

Zenoss Cloud End User License Agreement

This Zenoss Cloud EULA is between Zenoss and the person who has placed an order for a Zenoss Cloud Service license with a Zenoss authorized Reseller.

You may not have access to the Zenoss Cloud Service or Software unless you indicate your acceptance of this Zenoss Cloud EULA, either by clicking “accept” on the Web page where this Zenoss Cloud EULA appears, or following other signing instructions provided by the Reseller. If the terms of this Zenoss Cloud EULA are not acceptable to you, you may cancel your order for the Zenoss Cloud Service or Software license that you placed with the Reseller and receive a refund of any license fee paid. This Zenoss Cloud EULA applies in addition to any terms and conditions applicable to software in the agreement between you and the Reseller. If there is a conflict between the terms of this Zenoss Cloud EULA and your agreement with Reseller, this Zenoss Cloud EULA will control.

If the individual accepting this Zenoss Cloud EULA does so on behalf of a legal entity, then the individual represents and warrants to Zenoss that he or she has the authority to legally bind that entity to this Zenoss Cloud EULA. The Service and license stated below extends only to the entity that is a party to this Zenoss Cloud EULA and not to that entity’s affiliates.

The Description of Software, Support, and Services (“DOSSS”), as amended, applicable to any Order is incorporated into this Agreement and can be found at the following [URL address: www.zenoss.com/contracts](http://www.zenoss.com/contracts). The Order or Order Form is the written order you submit to Reseller that lists the Service or License Products you intend to purchase and any support plan, and any related fees, use limitations, and other transactions terms.

1. Access. You are granted a limited, non-exclusive, non-transferable non-sublicenseable right during the applicable term specified on the Quote/Order Form to access and use the Service in the quantities of Managed Resources authorized in the applicable Order Form (“Authorized Quantity”) and in accordance with the applicable license tier set forth in the Quote/Order Form, 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 or the license tier being managed by the Service is found to be more than the Authorized Quantity or exceeding the license tier, You agree to purchase the additional necessary Managed Resources or license tier capacity for a term ending co-terminus with the then-current Quote/Order Form and at the same applicable pro-rated Service Fee. You are not authorized to resell, distribute, or transfer access to the Services to any third party.

Your use is a subscription license having an initial term as stated in the Order or, if no term is stated in the Order, one year. On expiration of the initial subscription license term, your license will automatically renew for consecutive renewal terms of one year each until either you, the Reseller or Zenoss gives a written notice of non-renewal at least thirty (30) days prior to the expiration of the initial term, or the then current renewal term, as applicable, provided that if your Order or Order Form states different renewal terms, the Order or Order Form will control. You may not transfer or sublicense the Services to, or make the Services available for use by, any person except your employees and your permitted contractors as described in Section 9 (Assignment, Contractors). Your license is non-exclusive and worldwide, subject to applicable export laws. You may not modify the Software or create any derivative works of the Software. You may not reverse engineer, disassemble or de-compile the Services or Software except as permitted by applicable law notwithstanding this restriction, and then on advance written notice to Zenoss of at least 30 days. You may not publish any benchmark or other performance test results regarding the Services. You may not remove any copyright, trademark, or other proprietary notices that appear on or with the Services or Software. Except for the software extensions published by the Zenoss Community under an open source license as “Community

ZenPacks,” you may not use the Software or any part of the Software with any software published by the Zenoss Community. You may not use third party software or manipulate the Services or Software database for the purpose of reducing the license fees due. The Services includes software that is licensed under open source licenses. License terms, notices, attributions and other information about the open source elements of the Software or Services are available in the licensing file distributed with the Software. If there is a conflict between this Zenoss Cloud EULA and any open source license for software included in the Services, the open source license will control. If you have been provided access the Services or Software for use on a “test,” “evaluation,” “lab,” “NFR,” “proof of concept,” “temporary” or similar basis, then your license term is as stated in the written authorization for such use, or if no term is stated, 30 days from the day the Services or Software is provided to you, and you may use the Software only in a non-production environment for the purpose of evaluating the Services or Software for a production license.

2. Professional Services. If you elect to purchase Professional Services from Zenoss or the Reseller and the Professional Services include the creation or delivery of Deliverables, then you agree that, unless otherwise expressly stated in a written agreement signed by you and Zenoss, Zenoss owns all rights in intellectual property in Deliverables, whether created by you, Zenoss, or the Reseller, excluding only Your Data and IP. You hereby assign your rights in Deliverables, excluding Your Data and IP, to Zenoss and agree that you will take all actions reasonably requested by Zenoss to evidence or perfect its rights in the Deliverables. You grant Zenoss a power of attorney to take any actions on your behalf that are required by this Section. Unless otherwise expressly stated in a written agreement signed by you and Zenoss, you are licensed to use Deliverables on the license terms applicable to the Software under this Zenoss Cloud EULA.

3. Termination. This Zenoss Cloud EULA terminates automatically if you violate any license restriction stated in Section 1 (Access). Zenoss may terminate this Zenoss Cloud EULA on written notice if you violate any term of this Zenoss Cloud EULA other than the terms stated in Section 1 (Access), and you do not cure the failure within thirty (30) days of the notice. In addition, if you have purchased a subscription license, Zenoss may terminate this Zenoss Cloud EULA on thirty (30) days’ notice if you violate the terms of any Order for Support or Services related to your subscription license, including failing to pay fees when due to Zenoss or the Reseller, and do not cure the failure within thirty (30) days of the notice. On termination of this Zenoss Cloud EULA your license to access and use the Services to monitor your system elements terminates. Within two (2) business days of termination of this Zenoss Cloud EULA you must run a final Managed Resources Usage Report as described in the Section 1 above, cease continued access to the Service and uninstall any Software from your systems, and destroy or render unusable all copies of the Software. On Zenoss’ request, you will certify in writing that you have complied with this Section. Sections 4-10 will survive expiration or termination of this Zenoss Cloud EULA and any Support Plan or Professional Services engagement.

4. Warranty and Warranty Disclaimers.

Zenoss warrants that it will provide Support and Professional Services in a good and professional manner. As between you and Zenoss, Zenoss makes no other representation or warranty regarding the Services, Software, Support or Professional Services and each of them are provided AS IS WITH ALL FAULTS. Zenoss does not warrant that your use of the Services or Software will be error free, uninterrupted or completely secure. Zenoss disclaims any implied or statutory warranties, such as a warranty of merchantability, fitness for a particular purpose, lack of malware, and non-infringement, and disclaims any warranty that may arise from a course of dealing.

5. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT SHALL ZENOSS, RESELLER, OR THEIR RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR HARM YOU SUFFER THAT COULD HAVE BEEN AVOIDED BY YOUR REASONABLY PROMPT IMPLEMENTATION OF A MAINTENANCE

RELEASE, OR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFIT OR LOST SAVINGS (WHETHER RESULTING FROM IMPAIRED OR LOST DATA, 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 AGGREGATE LIABILITY OF ZENOSS, RESELLER AND ANY OF THEIR RESPECTIVE LICENSORS OR SUPPLIERS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT PAID FOR THE LICENSES OR SERVICES GIVING RISE TO THE CLAIM DURING THE TWELVE MONTHS PRECEEDING THE CLAIM.

6. Proprietary Rights.

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 Zenoss Cloud EULA, including derivative works and any other work product created as part of this Zenoss Cloud EULA (including, without limitation, any changes thereto made at your suggestion) 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 Zenoss Cloud EULA 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. You retains any copyright and any other rights you already hold in Content which creates, submits, posts or displays on or through, the Service. By creating, submitting, posting or displaying such Content, you give Zenoss an 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. You confirm and warrant to Zenoss that you have all the rights, power and authority necessary to grant the above license.

6.3 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 Zenoss Cloud EULA or any Quote/Order Form or SOW hereunder which includes without limitation any derivatives, improvements or modifications of Zenoss or your intellectual property developed, designed or discovered under this Zenoss Cloud EULA or any Quote/Order Form 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. Nothing in this Zenoss Cloud EULA 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 Zenoss Cloud EULA.

7. Conditions of Use and Other Limitations.

7.1 Conditions of Use. You are solely responsible for ensuring, and you represent, warrant and covenant to Zenoss, that at all times you and your respective Named Users have adequate rights to use the Content in the

manner in which you 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, you represent, warrant and covenant to Zenoss that you have the right to do so. In addition, you represent, warrant and covenant to Zenoss that neither you nor any Named User will use the Service 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 you have 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. You agree 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 you 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 Zenoss Cloud EULA, 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. You may not use the customer account or the Service for any purpose except as expressly permitted in this Zenoss Cloud EULA and the applicable Quote/Order Form. Without limiting the generality of the foregoing limitation, you 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, you agree that it is responsible for any acts or omissions of its agents that access or use any component of the service, and you shall ensure that such agents comply with the terms of this Zenoss Cloud EULA. Zenoss reserves the right to monitor your use of the Service to ensure compliance with this Zenoss Cloud EULA and to prevent fraudulent use. You may not make available a user name and password to a party that is not an authorized Named 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 you are not in compliance with this Zenoss Cloud EULA 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. Confidential Information.

8.1 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 Services, 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.

8.2 The non-disclosure obligations of Section 8.1 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.

8.3 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.

9. Assignment, Contractors. You may not assign this Zenoss Cloud EULA or sublicense the access to the Services or Software without Zenoss’ prior written consent. The warranties stated above are for your benefit only, notwithstanding Zenoss consent to an assignment or sublicense. You may not allow any person to use the Software other than: (i) your employees and individual contractors acting under your direct supervision, and (ii) the personnel of outsourcers who are performing an internal business function for you and on the condition that the outsourcer has expressly agreed that its access to the Services or use of the Software is subject to this Zenoss Cloud EULA. You remain responsible your contractors and outsourcers’ use of the Services or Software in violation of the terms of this Zenoss Cloud EULA.

10. General. Except for the license rights expressly granted in this Zenoss Cloud EULA, Zenoss reserves all rights in the Software and its other intellectual property. If you are a government agency, you acknowledge that the Services and Software has been developed at private expense and is provided with RESTRICTED RIGHTS. The parties confirm that they have requested that this agreement be drafted in English. (Les parties contractantes confirment qu’elles ont exigé que le présent contrat et tout les documents associés soient rédigés en anglais.) Any notices under this Zenoss Cloud EULA must be given in English. You may not use or transfer the Services or Software in violation of applicable law or regulation, such as export law and regulation. The term “person” refers to any legal person, and may mean a natural person (individual), a legally created person (such as an entity, trustee, or executor), or an entity (such as a corporation, partnership, or limited liability company). The use of the word “including” shall be read to

mean "including, without limitation." All references to monetary amounts shall mean United States Dollars unless otherwise indicated. The term "parties," either in lower- or upper-case form, refers to Zenoss and the person who accepts this Zenoss Cloud EULA. A reference to "day" shall mean a calendar day, unless expressly designated as a "business" day. The following definitions are herein used within this Zenoss Cloud EULA: "Content" means any material which Customer creates, submits, posts or displays on or through the Service. "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 Zenoss Cloud EULA. "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/Order Form and in this Zenoss Cloud EULA. "Service" shall mean the web-based service listed on the Quote/Order Form 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. Any requirement in this Zenoss Cloud EULA that a statement be written, in writing, or a like requirement is satisfied by an email or other digital form of writing unless expressly stated otherwise. Nouns stated in the singular shall imply the plural as indicated by the context, and pronouns that are gender specific shall be read to refer to either gender. The Section captions in this Zenoss Cloud EULA are for convenience only; they are not part of this Zenoss Cloud EULA and may not be used to interpret the terms of this Zenoss Cloud EULA. In the event one or more of the terms of this Zenoss Cloud EULA are adjudicated invalid, illegal, or unenforceable, the adjudicating body may either interpret this Zenoss Cloud EULA 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 Zenoss Cloud EULA. This Zenoss Cloud EULA may be modified only by a written document that expressly refers to this Zenoss Cloud EULA and is signed by the parties. No right or remedy arising in connection with this Zenoss Cloud EULA shall be waived by a course of dealing between the parties, or a party's delay in exercising the right or remedy. A party may waive a right or remedy only by signing a written document that expressly identifies the right or remedy waived. Unless expressly stated in the waiver, a waiver of any right or remedy on one occasion will not be deemed a waiver of that right or remedy on any other occasion, or a waiver of any other right or remedy. The pre-printed terms on the parties' purchase orders or other business forms shall have no effect whatsoever. There are no third-party beneficiaries to this Zenoss Cloud EULA. This Zenoss Cloud EULA will be governed by the laws of Texas and United States of America, as applicable. Exclusive venue for an action arising under or in connection with this EULA shall be in Travis County, Texas. This Zenoss Cloud EULA is the complete and exclusive agreement between the parties regarding its subject matter and supersedes and replaces in its entirety any prior or contemporaneous agreement or understanding regarding the subject matter of this Zenoss Cloud EULA, written or oral.