

## Data Processing Addendum

This Data Processing Addendum ("DPA") is made and entered into by and between SolarWinds MSP UK Ltd. (SolarWinds MSP UK) and SolarWinds MSP Canada ULC ("SolarWinds MSP Canada", collectively "SolarWinds MSP") and the customer ("You" or Company").

This DPA forms part of the Software Services Agreement or End User License Agreement ("Agreement"), as applicable, entered into between SolarWinds MSP and You and applies to the extent that (i) SolarWinds MSP processes Personal Data on behalf of You in the course of providing the Services or Software; and (ii) the Agreement expressly incorporates this DPA by reference.

This DPA is intended to be the final and entire expression of the parties' agreement on the subject matter hereof. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

### HOW TO EXECUTE THIS DPA:

1. This DPA consists of two parts: the main body of the DPA and Exhibit 1 (including Appendices 1 and 2).
2. This DPA has been pre-signed on behalf of SolarWinds MSP. The EU Model Clauses in Exhibit 1 have been pre-signed by SolarWinds MSP as the data importer.
3. To complete this DPA, You must:
  - a. Complete the information in the signature boxes and sign on page 5.
  - b. Complete the information in the signature boxes of Exhibit 1 and sign on pages 6 and 12.
  - c. Complete the information in the signature boxes and sign on pages 14 and 15.
4. Send the completed and signed DPA to SolarWinds MSP by email, indicating the Customer's Name and Account (as set out on the applicable SolarWinds MSP Order Form or invoice) to [legalsmp@solarwinds.com](mailto:legalsmp@solarwinds.com).

**Upon receipt by SolarWinds MSP of Your validly completed DPA at this email address, this DPA will become legally binding.**

## DATA PROCESSING TERMS

1. **Definitions.**
  - 1.1 **Controller** means the entity which determines the purposes and means of the Processing of Personal Data.
  - 1.2 **Data Protection Laws and Regulations** means EU Data Protection Laws and Regulations and, to the extent applicable, the data protection or privacy laws of any other country.
  - 1.3 **Data Security Incident** means the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data in SolarWinds MSP's possession.
  - 1.4 **Data Subject** means the identified or identifiable person to whom Personal Data relates.
  - 1.5 **EU Data Protection Laws and Regulations** means (i) prior to 25<sup>th</sup> May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data; and (ii) on and after 25<sup>th</sup> May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (General Data Protection Regulation or GDPR) and all laws and regulations, including laws and regulations of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom, as applicable to the Processing of Personal Data under the Agreement.

1.6 **EU Model Clauses** means the unchanged EU-approved version of the Standard Contractual Clauses (without optional clauses), which are set forth in Exhibit 1, and shall apply to Processing of Your Data.

1.7 **Personal Data** means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations), where for each (i) or (ii), such data is Your Data.

1.8 **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.

1.9 **Processor** means the entity which Processes Personal Data on behalf of the Controller.

1.10 **Security, Privacy and Architecture Documentation** means the Security, Privacy and Architecture Documentation applicable to the specific Services purchased by You, as updated from time to time, referred to in Appendix 2.

1.11 **Services** means any product or service offering or support services provided by SolarWinds MSP to You pursuant to the Agreement.

1.12 **Subprocessor** means any Processor engaged by SolarWinds MSP or its Affiliates that Processes Personal Data in connection with the Services.

## 2. Processing

2.1 As previously set forth in the Agreement, the parties acknowledge and agree that with regard to the Processing of Your Personal Data under the Data Protection Laws and Regulations and this DPA, You determine the purposes and means of Processing and are the Controller and SolarWinds MSP Processes Your Personal Data on behalf of You and is the Processor. Each party will comply with the obligations applicable to it under the Data Protection Laws and Regulations with respect to the Processing of Your Personal Data.

2.2 SolarWinds MSP and its Affiliates will engage Sub-processors pursuant to the requirements set forth in Section 5 below.

2.3 The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Exhibit 1 to this DPA.

## 3. Rights of Data Subjects; Legal Disclosure Requests

3.1 **Rights of Data Subjects.** SolarWinds MSP shall, to the extent legally permitted, promptly notify You if SolarWinds MSP receives a request from a Data Subject to exercise the Data Subject's right, including the 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**"). To the extent You, in Your use of the Services, do not have the ability to address a Data Subject Request, SolarWinds MSP shall upon Your request provide commercially reasonable efforts to assist You in responding to such Data Subject Request, to the extent SolarWinds MSP is legally permitted to do so and the response to such Data Subject Request is required under Data Protection Laws and Regulations. To the extent legally permitted, You shall be responsible for any costs arising from SolarWinds MSP's provision of such assistance. Taking into account the nature of the Processing, SolarWinds MSP shall assist You by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of Your obligation to respond to a Data Subject Request under Data Protection Laws and Regulations.

3.2 **Legal Disclosure Request.** If SolarWinds MSP receives a legally binding request, including from a supervisory authority, for the disclosure of Personal Data, which is subject to this DPA, such request will be dealt with in accordance with the Agreement and the Data Protection Laws and Regulations.

#### **4. Personnel**

SolarWinds MSP will restrict its personnel from Processing Personal Data without authorization (unless required to do so by applicable law) and will ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities, and are subject to an obligation of confidentiality.

#### **5. Sub-Processors**

**5.1 Appointment of Sub-processors.** You acknowledge and agree that (a) SolarWinds MSP's Affiliates may be retained as Sub-processors; and (b) SolarWinds MSP and SolarWinds MSP's Affiliates respectively may engage third-party Sub-processors in connection with Processing Personal Data. SolarWinds MSP or a SolarWinds MSP Affiliate has entered into a written agreement with the applicable Sub-processors containing data protection obligations in a manner substantially similar to the standards set forth in this Agreement with respect to the protection of Personal Data to the extent applicable to the nature of the Services provided by such Sub-processor.

**5.2 List of Current Sub-processors and Notification of New Sub-processors.** Upon request, SolarWinds MSP shall make available to You an updated list of Sub-processors who Process Personal Data in connection with the provision of the Services ("Sub-processor List").

**5.3 Objection Right for New Sub-processors.** You may reasonably object to SolarWinds MSP's use of a new Sub-processor by notifying SolarWinds MSP in writing within ten (10) business days after receipt of an updated Sub-processor List. In the event You object to a new Sub-processor, SolarWinds MSP will use reasonable efforts to make available to You a change in the Services or recommend a commercially reasonable change to Your configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening You. If SolarWinds MSP is unable to make available such change within a reasonable period of time, either party may terminate the applicable Order Form(s) with respect only to those Services which cannot be provided by SolarWinds MSP without the use of the objected-to new Sub-processor, by providing written notice to the other party.

**5.4 Liability.** SolarWinds MSP shall be liable for the acts and omissions of its Sub-processors to the same extent SolarWinds MSP would be liable if performing the services of each Sub-processor directly under the terms of this DPA, save as otherwise set forth in the Agreement.

#### **6. Security**

**6.1** SolarWinds MSP shall maintain administrative, physical and technical safeguards designed for protection of the security, confidentiality and integrity of Personal Data, in accordance with the Security, Privacy and Architecture Documentation. SolarWinds MSP regularly monitors compliance with these safeguards. You shall be responsible for implementing the appropriate administrative, physical, and technical safeguards as to Your Processing of Personal Data as well as using and configuring the Services in a manner that similarly complies with the Data Protection Laws and Regulations, including implementing appropriate administrative, physical, and technical safeguards.

**6.2** Upon written request by You, subject to the confidentiality obligations set forth in the Agreement, SolarWinds MSP shall make available to You (or a third party, independent auditor) information regarding SolarWinds MSP's compliance with the obligations set forth in this DPA in the form of a self-certification, or if there is reasonable suspicion relating to noncompliance based upon the self-certification, an audit, which shall be at Your cost. If applicable, You shall promptly notify SolarWinds MSP of information regarding any noncompliance discovered during the course of an audit. SolarWinds MSP will also provide You with reasonable cooperation and assistance, at Your cost, to fulfill Your obligations under GDPR to carry out a data protection impact assessment related to Your use of the Services, to the extent You do not have access to the relevant information and to the extent such information is available to SolarWinds.

#### **7. Personal Data Security Breach Management and Notification**

In the event SolarWinds MSP becomes aware of a Data Security Incident involving Personal Data received from You, SolarWinds MSP shall (i) notify You as soon as is reasonably practical and without undue delay, of the nature of the Data Security Incident; and (ii) will use reasonable efforts to assist You in mitigating, where possible, the adverse effects of the Data Security Incident, including taking steps that SolarWinds

MSP deems necessary and reasonable to remediate the cause of such Data Security Incident to the extent the remediation is within SolarWinds MSP's reasonable control. The obligations herein shall not apply to incidents that are caused by You or Your Users.

#### **8. Transfer Mechanisms**

8.1 Any transfer of Personal Data made subject to this DPA from member states of the European Union, Iceland, Liechtenstein, Norway, Switzerland or the United Kingdom to any countries which do not ensure an adequate level of data protection within the meaning of the laws and regulations of these countries shall, to the extent such transfer is subject to such laws and regulations, be undertaken by SolarWinds MSP and its Affiliates through one of the following mechanisms: (a) in accordance with the Swiss-U.S. and EU-U.S. Privacy Shield Framework and Principles issued by the U.S. Department of Commerce, both available at <https://www.privacyshield.gov/EU-US-Framework>, or (b) the EU Model Clauses set forth in Exhibit 1 to this DPA.

8.2 If transfers are made pursuant to 8.1 (a), SolarWinds MSP has self-certified to, and complies with, the Swiss-U.S. and EU-U.S. Privacy Shield Frameworks, as administered by the U.S. Department of Commerce, and shall maintain such self-certification and compliance with respect to the Processing of Personal Data transferred from member states of the European Union, Iceland, Liechtenstein, Norway, or the United Kingdom or Switzerland to any countries which do not ensure an adequate level of data protection within the meaning of the laws and regulations of the foregoing countries for the duration of the Agreement.

#### **9. Deletion of Data**

The Services provide You with controls to enable You to retrieve, rectify or delete Personal Data as described in the Documentation. Upon termination of the Agreement, SolarWinds MSP will, to the extent allowed by applicable law, delete Your Data in accordance with the Agreement.

#### **10. Limitation of Liability**

Each party and its Affiliates' liability arising out of or related to this DPA (whether in contract, tort or under any other theory of liability) is subject to the section 'Limitation of Liability' of the Agreement, and any reference in such section to the liability of a party means that party and its Affiliates in the aggregate.

#### **11. Termination Right**

This DPA shall remain in effect for the duration of the Agreement between the parties. You may terminate the EU Model Clauses at Your discretion by providing written notice to SolarWinds MSP. The EU Model Clauses shall only apply to the Processing of Personal Data to any country not recognized by the European Commission as providing adequate protection of Personal Data or any recipient not covered by a legal framework deemed by the European Commission as providing an adequate level of protection for Personal Data, as applicable.

#### **12. Miscellaneous**

The Agreement and this DPA shall only apply between the parties and shall not confer any rights to any other person or entity. This DPA will not modify the allocation of risks agreed upon by the parties in the Agreement, including any limitations or exclusions of liability.

SIGNATURE PAGE FOLLOWS

**On behalf of the data exporter:**

Name (written out in full): Rasmus H. Mortensen

Position: CEO

Address:

Other information necessary in order for the contract to be binding (if any):

Signature

(stamp of organisation)

15/5-18  


**On behalf of the data importer:**

Name (written out in full): Jason W. Bliss

Position: Director

Address: Suites 11 & 12, The Vision Building, 20 Greenmarket, Dundee, DD1 4QB, UK

Other information necessary in order for the contract to be binding (if any): None

Signature

(stamp of organisation)



**On behalf of the data importer:**

Name (written out in full): Jason W. Bliss

Position: Director

Address: 450 March Rd, 2nd Floor, Ottawa, Ontario K2K 3K2, Canada

Other information necessary in order for the contract to be binding (if any): None

Signature

(stamp of organisation)



**Exhibit 1 to the DPA**

**Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: Garuda AS

Address: Voldbjergvej 14, 2., 8240 Risskov

Tel.: +45 87 46 86 00

Fax: .....

E-mail: garuda@garuda.dk

Other information needed to identify the organisation:

.....  
(the data exporter)

and

Name of the data importing organisation: SolarWinds MSP UK Limited.

Address: Suites 11 &12, The Vision Building, 20 Greenmarket, Dundee, DD1 4QB, UK

Tel.: +44 (0) 1382 309040

and

Name of the data importing organisation: SolarWinds MSP Canada ULC

Address: 450 March Rd, 2nd Floor, Ottawa, Ontario K2K 3K2, Canada

E-mail: [privacy@solarwinds.com](mailto:privacy@solarwinds.com)

Other information needed to identify the organisation: None (the data importer)

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

## Clause 1

### Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## Clause 2

### Details of the Transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

## Clause 3

### Third-party Beneficiary Clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### *Clause 4*

##### ***Obligations of the Data Exporter***

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).



*Clause 5*

***Obligations of the Data Importer***

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

## *Clause 6*

### ***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.  

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

## *Clause 7*

### ***Mediation and Jurisdiction***

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## *Clause 8*

### ***Cooperation with Supervisory Authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

#### *Clause 9*

#### **Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

#### *Clause 10*

#### **Variation of the Contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

#### *Clause 11*

#### **Subprocessing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

**Obligation after the Termination of Personal Data Processing Services**

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**On behalf of the data exporter:**

Name (written out in full): Rasmus H. Mortensen

Position: CEO

Address:

Other information necessary in order for the contract to be binding (if any):

Signature.....

(stamp of organisation)

15/5-18  


**On behalf of the data importer:**

Name (written out in full): Jason W. Bliss

Position: Director

Address: Suites 11 & 12, The Vision Building, 20 Greenmarket, Dundee, DD1 4QB, UK

Other information necessary in order for the contract to be binding (if any): None

Signature.....

(stamp of organisation)



**On behalf of the data importer:**

Name (written out in full): Jason W. Bliss

Position: Director

Address: 450 March Rd, 2nd Floor, Ottawa, Ontario K2K 3K2, Canada

Other information necessary in order for the contract to be binding (if any): None

Signature.....

(stamp of organisation)



## **APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

### **Data Exporter**

The data exporter is (please specify briefly your activities relevant to the transfer): **Company**

### **Data Importer**

The data importer is (please specify briefly activities relevant to the transfer):

**SolarWinds MSP** is a provider of integrated cloud-based and on-premise IT service management solutions that processes personal data upon the instruction of the data exporter, in accordance with the terms of the Agreement.

### **Data Subjects**

The personal data transferred concern the following categories of data subjects (please specify):

Data exporter may submit Personal Data to the data importer, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects, when obtained, retained, and transmitted in accordance with the policies of the data exporter and with all legal requirements to which the data exporter is subject:

### **Categories of Data**

The personal data transferred concern the following categories of data (please specify):

Personal Data including but not limited to the following categories:

- First and last name
- Contact information (company, email address, phone and physical address)
- Financial information
- Account information
- IP and MAC address
- Browser information
- Product information, including localization data, network device information, activity logs, connection data, system usage and network data, application information, email data, traffic data, and other electronic data submitted, stored, uploaded, sent, or received by data exporter or data subjects via the Services

### **Special Categories of Data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify): **None.**

### **Processing Operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

The objective of processing Personal Data by the data importer is in connection with the performance of the SolarWinds MSP Services pursuant to the Agreement, which may include, but are not limited to the following:

- Remote monitoring and management solutions (on-premises or cloud versions)
- Patch management solutions and policies
- Antivirus protection
- Web access protection
- Network device discovery
- Prescriptive data analytics
- Data breach risk intelligence
- Remote access tools
- Automated monitoring, scripting and maintenance features
- Backup and recovery of data
- Helpdesk and ticketing features
- Mobile device management solutions
- Technical support services
- E-mail security and management

**On behalf of the data exporter:**

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature.....

(stamp of organisation)

15/5-18  


**On behalf of the data importer:**

Name (written out in full): Jason W. Bliss

Position: Director

Address: Suites 11 & 12, The Vision Building, 20 Greenmarket, Dundee, DD1 4QB, UK

Other information necessary in order for the contract to be binding (if any): None

Signature: .....

(stamp of organisation)



**On behalf of the data importer:**

Name (written out in full): Jason W. Bliss

Position: Director

Address: 450 March Rd, 2nd Floor, Ottawa, Ontario K2K 3K2, Canada

Other information necessary in order for the contract to be binding (if any): None

Signature: .....



(stamp of organisation)

**APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

Data importer will maintain administrative, physical, and technical safeguards designed to protect the security, confidentiality, and integrity of Personal Data uploaded through the Services subscribed to or purchased by the data exporter, as described in the Security, Privacy and Architecture documentation applicable to the Services, which may be reasonably made available by data importer. Data importer will not materially decrease the overall security of the Services during the subscription term.

**On behalf of the data exporter:**

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature

(stamp of organisation)

15/5-18  


**On behalf of the data importer:**

Name (written out in full): Jason W. Bliss

Position: Director

Address: Suites 11 & 12, The Vision Building, 20 Greenmarket, Dundee, DD1 4QB, UK

Other information necessary in order for the contract to be binding (if any): None

Signature

(stamp of organisation)



**On behalf of the data importer:**

Name (written out in full): Jason W. Bliss

Position: Director

Address: 450 March Rd, 2nd Floor, Ottawa, Ontario K2K 3K2, Canada

Other information necessary in order for the contract to be binding (if any): None

Signature

(stamp of organisation)

