

MINIMUM TERMS AND CONDITIONS FOR END-USERS HAVING PURCHASED ACCEDIAN PRODUCTS THROUGH CHANNEL PARTNERS

IMPORTANT: READ THESE TERMS AND CONDITIONS (“**T&CS**”) BEFORE USING ACCEDIAN’S PRODUCTS. THESE T&CS APPLY TO ALL END-USER (“**END USER**”) WHO PURCHASED PRODUCTS (“**PRODUCTS**”) AND SERVICES OF ACCEDIAN NETWORKS INC. OR OF AN ACCEDIAN NETWORKS INC’S AFFILIATES (“**ACCEDIAN**”) THROUGH AN ACCEDIAN AUTHORIZED CHANNEL PARTNER (“**CHANNEL PARTNER**”). BY BUYING, ORDERING, ACCEPTING DELIVERY, KEEPING, OR USING PRODUCTS TO WHICH THESE T&CS ARE ATTACHED, INCLUDED OR REFERENCED, END USER AGREES TO SUCH T&CS. THESE T&CS MAY BE READ IN CONJUNCTION WITH ANY OTHER AGREEMENT BETWEEN CHANNEL PARTNER AND THE END USER (THE “**END USER AGREEMENT**”) PROVIDED BY THE CHANNEL PARTNER HOWEVER, IF THERE IS A CONFLICT BETWEEN THE PROVISIONS OF THESE T&CS AND ANY TERMS AND CONDITIONS PROVIDED THEN THE PROVISIONS OF THESE T&CS SHALL CONTROL.

For purposes of these T&Cs, capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Channel Partner Agreement between Accedian and Channel Partner.

1. DEFINITIONS

1.1. “Accedian Systems” means the information technology infrastructure used by or on behalf of Accedian in performing the Cloud Services, including all software, hardware, databases, electronic systems (including database management systems) and networks.

1.2. “Activation Date” means the date on which the Key is generated or a Feature is enabled by Accedian.

1.3. “Cloud Materials” means the Accedian Systems and any and all other information, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Accedian in connection with the Cloud Services or otherwise comprise or relate to the Cloud Services or Accedian Systems. Cloud Materials excludes Customer Systems.

1.4. “Cloud Services” means software-as-a-service solution of Accedian which is purchased by End User and further described in the Ordering Documentation.

1.5. “Customer Systems” means the End User’s information technology infrastructure, including software, hardware, databases, electronic systems (including database management systems) and

networks, whether operated directly by End User or through the use of third-party services.

1.6. “Documentation” means copies of all electronic or printed documentation, if any, provided to End User.

1.7. “Features” means the features of the Software or of the Cloud Services, that an End User may purchase including, but not limited to, objects, sessions, features, capture points, software instances or flow analysis.

1.8. “Key” has the meaning set forth in Subsection 4.2.

1.9. “License” means Perpetual License and/or Subscription License (as defined below).

1.10. “Ordering Documentation” means the applicable price quotation, relevant invoice, statement of work, sales order acknowledgement, and Documentation or specifications for the Products and services purchased, acquired or licensed hereunder from Accedian either directly or indirectly.

1.11. “Perpetual License” has the meaning set forth in Subsection 3.2.

1.12. “Subscription License” has the meaning set forth in Subsection 3.3.

2. RIGHTS TO THE HARDWARE AND LICENSE TO USE THE SOFTWARE

2.1. If purchased, transfer of title to the hardware passes to End User at the moment End User pays the purchase price for the hardware. If rented, Accedian retains the title to the hardware and the End User must return the hardware once the rental period has ended.

2.2. Unless and until End User has purchased the hardware, End User agrees to keep the hardware free and clear of all claims, liens, and encumbrances except those of Accedian and any act by End User, either voluntary or involuntary, purporting to create a claim, lien or encumbrance on the Product shall be void.

3. GRANT OF LICENSES

3.1. The End User may install and use the Software as permitted by the license type described below and specified in the Ordering Documentation.

3.2. *Perpetual.* To the extent that End User ordered Software and/or Cloud Services on a perpetual basis, Accedian hereby grants to End User a worldwide, non-sublicensable, perpetual, non-transferable and non-exclusive license to (i) use the object code version of the Software identified in the Ordering Documentation, and/or (ii) to access and use the Cloud Services (the “**Perpetual License**”). Unless otherwise agreed, the term of a Perpetual License is effective upon delivery of the Software to End User and remains in force in perpetuity or until terminated pursuant this Agreement, whichever is earlier.

3.3. *Subscription.* To the extent that End User ordered Software or Cloud Services on a subscription basis, Accedian hereby grants to End User a worldwide, non-sublicensable, non-transferable and non-exclusive

license to (i) use the Software identified in the Ordering Documentation, and/or (ii) to access and use the Cloud Services for the period of time set forth in the Ordering Documentation (the “**Subscription License**”). The applicable term and/or capacity limit of the license shall be specified in the Ordering Documentation. Unless otherwise agreed in the Ordering Documentation accepted by Accedian, the term of a Subscription License is effective from the Activation Date until the expiration date that corresponds to the end of the subscription period set forth in the Ordering Documentation or until terminated pursuant this Agreement, whichever is earlier.

3.4. Except as set forth herein, no license is hereby granted to End User in, and the License does not include: i) the human readable code of the Software (source code) and/or ii) the Key.

4. GENERAL LICENSE TERMS

4.1. End User is permitted to i) use the Product solely to analyze End User’s network traffic and detect application performance issues only in connection with End User’s internal business purpose or as otherwise contemplated in the Documentation (“**Customer’s Internal Business Purpose**”); and ii) use, copy, reproduce in whole or in part, adapt and modify any Documentation only for Customer’s Internal Business Purpose.

4.2. Accedian may deliver to End User a software license key enabling features of the Software (the “**Key**”). End User is responsible for the use of the Key assigned to them and shall not share the Key with anyone other than End User’s employees. End User acknowledges that the Key includes a disabling code which may be used by Accedian to disable the Software in case of non-compliance with this Agreement or with payment obligations, and which may cause the Key to automatically expire at a certain date, unless renewed by Accedian. If a Key expires or is disabled by Accedian, the Software may cease to function in some or all aspects and End User may lose access to data made with or stored using the Software.

4.3. Following its reasonable prior notice to End User, Accedian has the right, on a quarterly basis, to audit End User’s use of the Software or of the Cloud Services or require written certification, signed by an authorized representative of End User, to confirm that End User’s use of the Software or of the Cloud Services is in compliance with this Agreement and applicable laws and that the number of Features monitored or used by End User does not exceed the number of Features paid for by End User. End User shall provide all reasonable assistance and information to Accedian in relation to the audit and/or the written

certification. In the event that such audit reveals any use of the Software or of the Cloud Services by End User other than in full compliance, Accedian reserves the right to charge End User for all reasonable expenses related to such audit in addition to any other liabilities and overages applicable as a result of such non-compliance.

4.4. In addition, End User is wholly responsible for the compliance by any employee, consultant or other individual who benefits from the License.

5. EVALUATION LICENSES

5.1. Accedian may grant to End User a license to evaluate the Software and/or the Cloud Services for a limited period of time. If Accedian provides remote access to the Software or delivers the Software to End User for evaluation purposes only, the Software may be used by End User at no cost during the Evaluation Period (as defined below). The Software or Cloud Services can be activated using evaluation Software license key(s) (the “**Evaluation Keys**”). Unless otherwise set forth in the Ordering Documentation, End User acknowledges that Evaluation Keys expire after a 90 days period for all Products, after 15 days for Skylight sensor: on-premises and cloud Products, or any other period agreed to in writing by Accedian (the “**Evaluation Period**”). Accedian is not obligated to permit further use of the Software or the Cloud Services.

5.2. During the Evaluation Period, the Software and/or the Cloud Services is provided to End User "as is" without warranty of any kind, whether express, implied, statutory, or otherwise. ACCEDIAN AND ITS LICENSORS BEAR NO LIABILITY FOR ANY DAMAGES RESULTING FROM USE (OR ATTEMPTED USE) OF THE PRODUCT BEING EVALUATED THROUGHOUT THE EVALUATION PERIOD.

5.3. Accedian has no obligation to provide support to End User during the Evaluation Period.

6. PRODUCT SPECIFIC LICENSE TERMS

6.1. LICENSE TO USE THE SKYLIGHT ORCHESTRATOR, SKYLIGHT SENSOR, CONTROL SKYLIGHT PERFORMANCE ANALYTICS AND SKYLIGHT PERFORMANCE ANALYTICS: SLA PORTAL

6.1.1. Each License supports a limited number of Features. If End User wants to use the Software or the Cloud Services for a number of Features that exceeds the number of Features paid for, then End User may purchase additional Licenses.

6.2. TERMS SPECIFIC TO CLOUD SERVICES

6.2.1. Accedian has and will control the operation, provision, maintenance and management of the Cloud Materials.

6.2.2. End User has and will retain control over the operation, maintenance and management of, and all access to and use of, the End User Systems, and responsibility for all access to and use of the Cloud Services by any person or entity, including i) the results obtained from any use of the Cloud Services or Cloud Materials; and ii) the conclusions, decisions or actions based on such use.

6.2.3. End User has and will retain control and responsibility for any third party products, software, hardware or services which are linked to, configured or programmed for the Cloud Materials, even if Accedian approved or acknowledged such linking, programming or configuration.

6.2.4. Accedian reserves the right, in its sole discretion, to make any changes to the Cloud Services and the Cloud Materials that it deems necessary or useful, provided Accedian does not substantially reduce the functionality of the Cloud Services.

6.2.5. If the Cloud Services are purchased on a subscription basis, the Cloud Services fees include the hosting and support for the benefit of End User. If the Cloud Services are purchased on a perpetual basis, the Cloud support and hosting fees shall be charged separately from the Cloud Services fees.

6.3. TERMS SPECIFIC TO SKYLIGHT PERFORMANCE ANALYTICS: SLA PORTAL SOFTWARE

6.3.1. In order to access and use *Skylight performance analytics: SLA Portal Software*, End User may be required to register with Accedian and select a user name and password or otherwise activate *Skylight performance analytics: SLA Portal Software* for use (the “**Account Information**”). This Account Information shall be used only by End User and End User may not share or otherwise disclose End User’s Account Information to any other party. End User shall be responsible for the security, confidentiality and integrity of End User’s Account Information and for any authorized or unauthorized access and use of End User’s Account Information. End User agrees that Accedian may collect and use technical and related information regarding End User’s system and use of *Skylight performance analytics: SLA Portal Software*, including, without limitation, technical information about End User’s computer, system and application software, and peripherals, that is gathered periodically to facilitate and improve the provision of updates, support and other services (if any) related to the

Skylight performance analytics: SLA Portal Software and to verify compliance with this Agreement.

6.3.2. Should End User wish to use the geo-mapping feature available with *Skylight performance analytics: SLA Portal Software*, End User shall obtain a valid Google API Maps license key (the “**Google Key**”) and provide same to Accedian in order to enable the geo-mapping feature. It is understood that in no event shall Accedian be liable with respect to the use of the Google Key, nor to pay any charge or cost incurred to obtain and/or use the Google Key.

6.3.3. End User has the option to buy a License to use *Skylight performance analytics: SLA Portal Software* with a 30-day term (the “**30-day Skylight performance analytics: SLA Portal License**”). Such License is renewable on a monthly basis prior to its expiry by paying Accedian’s then applicable renewal fee. The 30-day Skylight performance analytics: SLA Portal License shall commence on the Activation Date and shall expire on the last day of the month of the Activation Date (by way of example, if the Activation Date is October 15, the 30-day Skylight performance analytics: SLA Portal License shall expire on October 31 and the 30-day price shall be prorated accordingly).

6.3.4. End User also has the option to buy a License to use *Skylight performance analytics: SLA Portal Software* with a 1-year term (the “**1-year Skylight performance analytics: SLA Portal License**”). Such License shall be renewable on a yearly basis prior to its expiry by paying Accedian’s then applicable renewal fee. The 1-year Skylight performance analytics: SLA Portal License shall commence on the Activation Date and shall expire on the last day of the year of the Activation Date (by way of example, if the Activation Date is October 15, the 1-year Skylight performance analytics: SLA Portal License shall expire on December 31 and the yearly price shall be prorated accordingly).

6.3.5. POs for 30-day and 1-year Skylight performance analytics: SLA Portal Licenses shall not be for less than a full calendar month.

6.4. TERMS SPECIFIC TO SKYLIGHT SENSOR: ON-PREMISES AND CLOUD

6.4.1. Each License supports a given number of either a set of exchanges between one client and one server for one application or a layer 7 transaction (“**Flow Analysis**”) performed by the Software within 1 minute (the “**Number of Flow Analyses**”). The Number of Flow Analyses must not exceed the number ordered and paid for. If the limit of authorized analyses is exceeded, the analyses made over the limit are not recorded in the database and an alert is sent to an administrator.

7. RESTRICTIONS

7.1. Except as otherwise provided herein or expressly agreed by Accedian, End User shall not, and will not allow a third party to: i) modify, translate or create derivative works based upon the Software; ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code (or underlying ideas, algorithms, structure or organization) from the Software, in whole or in part; iii) copy, clone, reproduce, republish, upload, post or transmit the Software in any way; iv) sell, lease, license, sublicense, assign, distribute or otherwise transfer or encumber by any means (including by lien, hypothecation or otherwise) in whole or in part the Software; v) use the Software for the purposes of competing with Accedian, including without limitation developing competitive intelligence; or vi) use the Software in or in association with safety critical applications such as, without limitation, medical systems, transport management systems, vehicle and power generation applications including but not limited to nuclear power applications.

8. RESTRICTIONS

8.1. Except as otherwise provided herein or expressly agreed by Accedian, End User shall not, and will not allow a third party to: i) modify, translate or create derivative works based upon the Software; ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code (or underlying ideas, algorithms, structure or organization) from the Software, in whole or in part; iii) copy, clone, reproduce, republish, upload, post or transmit the Software in any way; iv) sell, lease, license, sublicense, assign, distribute or otherwise transfer or encumber by any means (including by lien, hypothecation or otherwise) in whole or in part the Software; v) use the Software for the purposes of competing with Accedian, including without limitation developing competitive intelligence; or vi) use the Software in or in association with safety critical applications such as, without limitation, medical systems, transport management systems, vehicle and power generation applications including but not limited to nuclear power applications.

9. UNITED STATES GOVERNMENT END USERS

9.1. The Software and any other software covered under this Agreement is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government End Users acquire the Software with only those rights set forth therein. Any use,

modification, reproduction, release, performance, display or disclosure of the object code or the accompanying documentation by the U.S. government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the provisions hereof. Any technical data provided that is not covered by the above provisions is deemed to be "technical data" and "commercial items" pursuant to 48 C.F.R. 252.227-7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of 48 C.F.R. 252.227-7015(b).

10. WARRANTIES, SUPPORT AND RMA PROCESS

10.1. The provisions regarding the warranties, support services and RMA process are set out at <https://accedian.com/wp-content/uploads/2020/01/Warranties-Support-and-RMA-Process.pdf>.

11. LIMITATION OF LIABILITY

11.1. In this section 11, "Accedian" refers to Accedian, its employees, directors, officers, shareholders and/or agents.

11.2. REGARDLESS OF THE BASIS ON WHICH END USER IS ENTITLED TO CLAIM DAMAGES FROM ACCEDIAN (INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, MISREPRESENTATION OR OTHER CLAIM IN CONTRACT, TORT, STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY) ACCEDIAN'S ENTIRE LIABILITY TO END USER AND/OR ANY THIRD PARTY FOR THE TOTAL OF ALL CLAIMS, IN CONNECTION WITH THE PRODUCTS AND SERVICES, WILL NOT EXCEED THE LOWER OF I) THE AMOUNT OF ANY ACTUAL DIRECT DAMAGES OR II) THE AMOUNT PAID BY END USER FOR THE PURCHASE OF THE PRODUCTS AND/OR THE SERVICES PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES WITHIN THE LAST TWELVE MONTHS PRECEDING THE CLAIM. THE LIMIT DOES NOT APPLY TO ACCEDIAN'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY TS NEGLIGENCE.

11.3. EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER, UNDER NO CIRCUMSTANCES IS ACCEDIAN LIABLE TO END USER OR ANY THIRD PARTY FOR ANY OF THE FOLLOWING DAMAGES EVEN IF INFORMED OF THEIR POSSIBILITY: I) LOSS OF, OR DAMAGE TO, DATA; II) SPECIAL,

INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL LOSSES; OR III) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

12. INDEMNIFICATION

12.1. Accedian will defend or, at its option, settle any claim, action or proceeding brought against End User by a third party, relating only to the Product furnished by Accedian to End User and alleging that the Product infringes a United States or Canadian patent, copyright, trade secret (“**Infringement Claim**”). Accedian will indemnify End User against the direct damages and costs (excluding the costs of legal representation) finally awarded by a court against End User in any action or proceeding which results from the Infringement Claim.

12.2. If an Infringement Claim is made, Accedian is entitled, at its expense and in its sole discretion to i) replace the affected Product with a non-infringing functional equivalent; ii) modify the Product to avoid infringement; or iii) acquire for End User the right of continued use.

12.3. Accedian will not be liable under this Section 10 unless End User i) promptly notifies Accedian in writing of the Infringement Claim; ii) gives Accedian sole control to defend or settle the Infringement Claim; and iii) gives Accedian full authority, information and assistance in its defense against it.

12.4. End User is entitled, at its own expense, to engage separate counsel and participate in the defense of the Infringement Claim.

12.5. Accedian will not be liable for any Infringement Claim arising out of i) any information design, specification, instruction, data or material furnished by End User and incorporated in a deliverable by Accedian at End User’s request; or ii) the use or resale of an older or altered release of a Product if the infringement could have been avoided by the use or resale of a more current release; or (iii) the use of Product with any third party product or service including End User’s product and/or services; or (iv) any modification to the Product not made by Accedian.

12.6. End User will indemnify and hold Accedian, its directors, officers, employees, affiliated, subsidiary and parent companies harmless against all loss, damage, liability, cost or expense incurred by each, some or all of them in connection with End User’s acts or omissions including each claim, fine and liability in

connection with i) each loss or damage to property and/or of personal injury including death, which may be caused by End Users or others; ii) each loss or damage arising out of each representation or warranty that is inconsistent with and/or alters the scope of the representations and warranties set out in these T&Cs or the End User Agreement; iii) each breach, or violation, of any law, rule or regulation of any jurisdiction which may apply to End User’s obligations and undertakings under these T&Cs or the End User Agreement; and iv) each breach by End User of any of its obligations in these T&CS or the End User Agreement, including any representation, warranties or affirmations.

12.7. This section 12 sets out Accedian’s entire liability in connection with an Infringement Claim.

13. RIGHTS IN INTELLECTUAL PROPERTY

13.1. Accedian owns or has a license to all rights, title and interest in and to each Product and electronic or printed Documentation, if any, accompanying the Product provided to End User and the intellectual property in connection with each and all of them (the “**Accedian Property**”).

13.2. Other than the license rights set out herein, End User does not and shall not acquire any intellectual property rights in the Accedian Property.

13.3. End User will not alter or remove any proprietary markings including product identification, patent or serial numbers, labels, logos, trademark, copyright or other notices in or on the Product and/or Documentation.

14. COMPLIANCE WITH LAWS

14.1. End User agrees to comply with all applicable laws and regulations including the customs and export control laws and regulations and applicable anti-bribery legislation of Canada, the United States and the country in which the Products and/or Services are delivered or performed.