

## SOLO.IO SUBSCRIPTION TERMS

### NOT FOR EDITING OR NEGOTIATION

The Solo.io Subscription Terms ("**Subscription Terms**") apply to the extent (1) referenced in an Order Form (as defined below), or (2) you download, install or execute any Software (as defined below) from [www.solo.io](http://www.solo.io) ("**Solo's Website**") as part of a free trial except to the extent Separate Licenses (as defined below) apply. These Subscription Terms, together with all attachments, addenda, exhibits, statements of work and documents at referenced URLs, (collectively, the "**Agreement**") is entered into by and between Solo.io, Inc. ("**Solo**"), and the entity identified as the "Ship-To" of an applicable Order Form or the individual that downloads, installs or executes any Software from Solo's Website ("**Subscriber**").

### 1. DEFINITIONS

1.1 "**Affiliate**" means, with a respect to a party, any entity that controls, is controlled by, or which is under common control with such party, where "control" means ownership of fifty percent (50%) or more of the outstanding shares or securities representing the right to vote in the election of directors or other management of operations of such party.

1.2 "**Authorized Persons**" means Subscriber's employees, Affiliates and its employees, or a Permitted Third Party, who are bound to confidentiality obligations no less protective than this Agreement.

1.3 "**DPA**" means the version of the data processing agreement located at <https://legal.solo.io/#subscriber-dpa> that is in effect as of the Effective Date.

1.4 "**Documentation**" means Solo's user documentation available online or through the delivery of Support Services relating to a Product.

1.5 "**Order Form**" means an ordering document entered into between Solo (or its Affiliates) and Subscriber (or its Affiliates) to purchase Subscriptions and/or Professional Services, where the parties agree that where either party or one of their Affiliates enters an Order Form with an Affiliate of the other party, such Affiliate shall be solely responsible for performing all of its obligations under the Agreement in connection with such Order Form.

1.6 "**Permitted Third Party**" means an entity under contract with Subscriber or Subscriber's Affiliate that needs to access or use a Subscription or Professional Services to perform its obligations to Subscriber, provided that (i) such entity must not be a direct competitor of Solo, and (ii) Subscriber remains responsible to Solo for the compliance of such entity and its employees and Affiliates with the terms and conditions of this Agreement.

1.7 "**Product**" means Solo-branded paid software, cloud-based service or the like, made available for use and/or access from Solo.

1.8 "**Professional Services**" means the professional service described in an Order Form, which may include implementation, configuration, consulting or training.

1.9 "**Software**" means software provided by Solo that is licensed for use on premise or in a cloud account managed by Subscriber (or an Authorized Person) under a Subscription, including all updates thereto and new releases thereof, that are made generally available by Solo. Software excludes any third-party open source software that operates in connection with the Software, except to the extent any portion thereof is modified by Solo and provided to Subscriber by Solo for use during the Subscription Term.

1.10 "**Subscription**" means Subscriber's right during the term specified in an Order Form ("**Subscription Term**") to install, use and/or access a Product and/or to receive Support Services, as applicable.

1.11 "**Support Services**" means the maintenance and support services purchased, if any, in a Subscription, as specified in an applicable Order Form, and more fully described at <https://legal.solo.io/#technical-support-policy> (the "**Technical Support Policy**").

### 2. PRODUCT TERMS AND CONDITIONS.

2.1 Trial Use and Beta Features. Sections 7 and 8 of this Agreement do not apply to any trial use or beta versions of the Products.

Section 2.2 applies to all trials, except that such use is (i) limited to non-production purposes only and (ii) limited to a time agreed between Subscriber and Solo in writing (email acceptable). At the end of a trial, Subscriber must uninstall and cease use of all Software.

## 2.2 Software Terms.

**2.2.1 License Grant.** Subject to the terms and conditions of this Agreement, including payment, Solo grants to Subscriber a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) solely for Subscriber's internal business operations, during the Subscription Term, to (i) install and use, in object code format, the Software, (ii) use, and distribute internally a reasonable number of copies of the Documentation, provided that Subscriber must include on such copies all marks and notices; (iii) permit Authorized Persons to use the Software and Documentation as set forth in (i) and (ii) above, provided that such use by Authorized Persons must be solely for Subscriber's benefit. Subscriber's rights are subject to any scope, quantitative or usage limitations set forth in the applicable Order Form ("**Scope Limitations**"). Following execution of an applicable Order Form, Solo will deliver a license key to Subscriber to use the Software. The Software will be deemed to have been delivered to Subscriber upon provision of such license key, and the Software is deemed to be accepted by Subscriber upon delivery.

**2.2.2 Use Restrictions.** Except as expressly permitted by law, Subscriber shall not, and will not permit any Authorized Person to: (i) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software or any portion thereof to human readable form, (ii) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted herein; (iii) except as permitted with respect to Authorized Persons, transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party; (iv) circumvent the limitations on use of the Software that are imposed or preserved by any license key, (v) alter or remove any marks and notices in the Software; (vi) make available to any third party (other than Permitted Third Parties) any analysis of the results of operation of the Software, including benchmarking results, without the prior written consent of Solo, or (vii) use the Software in excess of the Scope Limitations.

**2.2.3 Unlimited Enterprise License.** To the extent Subscriber is granted an unlimited enterprise license in an applicable Order Form, Subscriber has no quantitative volume limitations (API calls or routes, nodes, cores or the like) with regards to such a license and is not subject to Section 2.2.4 below.

**2.2.4 Use Case License.** For all other licenses limited by quantitative volumes in an Order Form, Subscriber agrees to promptly notify Solo in writing as soon as Subscriber becomes aware of use of the Software in excess of any applicable Scope Limitations, and Subscriber agrees that Solo will invoice Subscriber for the difference in fees paid and the fees that should have been paid in accordance with the terms of the applicable Order Form and this Agreement. For clarity, such invoice may be issued after the expiration or termination of this Agreement. No more than once per year during the Subscription Term and for one (1) year after the termination of expiration of such Subscription Term, Solo may request confirmation of Subscriber's usage volume, in writing, of the Software based on the applicable Scope Limitations noted on an applicable Order Form. Subscriber must provide Solo the usage volume within ten (10) business days of a request from Solo. To the extent Solo does not receive a confirmation of usage volume Subscriber shall be deemed to be in material breach of this Agreement. If Subscriber's usage volume exceeds that stated on an applicable Order Form, Solo may invoice Subscriber for the excess usage.

**2.3 Bundled Solution Terms.** If Subscriber intends to purchase a Subscription that includes Software for embedded use, additional terms can be found in Addendum A.

**2.4 Data Processing.** Solo is not a cloud-based service; however, to the extent Solo receives personally identifiable information from Subscriber's use of Support Services and/or Professional Services, Solo will comply with the DPA.

## **3. PROFESSIONAL SERVICES AND SUPPORT SERVICES**

**3.1 Professional Services.** Subscriber will provide all assistance, cooperation, information and resources reasonably necessary to enable Solo to perform the Professional Services. The details of the Professional Services to be performed will be determined on a per-project basis and described in an Order Form. Unless otherwise specified in an applicable Order Form, Professional Services must be consumed within twelve (12) months of the start date indicated on the Order Form and any unused portion will expire after such time. For the avoidance of doubt, Subscriber will be invoiced for all Professional Services contained in an Order Form even if not used. If the parties need to make changes to the Order Form, the parties will execute a new Order Form referencing the original Order Form

memorializing any changes; provided that, if Subscriber's requested changes materially increase the scope of the effort required, such new Order Form will also include any additional fees owed by Subscriber. In the event Subscriber requests that Professional Services be rescheduled, Subscriber shall reimburse Solo for any additional costs or expenses incurred by Solo to reschedule the performance of such Professional Services, including without limitation, fees, charges and penalties related to airfare, visas and accommodations. Further, upon Subscriber's consent, not to be unreasonably withheld, Solo may engage qualified subcontractors to provide Professional Services, and Solo remains responsible for any subcontractor's compliance with this Agreement.

**3.2 Support Services.** Support Services will be delivered to Authorized Persons during the applicable Subscription Term remotely, electronically and through the Internet, and when applicable, via telephone in accordance with the Technical Support Policy and any quantitative limitations specified on an Order Form. Support Services are not delivered on-site at Subscriber's location. Solo may modify the Technical Support Policy but agrees not to materially diminish the level of Support Services during the Subscription Term.

**3.3 Reservation of Rights.** Solo and its licensors shall retain all rights, title and interest, including all intellectual property rights, in, to and under any Product and Documentation, all add-ons to the Product or the like, any training and other educational materials, and any deliverables created or made available as part of the Professional Services and/or Support Services, together with all modifications, updates, enhancements, improvements and derivative works in any of the foregoing (collectively, the "**Solo Technology**"). Authorized Persons may use Solo Technology only in connection with a Subscription, subject to the same usage rights and restrictions as such Subscription. Solo grants Subscriber a royalty-free, perpetual, non-transferable and non-exclusive license to use and reproduce any reports (excluding Solo Technology) created specifically for Subscriber in the performance of Support Services and/or Professional Services for Subscriber's internal business purposes. Subscriber's rights to Solo Technology are limited to those expressly set forth in this Agreement. Nothing in this Agreement shall be deemed to prohibit Solo from using for any purpose any general knowledge, skills, techniques or methods it learns in the course of performing Professional Services and/or Support Services.

**3.4 Third Party Components.** Further, Subscriber acknowledges that Solo Technology may contain third party components subject to third party or open source license terms ("**Separate License**"). This Agreement does not alter any rights Subscriber might have with respect to a third party component under such Separate License and, to the extent there is a conflict between the Separate License and this Agreement, the Separate License takes precedence with respect to such third party component. Separate Licenses do not impose any additional restrictions or obligations on the use of the Solo Technology under this Agreement. A list of third party components and corresponding Separate Licenses are available upon request to Solo. Solo disclaims all warranties and assumes no liability for any third party components, code or software ("**Third Party Products**") that are (1) either used by Subscriber under the terms of such Separate License contrary to the license contained in this Agreement, (2) not provided by Solo but integrated with Solo Technology or Software, or (3) installed by Solo as part of Professional Services at the direction of Subscriber and fall under sub-sections (1) or (2).

**3.5 Feedback.** Subject to Solo's confidentiality obligations under Section 4 of this Agreement, Subscriber, its Affiliates and Permitted Third Parties, and their respective employees, may, on an entirely voluntary basis, submit feedback or suggestions, and Solo and its Affiliates may use and modify such feedback or suggestions without any restriction or payment.

## **4. CONFIDENTIAL INFORMATION**

**4.1 Definition.** "**Confidential Information**" means any non-public information disclosed by either party or its Affiliates to the other party that a reasonable person should understand to be confidential due to the circumstances of disclosure or the nature of the information itself. Confidential Information includes Solo Technology, all materials and communications concerning either party's business, including, without limitation, pricing, reports, security information and assessments, technical information and the terms of this Agreement, and all notes, summaries and analyses of the foregoing prepared by the receiving party. Confidential Information excludes information: (i) was or becomes generally known to the public other than as a result of a disclosure by the receiving party in violation of this Agreement; (ii) was known, without restriction as to use or disclosure, by the receiving party prior to receiving such information from the disclosing party; (iii) is rightfully acquired by the receiving party from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the receiving party without access to any Confidential Information of the disclosing party.

**4.2 Use of Confidential Information.** The receiving party shall keep the Confidential Information in strict confidence during the Agreement Term and thereafter. Except as otherwise required by law or approved in writing by the disclosing party, the receiving party may not disclose any Confidential Information: (i) to any person or entity other than Authorized Persons to the extent required to be

able to access and use a Subscription and/or Professional Services; (ii) to a third party without the disclosing party's prior written authorization (except in connection with (a) the enforcement of a party's rights under this Agreement or (b) a potential merger, acquisition or sales of all or substantially all of a party's assets).

**4.3 Compelled Disclosure.** If the receiving party is requested or legally compelled (by valid and effective subpoena or order issued by either a court of competent jurisdiction), or is required by a regulatory body, to disclose Confidential Information of the disclosing party, the receiving party shall, unless prohibited by force of law: (i) provide the disclosing party with prompt notice (so long as time permits) of any such request or requirement before disclosure so that the disclosing party may seek an appropriate protective order or other appropriate remedy; and (ii) provide reasonable assistance to the disclosing party in obtaining any such protective order. If the receiving party is nonetheless legally compelled or otherwise required to disclose, the receiving party will furnish only that portion of the Confidential Information that is legally required and shall make reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any part of the Confidential Information so disclosed.

**4.4 Return of Confidential Information.** All documents and other tangible objects containing or representing Confidential Information that have been disclosed by either party to the other party, and all copies in the possession of the other party, are and will remain the property of the disclosing party. At the disclosing party's written request, the receiving party shall promptly return or destroy all of those documents or objects; provided that, the receiving party may retain copies of such Confidential Information (i) for archival purposes, (ii) as required by applicable law, and (iii) to the extent such copies are electronically stored in accordance with the receiving party's document retention or back-up policies or procedures (including, without limitation, those regarding electronic communications), in each case, so long as such Confidential Information is kept confidential as required under this Agreement.

## **5. FEES, PAYMENT AND TAXES**

**5.1 Fees and Payment.** Subscriber agrees to pay for all fees due under each Order Form or otherwise under this Agreement within thirty (30) days of receipt of an applicable invoice. Payments will be made without the right of set-off or chargeback. All Order Forms are non-cancellable, and all fees are non-refundable and based on the Subscription(s) and/or Professional Services purchased, not actual usage.

**5.2 Late Payment and Interest.** Any amount not paid when due will be subject to interest of 1.5% of the unpaid balance or the highest rate permitted by applicable law, whichever is less. Subscriber will reimburse Solo for any costs to collect late payments.

**5.3 Taxes.** All fees stated on an Order Form are exclusive of any applicable sales, use, value-added, import or export and excise taxes levied upon the delivery or use of the taxable components if any of the Subscription and/or Professional Services purchased by Subscriber under this Agreement (collectively, "**Taxes**"). Taxes do not include taxes on the net income of Solo or any of its Affiliates. Unless Subscriber provides evidence of an exemption from the relevant Taxes, Subscriber will pay and be solely responsible for all Taxes and will gross up any payment to include such Taxes. If a taxing authority pursues Solo for unpaid Taxes for which Subscriber is responsible for under this Agreement and which Subscriber did not pay Solo, Solo may invoice Subscriber and Subscriber will pay such Taxes, including all applicable interest and penalties, to Solo or directly to the taxing authority with receipt of payment to Solo.

**5.4 Future Functionality.** Subscriber's purchase is not dependent on any oral or written comments made by Solo regarding future functionality or features. Subscriber understands and agrees that any features or functions of Products, which are not currently available or not currently available as a GA release, may not be delivered on time or at all. Subscriber is purchasing Subscriptions and/or Professional Services based solely upon functionality and features that are currently available at the time of executing an Order Form. The development, release and timing of any features or functionality remains in Solo's sole discretion.

**5.5 Reseller Transactions.** If Subscriber places an order for Subscriptions or Professional Services from an authorized Solo reseller the terms of this Agreement apply to Subscriber's use of such Subscriptions or Professional Services except for (1) payment and taxes which shall be addressed in the agreement between the reseller and Subscriber and (2), where reseller manages Support Services on behalf of Subscriber, the Technical Support Policy.

## **6. TERM AND TERMINATION**

**6.1 Term.** This Agreement commences on the Effective Date and continues until terminated in accordance with the terms of Section 6.2 below. Notwithstanding the expiration of this Agreement, its terms will continue to apply to any Order Form that has not been

terminated and for which the Subscription Term, or term for Professional Services as detailed in Section 3.1 of this Agreement, as applicable, has not expired.

## 6.2 Termination.

6.2.1 *For Convenience*. Either party may terminate this Agreement for convenience upon thirty (30) days' written notice to the other party if there are no Order Forms in effect. Neither party may terminate an Order Form for convenience. The parties may mutually agree in writing to terminate this Agreement at any time.

6.2.2 *For Breach*. If a party fails to cure a material breach of this Agreement or an applicable Order Form within thirty (30) days after receipt of written notice of the breach, the other party may terminate this Agreement or the applicable Order Form, respectively. Termination of this Agreement will terminate all Order Forms in effect.

6.3 Effect of Termination. Upon termination of this Agreement or an applicable Order Form, any licenses to Subscriptions and/or Solo Technology shall terminate and Subscriber will cease use of all Subscriptions and/or Solo Technology. Any provisions intended by their nature to survive termination of this Agreement shall survive.

## 7. **WARRANTIES**

### 7.1 Solo Warranties.

7.1.1 *Professional Services Warranty*. Solo warrants it will perform the Professional Services in a professional, workmanlike, manner in accordance with generally accepted industry practice using personnel with the necessary skills, experience, and training and in accordance with the terms of the Order Form.

7.1.2 *Support Services Warranty*. Solo warrants it will perform the Support Services in accordance with the Technical Support Policy.

7.1.3 *Product Warranty*. Solo warrants that, during the applicable Subscription Term, the Products, in the form provided by Solo, will materially perform in accordance with the Documentation. This warranty does not apply to (i) any trial or beta use, (ii) any use of a Product not in accordance with the Documentation or terms of this Agreement, or (iii) any bug or defect attributable to software, hardware or a product not supplied by Solo.

7.1.4 *Virus Warranty*. Solo warrants that at the time the Software is made available for download, it will be free of any virus.

7.1.5 *Remedies for Warranty Breach*. In the event of a breach of any of the foregoing warranties in Section 7.1.1 through 7.1.4, Subscriber's sole and exclusive remedy is limited to correction of the non-conforming Products or re-performance of the Support Services or Professional Services, as applicable, and, if correction or re-performance is not commercially feasible within thirty (30) days of receipt of notice from Subscriber, then Subscriber may terminate the applicable Order Form upon written notice to Solo, and Solo shall promptly refund to Subscriber all prepaid, unused fees paid by Subscriber to Solo under such terminated Order Form. The foregoing is conditioned upon Subscriber notifying Solo within thirty (30) days that Subscriber becomes aware of the condition giving rise to a claim during the Subscription Term.

7.2 Disclaimer. EXCEPT AS SET FORTH IN THIS SECTION 7, THE PRODUCTS, SUPPORT SERVICES, PROFESSIONAL SERVICES AND SOLO TECHNOLOGY ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND SOLO MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE PRODUCTS, SUPPORT SERVICES, PROFESSIONAL SERVICES AND SOLO TECHNOLOGY FURNISHED OR PROVIDED TO SUBSCRIBER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SOLO EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE PRODUCTS, SUPPORT SERVICES, PROFESSIONAL SERVICES AND SOLO TECHNOLOGY FURNISHED OR PROVIDED TO SUBSCRIBER UNDER THIS AGREEMENT. SOLO DOES NOT WARRANT THAT THE PRODUCTS, SUPPORT SERVICES, PROFESSIONAL SERVICES AND SOLO TECHNOLOGY ARE ERROR-FREE OR THAT THE OPERATION OF SUCH WILL BE UNINTERRUPTED.

7.3 High-Risk Activities. Subscriber shall not use Solo Technology, Support Services and/or Professional Services in high-risk activities, where their use could reasonably be expected to lead to death, personal injury or severe physical or environmental damage (such as in the creation or operation of aircraft, autonomous vehicles, life support systems, weapon systems, or nuclear facilities).

## 8. SOLO INDEMNIFICATION

8.1 IP Claims. Solo will, at Solo's expense, either defend Subscriber from or settle any claim, proceeding or suit brought by a third party against Subscriber and its Authorized Persons, alleging that Subscriber's use of a Product or Support Services during the Subscription Term infringes or misappropriates such third party's intellectual property rights ("**IP Claim**"). Solo will indemnify Subscriber and its Authorized Persons from and pay: (i) all damages, costs and attorneys' fees finally awarded against Subscriber and its Authorized Persons to such third party to the extent resulting from such IP Claim; (ii) any settlement amounts consented to by Solo in connection with such IP Claim; and (iii) all out-of-pocket costs incurred within five (5) days of receipt of such IP Claim by Subscriber and its Authorized Persons prior to tendering the defense of an IP Claim to Solo. For the avoidance of doubt, (1) any costs incurred beyond five (5) days after receipt will be at Subscriber's own cost and expense, and (2) Solo will not pay for any out-of-pocket costs incurred by Subscriber once the IP Claim is tendered to Solo.

8.2 Exclusions. Solo will have no obligation under Section 8.1 to the extent an IP Claim is based upon: (i) use of the Products or Solo Technology in combination with any product or service not supplied by Solo; (ii) any modification of a Product or Solo Technology not made by Solo or its authorized subcontractor; (iii) any configuration of a Product or Solo Technology to meet Subscriber's specifications; (iv) Subscriber's Confidential Information; (v) failure to install an update to a Product or Solo Technology if such update would have addressed the infringement issue, or (vi) use of a Product or Solo Technology other than in accordance with this Agreement.

8.3 IP Claim Remedies. Solo may at its sole expense and option: (i) obtain the right to continuing using the affected Product or Solo Technology; (ii) replace or modify the infringing technology with substantially equivalent functionality to avoid the infringement, or (iii) if neither (i) or (ii) are commercially practicable in Solo's reasonable opinion, terminate Subscriber's right to use the affected portion of the Product or Solo Technology and, upon Subscriber's written request, terminate all affected Order Forms and promptly refund to Subscriber all prepaid unused fees paid by Subscriber to Solo under such terminated Order Forms.

8.4 IP Claim Conditions. Subscriber must: (i) give Solo prompt notice of the IP Claim, provided that failure to do so will only relieve Solo of its obligation under this Section 8 to the extent Solo's ability to defend the IP Claim is materially prejudiced, (ii) grant Solo full and complete control over the defense and settlement of the IP Claim; provided that Solo will not enter into any settlement agreement that requires any admission of liability or affirmative obligation on the part of Subscriber other than the obligation to cease using the affected Product or Solo Technology unless Subscriber consents otherwise in writing, and (iii) provide reasonable assistance in connection with the defense and settlement of the IP Claim. Subscriber may participate in the defense of the IP Claim at Subscriber's own expense. This Section 8 states the entire liability and obligations of Solo, and exclusive remedy of Subscriber, for any actual or alleged infringement of any intellectual property right related to a Product, Support Services, Professional Services and/or Solo Technology.

## 9. LIMITATION OF LIABILITY

9.1 Indirect Damages Disclaimer. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, OR LOST PROFITS, LOST DATA, LOSS OF BUSINESS OR COSTS FOR SUBSTITUTE GOODS, OF ANY KIND, WHETHER BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE, ARISING OUT OF A PARTY'S PERFORMANCE WITH OR FAILURE TO PERFORM THIS AGREEMENT.

9.2 Direct Damages Cap. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR A PARTY'S (I) INDEMNIFICATION OBLIGATIONS OR (II) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL A PARTY'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID OR PAYABLE BY SUBSCRIBER UNDER THIS AGREEMENT FOR THE AFFECTED PRODUCTS, SUPPORT SERVICES, PROFESSIONAL SERVICES OR SOLO TECHNOLOGY UNDER SUCH ORDER FORM GIVING RISE TO THE LIABILITY FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM.

9.3 Allocation of Risk. THE ALLOCATIONS OF RISK IN THIS SECTION 9 REPRESENT THE PARTIES AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THESE ALLOCATIONS IS REFLECTED IN THE PRICING OF SOLO IN AN ORDER FORM. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER



APPLICABLE LAW EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

## 10. MISCELLANEOUS

10.1 Anti-Corruption and Compliance with Laws. Each party represents that it has not received any improper gift, bribe, kickback or payment from the other party in connection with this Agreement. Each party further agrees to comply with all applicable U.S. and foreign anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977 and U.K. Bribery Act of 2010, and similarly applicable anti-corruption and anti-bribery laws. Each party agrees to comply with all laws applicable to such party's performance of its obligations under this Agreement. Subscriber acknowledges that Subscriber is responsible for complying with laws applicable to its use of the Subscriptions and/or Professional Services.

10.2 Assignment. Any assignment of this Agreement by either party without the prior written consent of the other party will be null and void, except an assignment to an Affiliate that is able to satisfy the obligations of this Agreement or in connection with a merger or sale of all or substantially all of the assigning party's assets or stock, provided that Subscriber may not transfer this Agreement to an Affiliate or successor that is a competitor of Solo's without Solo's prior written consent. Subject to this Section, this Agreement will be binding upon and inure to the benefit for each party's respective permitted successors and assigns.

10.3 Competitor Access. Under no circumstance may a direct competitor of Solo access or use any Product, Support Services or Professional Services or be authorized as a Permitted Third Party without Solo's written consent, which may be withheld in Solo's sole discretion. Further, Subscriber and Authorized Persons may not access or use any Product, Support Services or Professional Services to compete with Solo.

10.4 Equal Employment Opportunity. Each party agrees that it is an equal-opportunity employer and does not discriminate on the basis of age, race, creed, color, religion, sex, sexual orientation, gender identity, national origin, disability, marital or veteran status, or any other basis that is prohibited by applicable law. Solo and Subscriber shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741-5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Additionally, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.

10.5 Export Compliance. The Products, Support Services, Professional Services and/or Solo Technology are subject to the export laws and regulations of the United States. Subscriber represents that, it is not located in, and will not export, re-export, access or use, or permit any Authorized Person to export, re-export, access or use, any Product, Support Services, Professional Services and/or Solo Technology in any U.S. embargoed country or region, or export, re-export, access or use any of the foregoing contrary to any U.S. export laws or regulations. Subscriber acknowledges that remote access may in certain circumstances be considered a re-export.

10.6 Force Majeure. Neither party will be liable for, or be considered to be in breach of, or in default, under this Agreement, as a result of any cause or condition beyond such party's reasonable control.

10.7 Governing Law, Jurisdiction and Venue. This Agreement will be governed by the laws of the State of New York, without regard to its conflict of laws principles. All suits hereunder will be brought solely in Federal Court for the Southern District of New York, or if that court lacks subject matter jurisdiction, in any New York State Court in New York, New York. The United Nations Convention for the International Sale of Goods does not apply to this Agreement. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable court set forth above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

10.8 Government Rights. If a software Product or Solo Technology is licensed under a U.S. government contract, Subscriber acknowledges that such is a "commercial item" as defined in 48 CFR 2.101 comprised of "commercial computer software" and "commercial computer software documentation." If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires a software Product and/or the Documentation, the same shall be subject to this Agreement, as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. Subscriber acknowledges that this U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in

computer software, computer software documentation or technical data related to any software Product under this Agreement and in any subcontract under which a software Product and Documentation are acquired or licensed.

10.9 Notices. Any notice shall be in writing unless required or permitted otherwise elsewhere in this Agreement. It is the desire of the parties to receive all notices via e-mail to the e-mail address set forth in the signature block of the Order Form, or if no Order Form exists, to the email address associated with the use of the Software. Such notices will be deemed delivered if acknowledged received by return e-mail, or, if an Order Form exists, if followed within one day by a mailed copy of such notice to the physical address specified as the bill-to on an applicable Order Form. Either party may from time to time change its address for notices by giving the other party notice of the change in accordance with this Section.

10.10 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement or any Order Form, including but not limited to Subscriber's Affiliates or Permitted Third Parties.

10.11 Publicity. Upon Subscriber's written consent, in each instance, Solo may identify Subscriber as a user of the Products, Support Services and/or Professional Services on its website, in marketing materials, through a press release or other promotional materials.

10.12 Relationship. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating an agency, partnership, joint venture or other form of joint enterprise or employment relationship between the parties.

10.13 Severability. If any provision of this Agreement is unenforceable, that provision will be modified to render it enforceable to the extent possible to give effect to the parties' intention and the remaining provisions will remain in full force and effect.

10.14 Non-waiver. Failure, neglect or delay by any party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement, and no waiver will be binding unless made in an express writing signed by the waiving party.

10.15 Entire Agreement. This Agreement, together with any Order Forms executed by the parties, and the Technical Support Policy, each of which is incorporated by reference, constitutes the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior proposals, understanding, agreements and communications between the parties, whether oral or written, regarding such subject matter, including any non-disclosure agreements. In the event of any conflicts between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) DPA, (ii) Order Form (but only for the transaction thereunder), (iii) an applicable Addendum, (iv) this Agreement, and (v) Technical Support Policy. Headings are provided for convenience only and will not be used to interpret the substance of this Agreement. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Subscriber issues any purchase orders or similar documents in connection with its purchase of Subscriptions or Professional Services, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms, which are hereby deemed rejected and extraneous to this Agreement. The parties may amend this Agreement only by a written amendment signed by both parties. To facilitate execution, this Agreement may be executed by one or more of the parties in the form of an "Electronic Record," as such term is defined in the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq. ("**ESIGN Act**"). This Agreement may be executed in as many counterparts as may be required to reflect all parties' agreement, all counterparts will collectively constitute a single agreement, and such "Electronic Signature," as defined in the ESIGN Act, will constitute an original and binding signature of a party. The fact that a document is in the form of an Electronic Record and/or is signed using an Electronic Signature will not, in and of itself, be grounds for invalidating such document. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations, and, therefore, the rule of construction that any ambiguity shall be applied against the drafter is not applicable and will not apply to this Agreement.

#### **ADDENDUM A: BUNDLED SOLUTION SUBSCRIPTION ADDENDUM TO THE MASTER RELATIONSHIP AGREEMENT**

This **Bundled Solution Subscription Addendum** ("**Bundled Solution Addendum**") is subject to, and hereby incorporated into, the Agreement to the extent Subscriber purchases of one or more Subscriptions for Software to offer a Bundled Solution (as defined below) to Subscriber's End Users (as defined below).

#### **1. DEFINITIONS**



1.1 **"Bundled Solution"** means an integrated solution, including the Software, distributed to End Users by Subscriber, and as described on an Order Form.

1.2 **"End User"** means an unaffiliated third party of Subscriber to whom Subscriber sells a Bundled Solution.

1.3 **"End User License Agreement"** means an end user license agreement between Subscriber and End Users for the Bundled Solution on terms determined by Subscriber, provided that such terms will be consistent with the terms of this Bundled Solution Addendum.

1.4 **"Non-Production Purposes"** means use of the Software to enable for any non-production purpose, including development, demonstration, trial, marketing, testing and training purposes; provided such use enables the integration and promotion of the Bundled Solution to End Users.

1.5 **"Territory"** means the world, except with respect to countries, territories or jurisdictions where the marketing, sale or distribution of the Software and/or Documentation and/or Support Services is prohibited by the applicable laws or regulations of the United States (including applicable export laws).

## 2. SOFTWARE LICENSE AND RESTRICTIONS

2.1 Appointment as a Solo Distributor. Subject to the terms and conditions of this Agreement, Solo hereby appoints Subscriber, for the Subscription Term stated on an applicable Order Form, as a non-exclusive distributor of the Software as part of the Bundled Solution and Documentation in the Territory. Subscriber may include Solo's technical and marketing information provided by Solo in marketing materials about the Bundled Solution to End Users to promote the sale and distribution of the Bundled Solution.

2.2 Bundled Solution License Grant. In the case where Subscriber is using the Software as part of a Bundled Solution, subject to the terms and conditions of this Agreement, including payment, Solo grants to Subscriber a limited, non-exclusive, non-transferable, fully paid up, right and license, during the Subscription Term, to (i) install and use, in object code format, the Software for Non-Production Purposes, (ii) use, and distribute the Software, in object code format, and associated Documentation, solely as part of the Bundled Solution; (iii) grant to each End User of the Bundled Solution subject to an End User License Agreement the right to use the Software, in object code format, solely as part of the Bundled Solution, (iv) prepare derivative works of the Documentation provided by Solo to Subscriber, for the purpose of creating documentation for the Bundled Solution, and (v) permit Authorized Persons to use the Software and Documentation as set forth in (i) and (ii) above, provided that such use by Authorized Persons must be solely for Subscriber's benefit. Subscriber's, and End Users', rights are subject to any scope, quantitative or usage limitations set forth in the applicable Order Form (**"Scope Limitations"**). Following execution of an applicable Order Form, Solo will deliver a license key to Subscriber to use the Software. The Software will be deemed to have been delivered to Subscriber upon provision of such license key, and the Software is deemed to be accepted by Subscriber upon delivery.

2.3 Use Restrictions. Except as expressly permitted by law, Subscriber shall not, and will not permit any Authorized Person or End User to: (i) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software or any portion thereof to human readable form, (ii) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted herein; (iii) except as expressly permitted in Section 2.2 of this Bundled Solution Addendum, transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party; (iv) circumvent the limitations on use of the Software that are imposed or preserved by any license key, (v) make available to any third party (including End Users) any analysis of the results of operation of the Software, including benchmarking results, without the prior written consent of Solo, (vi) use the Software in excess of the Scope Limitations; (vii) market, sell or otherwise distribute the Software other than as part of the Bundled Solution; or (viii) make any representation or warranty with respect to the Software or Support Services beyond those stated in this Agreement. Subscriber shall be responsible for all acts and omissions of End Users who use the Bundled Solution.

2.4 Marketing and Branding. Nothing herein shall be construed to limit Solo's ability to license and market any Product Product, either independently or in concert with other strategic partners, and likewise nothing herein shall be construed to limit Subscriber's ability to sell and market other products, either independently, or in concert with other strategic partners. Subscriber has no right to use the trade names, service marks and trademarks of Solo (collectively, the **"Solo Marks"**) in connection with the Bundled Solution other than where the Solo Marks are found in the Software.

## 3. SUPPORT SERVICES

3.1 Subscriber Support. Solo will provide Support Services to Subscriber for Subscriber's development use of the Software as part of the Bundled Solution in accordance with the Technical Support Policy

3.2 End User Support. Subscriber will provide support directly to End Users under the End User License Agreement. Solo will not provide Support Services to End Users.

#### 4. WARRANTIES

4.1 Subscriber Warranties. Subscriber warrants that it will: (i) avoid misleading or unethical business practices in representing the Bundled Solution; (ii) fairly and accurately represent the Software; and (iii) not violate any applicable laws in integrating the Software as part of the Bundled Solution.

4.2 Additional Solo Warranties. Solo warrants that at the time the Software is made available for download, it will be free of any Virus.

#### 5. REPORTING AND TRUE-UP

5.1 Excess Usage. Subscriber agrees to promptly notify Solo in writing as soon as Subscriber becomes aware of use of the Software in excess of any applicable Scope Limitations as indicated on an Order Form, and Subscriber agrees that Solo will invoice Subscriber for the difference in fees paid and the fees that should have been paid in accordance with the terms of the applicable Order Form and this Agreement. For clarity, such invoice may be issued after the expiration or termination of this Agreement.

5.2 Quarterly Reporting and True-Up. Every three (3) months during the Subscription Term, Subscriber shall provide Solo with a written report of its total volume usage to confirm Subscriber's usage is within the Scope Limitations stated on an applicable Order Form. To the extent Solo does not receive a confirmation of usage volume every three (2) months, Subscriber shall be deemed to be in material breach of this Agreement. If Subscriber's usage volume exceeds that stated on an applicable Order Form, Solo may invoice Subscriber for the excess usage in accordance with Section 4.1 of this Bundled Solution Addendum.

5.3 Termination and Expiration. Subscriber will immediately cease use of the Software upon termination or expiration of an applicable Order Form or this Agreement (to the extent termination of the Agreement terminates the applicable Order Form).

#### 6. SUBSCRIBER INDEMNIFICATION

6.1 Third Party Claims. Subscriber will, at Subscriber's expense, either defend Solo from or settle any claim, proceeding or suit brought by a third party against Solo and its Affiliates, and its and their respective employees, directors, officers, and/or licensors (collectively, the "**Solo Indemnitees**"), resulting from (i) the combination by Subscriber of the Software with products or services not supplied by Solo including the Bundled Solution, (ii) use of the Software in a manner not expressly authorized by Solo, (iii) unauthorized representations or warranties with respect to the Software, Documentation or Support Services beyond those contained in this Agreement, ("**Third Party Claim**"). Subscriber will indemnify Solo Indemnitees from and pay: (a) all damages, costs and attorneys' fees finally awarded against Solo Indemnitees to such third party to the extent resulting from such Third Party Claim; (b) any settlement amounts consented to by Subscriber in connection with such Third Party Claim; and (iii) all out-of-pocket costs incurred within five (5) days of receipt of such Third Party Claim by Solo Indemnitees prior to tendering the defense of a Third Party Claim to Subscriber. For the avoidance of doubt, (1) any costs incurred beyond five (5) days after receipt will be at Solo's own cost and expense, and (2) Subscriber will not pay for any out-of-pocket costs incurred by Solo once the Third Party Claim is tendered to Subscriber.

6.2 Indemnification Conditions. Solo must: (i) give Subscriber prompt notice of the Third Party Claim, provided that failure to do so will only relieve Subscriber of its obligation under this Section 6 to the extent Subscriber's ability to defend the Third Party Claim is materially prejudiced, (ii) grant Subscriber full and complete control over the defense and settlement over the Third Party Claim; provided that Subscriber will not enter into any settlement agreement that requires any admission of liability or affirmative obligation on the part of Solo unless Solo consents otherwise in writing, and (iii) provides reasonable assistance in connection with the defense and settlement of the Third Party Claim. Solo may participate in the defense of the Third Party Claim at Solo's own expense.