

ZENOSS, INC.
SAAS SUBSCRIPTION AGREEMENT

This Zenoss, Inc. SaaS Subscription Agreement (“Agreement”) is made by and between Zenoss, Inc. a Delaware corporation (“Zenoss”) and the undersigned customer (“Customer” or “you”). This Agreement and the corresponding Quote set forth the terms and conditions under which Customer may use and access the Service set forth in the Quote or in purchase orders provided to and accepted by Zenoss from time to time hereinafter in accordance with the Quote. The Quote shall reference and be governed by this Agreement.

Customer Contact & Notice Information.

	Customer	Zenoss
Customer Name		
Street Address		11305 Four Points Drive, Bldg. 1, Ste. 300
City, State & Postal Code		Austin, TX 78726
State of Incorporation		Delaware
Country		USA
Contact Person		
Phone		+1-512-687-6854
E-mail		contracts@zenoss.com

Zenoss, Inc.

(NAME OF CUSTOMER)

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ZENOSS, INC. SAAS SUBSCRIPTION AGREEMENT

TERMS AND CONDITIONS

1. Definitions

All terms that are used herein but not defined herein shall have the meaning given to such terms in the Agreement. Certain terms are defined in the DOSSS as referenced below in Section 5.2. The following terms shall have the following definitions:

“Content” means any material which Customer creates, submits, posts or displays on or through the Service.

“Customer” means the single end user entity (such as an LLC, corporation, organization or government agency) identified on the Quote, including internal divisions of that entity, but excluding any subsidiaries or other affiliates of the entity unless specifically identified on the Quote.

“Customer Account” means an account to which any Named User may use and access the Service and upload and store Content during the term of this Agreement.

"IP Address" means "Internet Protocol Address," which is a unique address used by Managed Resources to identify and communicate with each other on a computer network that uses the Internet Protocol (IP) standard.

“Named User” means an employee or other authorized representative of Customer to whom the Customer has provided authorized access to the Customer Account in accordance with the restrictions and other terms set forth in the Quote and in this Agreement.

"Regular Business Hours" means those hours set forth on the Zenoss web site as the regular support hours of Zenoss.

“Service” shall mean the web-based service listed on the Quote which Zenoss will make available to You through a designated website. The Service includes the Zenoss-designated website through which the You will access the Service and all Documentation. You acknowledge that, from time to time, without prior notice to You, the form and nature of the Service may change as Zenoss implements innovations or other changes.

“System” means the Zenoss server and its component(s) in use by you.

“URL” means a single web application which is hosted by you or on your behalf, which delivers services and/or information to users of the web application.

2. Subscription Fee; Taxes.

2.1 In exchange for your use of and access to the Service and Support, you must timely pay to Zenoss those fees described in the Quote (“Fees”). Fees: (a) for the initial term of your subscription to the Service, are due and payable immediately upon the execution of this Agreement; (b) for each renewal term, thirty days prior to the renewal term; and (c) in the event you increase the number of Managed Resources in excess of the Authorized Number of Managed Resources, within thirty days of any such increase. Fees for any renewal term shall be subject to change based on Zenoss’ then current pricing in effect. Fees for Services shall be paid in accordance with the fees and rates set forth in the applicable SOW. You shall pay all Zenoss invoices in full no later than thirty (30) calendar days from the date of invoice.

2.2 Customer will pay a late fee of one and half percent (1.5%) or at the highest amount permitted by applicable law (if lower) each month that a payment is late. Zenoss shall be entitled to recover from you all legal and collection costs (including reasonable attorney fees) incurred by Zenoss in connection with its enforcement of the payment provisions of this Agreement.

3. Term and Termination.

3.1 This Agreement shall commence on the Effective Date and continue for a one year period unless terminated earlier as set forth below. Thereafter, this Agreement, together with each order placed under this Agreement, shall renew for successive one-year renewal terms, unless either party provides written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term. Your use of the Service beyond any renewal date shall constitute your consent to a renewal of this Agreement, and any order placed under this Agreement, for an additional one (1) year term, and all Fees for such the renewal term shall be due and payable in accordance with this Agreement.

3.2 Zenoss may terminate this Agreement immediately in the event you: (a) fail to pay an invoice when due, (b) use the Service in a manner not authorized by this Agreement and the Quote; use the Service or Support in connection with Managed Resources in excess of the Authorized Number of Managed Resources (except to the minimum extent that the use of Managed Resources in excess of the Authorized Number of Managed Resources is expressly permitted in the Agreement), or (c) commit a material breach of this Agreement and fail to remedy that breach within thirty (30) days of receipt of written notice of material breach. You may terminate this Agreement in the event Zenoss commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of written notice of material breach.

3.3 Upon termination of this Agreement, you shall have no further right to (a) receive or use the Service, Support or other Services, (b) use the Service in any manner, or (c) receive further Upgrades under this Agreement. Upon termination, you must immediately cease use of the Service. Sections 2, 3, 5, 6, 8, 9, 11, 13 and 14.4 of this Agreement shall survive the termination of this Agreement for any reason.

4. Delivery. Subject to the terms and conditions of this Agreement and the applicable Quote, Zenoss shall provide you with access to the Service through a Zenoss designated website and shall include instructions regarding how to log in and access the Service through such website. Upon making this website available to you, you acknowledge and agree that the Service will be deemed to have been delivered to you.

5. Access to Service.

5.1 Access to Service. You are granted a limited, non-exclusive, non-transferable non-sublicenseable right during the applicable term specified on the Quote to access and use the Service in the quantities of Managed Resources authorized in the applicable Order Form ("**Authorized Quantity**"), and applicable Documentation solely for your internal business purposes. Upon request by Zenoss, and not more frequently than once per calendar quarter, You will produce an Managed Resources Usage Report and provide it to Zenoss in unaltered form. If the number of Managed Resources being managed by the Service is found to be more than the Authorized Quantity, You agrees to purchase the additional necessary Managed Resources capacity for a term ending co-terminus with the then-current Quote and at the same applicable pro-rated Service Fee.

5.2 The Description of Software, Support, and Services ("DOSSS"), as amended, applicable to any Order Form is incorporated into this Agreement.

5.3 Zenoss retains all ownership rights (including all copyrights and other intellectual property rights) in the Service, in any form, and You obtain only such rights as are explicitly granted in this Agreement. Zenoss reserves the right to deny access to any and all users who are in violation of the Authorized Quantity rights, and other terms outlined in the Quote. You are responsible for providing all equipment, services and connectivity necessary to access the Customer Account and the computer servers from which the Service is delivered, including (without limitation) a compatible computer with access to the Internet and payment of all fees associated with such access.

6. Proprietary Rights; Authority.

6.1 Ownership of the Service and Related Work Product. All title, ownership, and intellectual property rights in and to the Service, Deliverables and other intellectual property generated in performance of a SOW, and any other materials used in connection with this Agreement, including derivative works and any other work product created as part of this Agreement (including, without limitation, any changes thereto made at the suggestion of Customer) and any related documentation, including (without limitation) any copyrights, patents, trade secrets, computer code, programs, inventions, discoveries, know-how, methods, processes, designs, algorithms, formulae, patterns, and compilations ("**Proprietary Information**") are owned by Zenoss and its licensors, and nothing in this Agreement should be construed as transferring any aspects of such rights to You or any third party. Zenoss reserves any and all rights not expressly granted herein.

6.2 Content. Customer retains any copyright and any other rights Customer already holds in Content which Customer creates, submits, posts or displays on or through, the Service. By creating, submitting, posting or displaying such Content, Customer gives Zenoss a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute such Content on or through, the Service. The foregoing license is for the sole purpose of enabling Zenoss to provide or improve the Service, such as by (without limitation): (a) creating backup copies of Content; (b) enabling file sharing among Named Users; (c) transmitting Content over various public networks; and (d) making changes as necessary to conform and adapt Content to the technical requirements of connecting networks, devices or services. Customer confirms and warrants to Zenoss that Customer has all the rights, power and authority necessary to grant the above license.

6.3 Authority. Customer represents, warrants and covenants to Zenoss that: (a) Customer has and will maintain the full right and power to enter into and perform this Agreement without the further consent of any third party; and (b) neither Customer's entry into this Agreement nor Customer's or Zenoss' performance hereunder will conflict with any other contractual or other obligation which Customer may have to any other party. Customer shall defend, indemnify and hold Zenoss and its affiliates, and their respective directors, officers, employees, agents, representatives and contractors, harmless from any and all costs and

expenses that arise from a violation of the foregoing representation and warranty, including (without limitation) any third party claims and attorneys' fees.

6.4 Intellectual Property Rights. As stated in this Section, Zenoss shall own all right, title and interest in all Zenoss intellectual property provided to you under this Agreement or any Quote or SOW hereunder which includes without limitation any derivatives, improvements or modifications of Zenoss or your intellectual property developed, designed or discovered under this Agreement or any Quote or SOW issued hereunder. You agree to assign and does hereby assign to Zenoss all rights you may have or acquire in all such intellectual property. Zenoss shall have the exclusive right to apply for or register any patents, mask work rights, copyrights, and such other proprietary rights protections with respect thereto. You shall execute such documents, render such assistance, and take such other actions as Zenoss may reasonably request, at Zenoss' expense, to apply for, register, perfect, confirm and protect Zenoss' rights in any intellectual property hereunder. Without limiting the foregoing, Zenoss shall have the exclusive right to commercialize, prepare and sell products based upon, sublicense, prepare derivative works from, or otherwise use or exploit the intellectual property rights granted to Zenoss hereunder. Nothing in this Agreement shall be construed as to preclude Zenoss from developing, using, marketing or otherwise exploiting software programs or other materials that may be competitive with that prepared for you hereunder, irrespective of whether such programs are similar or related to the programs developed under this Agreement. Subject to the intellectual property ownership rights specified in the foregoing subsections, any technology developed pursuant to this Agreement or any Quote or SOW which is jointly created by the parties pursuant to this Agreement or created by you as a direct result of your activities relating to this Agreement or a Quote or SOW hereunder, shall be owned by Zenoss unless otherwise mutually agreed in the Quote or SOW covering the effort which led to the development of the technology. You hereby waive any and all moral rights, including without limitation any right to identification of authorship or limitation on subsequent modification that you (or its employees, agents, subcontractors or consultants) has or may have in the Service or Deliverables, and in any other intellectual property that is or becomes the property of Zenoss under this Section 8.

7. Conditions of Use and Other Limitations.

7.1 Conditions of Use. Customer is solely responsible for ensuring, and Customer represents, warrants and covenants to Zenoss, that at all times Customer and its respective Named Users have adequate rights to use the Content in the manner in which Customer and the Named Users actually use such Content; thus, every time a Named User uploads, downloads, copies, stores, displays, retrieves, modifies, distributes, shares or otherwise transmits or uses any Content in connection with the Service or the Account, or authorizes others to do any of those things, Customer represents, warrants and covenants to Zenoss that Customer has the right to do so. In addition, Customer represents, warrants and covenants to Zenoss that neither Customer nor any Named User will use the Service, the Customer Account or the Content: (a) for any purpose which is illegal or otherwise violates applicable local, state, national or international laws or regulations; (b) in a way that infringes, misappropriates or otherwise violates the privacy, copyright, patent, trade secret, trademark or other intellectual property, proprietary or personal rights of Zenoss or any third party; (c) for any spamming, chain letters or other use that may be disruptive, such as to the networks through which you access and use the Service; (d) in violation of any regulation, policy or procedure of any network through which you access and use the Service; (e) to access or attempt to access any Service, software, content or account for which Customer has no access authorization, or to duplicate, modify, distribute or display any of the content from any such account; or (f) to store, retrieve, transmit or view any Content that contains any illegal images, materials or information, any harassing, libelous, abusive, threatening or harmful material of any kind or nature, any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation, any code or material that violates the intellectual property rights of others, or any viruses, worms, "Trojan horses" or any other similar contaminating or destructive features. Customer agrees not to access (or attempt to access) or permit or encourage any third party to access (or attempt to access) any Content or other aspect of the Service or the Customer Account by any means other than through a designated URL provided by Zenoss.

7.2 Access Security. The Service is designed and intended to provide Named Users with personal, password-controlled access to the Content. Thus, without limiting the generality of any of the other conditions or restrictions set forth in this Agreement, neither Customer nor any Named User may directly or indirectly: (a) permit third party access, or take actions which result in access, or attempts to access, the Customer Account from more than one computer at any one time per Named User; (b) distribute or share any password with anyone; (c) permit anyone other than a Named User to access the Content; or (d) lease, license or otherwise charge others for use or access to the Customer Account or Content. Zenoss may use automated procedures and other means to detect violations of this Agreement, and may immediately disable and/or terminate offending Customer Accounts and/or Named Users. Zenoss is not responsible for interruptions that may result from any such disabling or termination.

7.3 Restrictions. Customer may not use the Customer Account or the Service for any purpose except as expressly permitted in this Agreement and the applicable Quote. Without limiting the generality of the foregoing limitation, Customer shall not and shall not allow others to: (a) copy (other than any permitted backup copy) or modify the Service; (b) reverse engineer, decompile, disassemble, derive the source code of, create derivative works from or otherwise exploit the Service (or any component thereof); (c) lease, license, use, make available or distribute all or any part of the Service to any third party; (d) distribute, sell, rent, lend, pledge, lease, sublicense, or otherwise, directly or indirectly, transfer rights or charge others for use of or access to the Service, whether directly or indirectly; (e) use the Service to operate in or as a time-sharing, outsourcing, service bureau,

application service provider or managed service provider environment; or (f) remove, modify or obscure any copyright, trademark or other proprietary rights notices which appear in or on the Service. Additionally, Customer agrees that it is responsible for any acts or omissions of its agents that access or use any component of the service, and Customer shall ensure that such agents comply with the terms of this Agreement. Zenoss reserves the right to monitor Customer's use of the Service to ensure compliance with this Agreement and to prevent fraudulent use. Customer may not make available a user name and password to a party that is not an Authorized User. Systematic access or extraction of content from the Service, including, but not limited to, the use of "bots" or "spiders" is prohibited. If such monitoring indicates Customer is not in compliance with this Agreement or if fraudulent activity is suspected, Zenoss reserves the right to take such action as it deems necessary, including, but not limited to, suspension or termination of the account.

8. Disclaimer of Warranties. THE SERVICE AND ANY RELATED, DOCUMENTATION, INFORMATION AND SUPPORT ARE PROVIDED TO YOU "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF THE SERVICE. ZENOSS AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, NON-INTERFERENCE AND/OR ACCURACY OF INFORMATIONAL CONTENT. ZENOSS AND ITS SUPPLIERS DO NOT WARRANT THAT THE SERVICE OR SUPPORT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED.

ZENOSS WILL NOT BE LIABLE FOR ANY LOSS OF INJURY ARISING OUT OF, IN WHOLE OR IN PART, ZENOSS CONDUCT IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING OR DELIVERING THE SERVICE OR INFORMATION RELATED TO THE SERVICE.

ANY THIRD PARTY SOFTWARE, INCLUDING ANY THIRD PARTY'S PLUG IN, THAT MAY BE PROVIDED WITH THE SERVICE IS INCLUDED FOR USE AT YOUR OPTION. IF YOU CHOOSE TO USE SUCH THIRD PARTY SOFTWARE, THEN SUCH USE SHALL BE GOVERNED BY SUCH THIRD PARTY'S LICENSE AGREEMENT. ZENOSS IS NOT RESPONSIBLE FOR ANY THIRD PARTY'S SOFTWARE AND SHALL HAVE NO LIABILITY FOR YOUR USE OF THIRD PARTY SOFTWARE.

9. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT SHALL ZENOSS OR ITS SUPPLIERS HAVE ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) ANY LOST PROFIT OR LOST SAVINGS (WHETHER RESULTING FROM IMPAIRED OR LOST DATA, SERVICE FAILURE, SOFTWARE OR COMPUTER FAILURE, SUPPORT FAILURE, OR ANY OTHER CAUSE), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE LIABILITY OF ZENOSS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT PAID TO ZENOSS BY YOU DURING THE PREVIOUS TWELVE MONTHS. ZENOSS SHALL HAVE NO LIABILITY FOR CUSTOMER'S PROVISION OF MSP SERVICES.

10. IP Assurance.

10.1 If an unaffiliated third party brings a legal action against you based on an IP Claim, Zenoss will pay: (i) counsel hired by Zenoss to defend the IP Claim; (ii) your reasonable and verifiable out of pocket expenses incurred directly by you in connection with Zenoss defending the IP Claim or and/or your assisting Zenoss in defending the IP Claim which have been approved in advance in writing by Zenoss (other than your hiring independent counsel); and (iii) any damages awarded by a court of competent jurisdiction (after any appeals) or any settlements of the IP Claim to which Zenoss consents. The foregoing obligations will only arise if you notify Zenoss in writing within ten (10) days of your receipt of the IP Claim, give Zenoss sole and exclusive control over its defense or settlement, and provide Zenoss reasonable assistance in defending the IP Claim, without prejudicing Zenoss in any manner. Nothing will prevent you from hiring your own independent counsel, at your own expense.

10.2 A court of competent jurisdiction issues a final, non-appealable finding (or Zenoss believes that such a finding is likely) that an IP Claim is valid, Zenoss will, at its expense and at its option: (i) obtain the rights necessary for you to continue to use the Software consistent with any agreement you have with Zenoss; (ii) modify the Software so that it is non-infringing; or (iii) replace the allegedly infringing portion of the Software with non-infringing code; provided that if Zenoss believes that none of the aforementioned options is commercially reasonable, Zenoss may terminate any agreement without further liability, and if you return the Software, Zenoss will refund all of your money paid in the then-current subscription year and all of your rights and licenses shall automatically terminate. As soon as you know or should have known of an IP Claim or of facts upon which an IP Claim might be based you must immediately cease using the allegedly infringing Software.

10.3 Zenoss will have no obligation or liability for IP Claims that arise from: (i) the combination of the Software with products or services not provided by Zenoss, if the infringement or misappropriation would not have occurred without the combined use; (ii) the modification of the Software by you or pursuant to your direction (other than at Zenoss' direction); (iii) the modification of the Software by Zenoss in accordance with your specifications, designs or instructions; (iv) Your distribution of the Software to, or its use for the benefit of, any third party; (v) Your use of the Software or any allegedly infringing portion of the Software after you know or should have known of an IP Claim; (vi) use of the Software in a manner not permitted or contemplated; (vii) your claim or lawsuit against a third party; or (viii) your use of a prior version of the Software if use of a more recent version that is generally available would not result in an infringement or misappropriation. Zenoss' liability shall be limited to one hundred twenty-five percent (125%) of the amount paid by you to Zenoss under any agreement during the previous twelve (12) months.

10.4 For purposes of this commitment, the terms "misappropriation" and "trade secret" will have the meanings defined in the Uniform Trade Secret Act.

11. Confidentiality.

11.1 During the term of this Agreement, and for two years following its termination, neither party shall disclose to any third party any information that is clearly marked as "Confidential" or identified in writing to the receiving party as confidential at the time of disclosure, or which would appear, to a reasonable person, to be of a confidential nature ("Confidential Information"). In protecting Confidential Information, a receiving party agrees to use the same care that it takes for its own confidential information. All Software, financial information, and other terms and conditions of this Agreement, are Confidential Information. Either party may disclose Confidential Information if (a) disclosures to legal and financial advisors as necessary; or (b) as required by governmental or judicial order. The disclosing party will notify the other party of the disclosure.

11.2 The non-disclosure obligations of Section 5.1 shall not apply if the information shall have: (a) first become generally known and published through no fault of the receiving party; (b) been learned by the receiving party from a third party; (c) been already known to the receiving party without violating this or any other confidentiality obligation; or (d) been developed by or for the receiving party, independent of activities under this Agreement. Further, the terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information.

11.3 Either party shall disclose any confidential information legally compelled or required by legal or regulatory process. Prior to any such disclosure, the receiving party shall immediately provide to the disclosing party written notice of that obligation so that the disclosing party may seek a protective order or other appropriate remedy or waive compliance by the receiving party with this clause. In the event that such protective order or other remedy is not obtained, or the disclosing party waives compliance with the provisions of this Agreement relating to the confidentiality and non-disclosure of the confidential information, the receiving party or its representatives may furnish only that portion of the confidential information which, in the opinion of its legal counsel, it is legally required to disclose, and in such case the receiving party shall exercise reasonable commercial efforts to obtain assurance that the confidential information to be disclosed is accorded appropriate confidential treatment.

12. Ownership; Destruction of Data. All Confidential Information shall remain the property of the Disclosing Party and shall be destroyed by the Receiving Party within two weeks upon written request. In addition, upon expiration of the Post-Termination Content Retrieval Period, each party shall promptly destroy all Confidential Information disclosed by the other party, and Zenoss shall promptly destroy all Confidential Information of Customer that may have been accessed, cached or otherwise stored by Zenoss in connection with the Service. The parties acknowledge that copies of Confidential Information deleted from a Receiving Party's systems may remain in a backup file until such system is overwritten.

12.1 Post-Termination Content Retrieval Period. During the Post-Termination Content Retrieval Period, Zenoss may provide Customer with limited access to the Customer Account to permit Named Users to retrieve or delete Content (but not to change or add to existing Content), provided that all fees due and owing to Zenoss have been paid and the Agreement was not terminated by Zenoss for failure to pay or otherwise cure a material breach. Content is account-specific; hence, purchasing a subscription to a new Customer Account will not enable a Customer or a Named User to access Content stored in a different Customer Account.

13. Automatic Reporting. You acknowledge and agree that certain Zenoss products contain features that report, or permit users to report, the user's usage patterns and problems - whether caused by the Service, third party software, or third-party websites - to Zenoss. The reports generated by these features typically include non-personally-identifying information such as the configuration of the user's computer and the code running at the time a problem or communication occurred, and the number and type of Managed Resources being managed by the Service ("Operational Data"). Some of these features give users the option of providing personally-identifying information, though none of these features require it. For example, Zenoss software and/or the Service may include a "call home" feature that automatically and periodically checks the Zenoss website for available software updates. Zenoss analyzes the information provided by these interactive product features to develop a better understanding of how its products are performing and being used, and to protect its intellectual property. Upon Zenoss' written request, you will provide Zenoss with

Operational Data that cannot be collected automatically through the Service, by running a Report and submitting it to Zenoss within fifteen (15) days of the request.

14. Miscellaneous.

14.1 Interpretation; Severability; Survival. The headings used in this Agreement are for convenience only and shall in no case be considered in construing this Agreement. If any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

14.2 Assignment. Customer may not assign this Agreement or its rights or obligations under this Agreement to any person or party, whether by operation of law or otherwise, without Zenoss' prior consent. Any attempt by Customer to assign this Agreement without Zenoss' prior consent shall be null and void.

14.3 No Waiver; Limitations. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy. To the extent permitted by applicable law, no action, regardless of form, arising out of this Agreement may be brought by Customer more than one (1) year after the cause of action has accrued.

14.4 Governing Law, Disputes. This Agreement shall be governed by and interpreted under the laws of England, as applicable, without giving effect to any conflicts of law principles that would require the application of the law of a different jurisdiction. The parties expressly and irrevocably disclaim and waive the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Act. To the extent permitted by law, each party waives the right to a trial by jury in respect of any litigation arising out of or related to this Agreement or the parties' activities in connection with this Agreement. In the event one or more of the terms of this Agreement are adjudicated invalid, illegal, or unenforceable, the adjudicating body may either interpret this Agreement as if such terms had not been included, or may reform such terms to the limited extent necessary to make them valid, legal or enforceable, consistent with the economic and legal incentives underlying the Agreement.

14.5 Disputes, International Arbitration.

a. General. Except as contemplated under Section 14.5(d), any controversy or claim arising out of or relating to this Agreement or the existence, validity, breach or termination thereof, whether during or after its term, will be finally settled by compulsory arbitration in accordance with the Commercial Arbitration Rules and Supplementary Procedures for International Commercial Arbitration of the American Arbitration Association ("AAA"), as modified or supplemented under this Section 24; provided, however, that in the event of any such controversy or claim, (i) neither party will initiate arbitration within the first 30 days after the aggrieved party first notifies the other party of the controversy or claim and (ii) during such 30-day period, the chief executive officers or other executives so appointed of both parties convene at least once in London, England, to endeavor in good faith to amicably resolve the controversy or claim.

b. Proceeding. To initiate arbitration, either party will file the appropriate notice at the Regional Office of the AAA in London, England. The arbitration proceeding will take place during a period not exceeding 30 days in London, England, and will be conducted in the English language. The arbitration panel will consist of 3 arbitrators, one arbitrator appointed by each party and a third neutral arbitrator appointed by the AAA. Any communication between a party and any arbitrator will be directed to the AAA for transmittal to the arbitrator. The parties expressly agree that the arbitrators will be empowered to, at Zenoss' request, (i) issue an interim order or award requiring Licensor to cease using the Products or Information pending the outcome of the arbitration or (ii) grant injunctive relief.

c. Award. The arbitral award will be the exclusive remedy of the parties for all claims, counterclaims, issues or accountings presented or plead to the arbitrators. The award will (i) be granted and paid in Euros exclusive of any tax, deduction or offset and (ii) include interest from the date of breach or other violation of the Agreement until the award is fully paid, computed at the then-prevailing LIBOR rate. Judgment upon the arbitral award may be entered in any court that has jurisdiction thereof. Any additional costs, fees or expenses incurred in enforcing the arbitral award will be charged against the party that resists its enforcement.

d. Legal Actions. Nothing in this Section will prevent Zenoss from seeking injunctive relief against Customer or filing legal actions for payment of outstanding and past due debts.

14.6 Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent required or permitted under this Agreement shall be in writing and delivered to the other party's address on the Quote. Notice shall be deemed to have been received by a party: (a) on the day sent, if sent by confirmed facsimile transmission; or (b) otherwise on the day received. Either party may change its address for notice purposes upon issuance of notice thereof in accordance with this Section.

14.7 Independent Contractors. The parties are independent contractors with respect to one another. Nothing in this Agreement shall create a partnership, joint venture, agency, or employment relationship between the parties.

14.8 Export Law Assurances. Customer acknowledges that the Software may be subject to U.S. and/or Canadian export and import control laws, and agree to comply fully with those laws in connection with the Software, including "anti-boycott", "deemed export" and "deemed re-export" regulations. Customer will not, and have not, acquired, shipped, transferred, or re-exported, directly or indirectly, the Software to proscribed or embargoed countries or their nationals, or to the People's Republic

of China or Russia, nor will it be used for: nuclear activities, chemical or biological weapons, or missile projects unless authorized by the U.S. government. Customer hereby certify that Customer are not prohibited by the U.S. government from participating in export or re-export transactions.

14.9 Force Majeure. Except for performance of a payment obligation, neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any causes beyond the reasonable control of that party.

14.10 Entire Agreement. This Agreement comprises an entire agreement and supersedes all previous agreements. The Agreement may only be modified in writing by agreement of both parties. The Agreement may be signed in counterparts.