (2) out of any three (3) consecutive months, Customer shall have the right to immediately terminate this SLA upon notice to Solace.

6. **Service Level Commitment Exclusions.** The Service Level Commitment does not apply to (a) immaterial outages of 60 seconds or less in connection with a high availability switchover of Event Brokers; (b) unavailability of the Services caused by factors outside of Solace's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, pandemic, civil unrest, acts of terror, strikes or other labor problems (other than those involving Solace employees); (c)

unavailability of the Services that result from internet access, equipment and/or software of Customer or other third parties where such equipment and/or software is not within the reasonable control of Solace; (d) unavailability of the Services caused by use of the Services (or any component thereof) by Customer in a manner not materially conforming to the requirements described in the Documentation or in the SLA.

7. **Amendments.** Except where prohibited by applicable law or as otherwise agreed in the order form, Solace may unilaterally amend this SLA, in whole or in part (each, an “**Amendment**”), by: (i) giving customer prior notice of such Amendment; or (ii) posting notice of such Amendment on the Solace website. Unless otherwise indicated by Solace any such Amendment will become effective as of the date the notice of such Amendment is provided to Customer or is posted on the website (whichever is the earlier).