

SILVER PEAK EDGECONNECT END USER LICENSE AGREEMENT

This End User License Agreement (“Agreement”) is a legal agreement between you (“Customer”) and Silver Peak Systems, Inc. (“Company”) regarding your license of Silver Peak’s EdgeConnect software (the “Software”). By using the Software, you agree to be bound by the terms of this Agreement. **If you do not agree to the terms of this Agreement, do not use the Software.**

1. Definitions.

1.1 “Documentation” means any user instructions, manuals or other materials, and on-line help files regarding the use of the Software that are generally provided by Company in connection with the Software.

1.2 “Orchestrator” means Company’s software which provides a user interface for Customer’s management of its Software licenses and configuration of its installed instances of the Software. For the purposes of this Agreement, Orchestrator is part of the Software.

1.3 “Support” means Company’s maintenance and support of the Software as described at <https://www.silver-peak.com/support> and as updated from time to time.

1.4 “Managed Services” means the use of the Software to provide services to third-parties in conjunction with value-added products and services.

1.5 “Third-party Software” means third-party components, libraries, or modules and relevant documentation delivered with the Software.

1.6 “Update” means a commercially available release of the Software identified by a change to the version number to the right of the first decimal point (e.g., a change from x.1 to x.2), including any error corrections, patches and bug fixes. For the purposes of this Agreement, each Update is part of the Software.

1.7 “Upgrade” means a commercially available release of the Software identified by a change to the version number to the left of the first decimal point (e.g., a change from 8.x to 9.x). For the purposes of this Agreement, each Upgrade is part of the Software.

1.8 “Usage Data” means non-personal data used for the operation and improvement of the Software, including but not limited to: license state, feature utilization, resource usage, crash history, errors, and performance metrics.

2. Software.

2.1 In order to activate, configure and use the Software, Customer must first install Orchestrator in Customer’s computing environment and Company must create an account for Customer (an “Account”) which Customer may access through Orchestrator. Customer is responsible for maintaining the confidentiality of its Account credentials. Customer is responsible for all access, activities and charges associated with Customer’s Account, whether or not authorized by Customer, except for unauthorized access, activities and charges that can reasonably be determined to be the result of Company’s mistake, omission or negligence in providing sufficient safeguards against unauthorized third-party access to Customer’s Account. Customer must promptly notify Company of any unauthorized use of Customer’s Account.

2.2 Customer is responsible for obtaining and maintaining any equipment and ancillary services required for Customer to connect via the internet to Company through the Software, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance and local telephone service and internet connectivity. Customer understands and agrees that the Software requires such connectivity for license management and that Company receives and uses Usage Data as necessary for essential functions of the Software. Silver Peak shall be under no obligation to assign a Software license or allow network access to hardware appliances which were purchased or otherwise procured via a third party other than an authorized Silver Peak partner.

2.3 Subject to the terms and conditions of this Agreement, Company grants to Customer, Customer’s agent, a

personal, non-exclusive, non-sublicenseable and non-transferable license for the Term to (a) use the Software solely in binary form for Customer's own internal needs; and (b) use the Documentation in connection with the permitted use of the Software. All right, title and interest in and to the Software (including all modifications) and Documentation, and all intellectual property rights therein, will remain the sole property of Company, subject to the express licenses granted to Customer under this Section. The Software is licensed hereby, not sold.

2.4 Customer will not itself, or through any parent, subsidiary, affiliate, agent or other third-party: (a) sell, lease, license or sublicense the Software or the Documentation; (b) decompile, disassemble or reverse engineer the Software, in whole or in part, or otherwise attempt to derive source code, the underlying algorithms, ideas, structures or techniques from the Software (except that this limitation will not apply to the extent that such activities may not be prohibited under applicable law); (c) allow access to the Software by any entity or individual other than Customer's employees or authorized contractors; (d) write or develop any derivative software or any other software program based upon the Software or any Confidential Information; (e) use the Software to provide processing, evaluation, or testing services to third parties, or otherwise use the Software on a hosted basis, as a 'service bureau', or commercial test lab; (f) redistribute, provide, disclose, divulge, or make available to, or permit use of the Software by any Third-Party without Company's prior written consent; or (g) copy the Software.

2.5 Notwithstanding the license restrictions set forth in Section 2.4 above, if the right to operate Managed Services is indicated on an applicable order, Customer has the right to use the Software to operate Managed Services, subject to the Managed Services restrictions set forth in Section 5.3 below and any territory, use, or other restrictions set forth in such order.

3. Third-Party Software.

3.1 Customer understands and agrees that, although provided to Customer by Company with the Software, Customer's use of the Third-Party Software shall be and is governed by the relevant terms and conditions governing such use ("Third-party Licenses"). Such Third-Party Licenses are bundled with the Software and may be viewed by Customer at https://www.silver-peak.com/download/latest/Disclosure_licenses_VXOA.html, through Orchestrator, or through Customer's installed instances of the Software. Customer acknowledges and agrees that Customer has reviewed the terms of Third-party Licenses and that Customer agrees to be bound by the terms of such Third-party Licenses. In this regard, such Third-party Licenses may grant Customer greater rights of use with respect to such Third-Party Software than permitted under Section 2 of this Agreement with respect to the Software.

4. Maintenance and Support.

4.1 During the Term, Company will make Updates and Upgrades available for download. Customer is responsible for downloading and installing the Updates and Upgrades.

4.2 During the Term, Company will provide Customer with Support for the then-current Upgrade version of the Software and the then-immediately-preceding Upgrade version. By way of example only, if the current version of the Software is 8.4, Company will provide Customer with Support for all 8.x and 7.x versions.

5. Limited Warranty.

5.1 During the Term, Company warrants that the Software will perform in substantial compliance with the then-current specifications for the Software published by Company. The liability of Company for any non-compliance with such warranty shall be limited making Updates and Upgrades available for download.

5.2 EXCEPT AS SET FORTH ABOVE, COMPANY AND ITS LICENSORS AND SUPPLIERS MAKE NO WARRANTIES, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. COMPANY AND ITS LICENSORS AND SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SUCH SOFTWARE, DOCUMENTATION, MATERIALS AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

5.3 Customers authorized to provide Managed Services are subject to the following restrictions: (a) Customers must enter into an agreement with users of their services with terms that are at least as protective of Company as

are set forth in this Agreement, (b) Except for bona fide claims under Company's indemnification obligations for infringement as set forth in Section 6 below, Customers shall at their own expense, defend all suits or proceedings instituted against Company and pay any award or damages finally assessed against Company where such suits are related to Customer's Managed Services, and (c) Customers are prohibited from making any claims, assertions, or representations about the Company, Software, or other Company products.

6. Indemnification. Company agrees that it will, at its own expense, defend all suits or proceedings instituted against Customer and pay any award or damages finally assessed against Customer in such suits or proceedings, insofar as the same are based on any claim that the Software licensed under this Agreement constitutes an infringement in the United States of any United States patent, copyright or trademark; provided, however, that Customer gives immediate written notice to Company of the institution of the suit or proceedings, permits Company through its counsel to defend the same and gives Company all needed information, assistance and authority to enable Company to do so. Notwithstanding the foregoing, Company will not be responsible for, and the foregoing indemnity obligation shall not apply to: (i) infringement of any patent covering the use of the Software in combination with any other products, process, equipment or materials not furnished by Company; (ii) a use of the Software that is not its intended use; or (iii) any device, part, good or product specified by Customer. In case the Software furnished by Company is in such suit held in and of itself to constitute infringement and its use is enjoined, or in Company's opinion may be held to constitute infringement and its use possibly enjoined, Company, within a reasonable time, will, at its option, either: (A) secure for Customer the right to continue using the Software by suspension of the injunction, by procuring for the Customer a license, or by some other means; (B) at Company's own expense, replace the Software with non-infringing Software; or (C) terminate this Agreement, disable the Software, and refund to Customer the pro-rata portion of the license fees pre-paid by Customer attributable to the period after termination. THE FOREGOING STATES COMPANY'S ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE) WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

7. LIMITATION OF LIABILITY. COMPANY'S LIABILITY ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO A REFUND OF THE LICENSE FEES ACTUALLY PAID BY CUSTOMER, NET OF ANY DISTRIBUTOR OR RESELLER MARGINS. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT) WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF THIS AGREEMENT. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS AGAINST CUSTOMER AND ANY OF THE FOLLOWING LIABILITIES THAT MAY ARISE OUT OF CUSTOMER'S CONFIGURATION OR USE OF THE SOFTWARE: (i) LOSS OR CORRUPTION OF DATA, (ii) INABILITY TO ACCESS OR USE THE SOFTWARE, (iii) INABILITY TO ACCESS OR USE CUSTOMER'S NETWORKS AND COMMUNICATIONS SERVICES, (iv) PERFORMANCE RELATED LOSSES OR DELAYS, (v) LOSS OF BUSINESS DUE TO INOPERABILITY OR PERFORMANCE OF THE SOFTWARE, AND (vi) NON-DELIVERY, MIS-DELIVERY, LATE DELIVERY OR DEGRADATION OF QUALITY OF COMMUNICATIONS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. Confidentiality. Customer shall hold in the strictest confidence the Software and any related materials or information including, but not limited to, any technical data, research, product plans or know-how provided by Company to Customer, either directly or indirectly in writing, orally or by inspection of tangible objects ("Confidential Information"). Customer shall not disclose any Confidential Information to third-parties, including any of its employees who do not have a need to know such information and Customer shall take reasonable measures to protect the secrecy of, and to avoid disclosure and unauthorized use of the Confidential Information. Customer shall immediately notify Company in the event of an unauthorized or suspected use or disclosure of the Confidential Information. Notwithstanding the foregoing, Company has not agreed to and does not agree to treat as confidential any suggestions or ideas related to Company's products or services that are provided to Company by Customer ("Feedback"), and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Company's right to use, profit from, disclose, publish, or otherwise exploit any Feedback, without compensation to or permission from Customer.

9. Term and Termination.

9.1 This Agreement will commence on the date of Customer's first license of the Software and will remain in full force and effect (unless terminated earlier as provided below) for as long as Customer has any active subscription to the Software (the "Term").

9.2 This Agreement may be terminated by Company at any time upon written notice to Customer in any of the following circumstances: (i) for Customer's material breach of the Agreement, which material breach has remained uncured for a period of thirty (30) days from the date of written notice of such breach, (ii) for Customer's breach of its confidentiality obligations hereunder, (iii) an adjudication of bankruptcy of Customer under any bankruptcy or insolvency law or (iv) the appointment of a receiver for business or property of Customer or the making of any general assignment for the benefit of its creditors.

9.3 Sections 2.3, 2.4, 2.5, 3, and 5 through 10 inclusive of this Agreement will survive any expiration or termination of this Agreement.

10. Miscellaneous. This Agreement will be governed by and construed under the laws of the State of California without regard to its conflict of laws provisions. The federal and state courts in the Northern District of California will have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior discussions, proposals, and understandings between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless set forth in writing signed by officers of both parties hereto. Customer agrees not to export the Software in violation of the laws and regulations of the United States or any other nation. This Agreement may not be assigned by Customer, except to the surviving party in a merger of Customer into another entity or in an acquisition of all or substantially all of Customer's assets. An assignment by Customer authorized hereunder, will be not become effective except and until the assignee agrees in writing to be bound by all Customer's rights and obligations set forth in this agreement. If any provision of this Agreement is held to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights.

11. Notices. Any legal notices pursuant to this Agreement will be given in writing to the address below:

Silver Peak Systems, Inc.
Attention: Legal
Department
2860 De La Cruz Blvd.
Santa Clara, CA 95050