OpenNMS Meridian™ Enterprise Agreement

License Agreement

Version 1.1
August 1, 2016

IMPORTANT—READ CAREFULLY: BY DOWNLOADING, PURCHASING, INSTALLING, OR USING SOFTWARE or SERVICES FROM THE OPENNMS GROUP, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE ENTITY TO THIS AGREEMENT, IN WHICH CASE "YOU" WILL MEAN THE ENTITY YOU REPRESENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT DOWNLOAD, INSTALL, OR USE OPENNMS GROUP SOFTWARE OR SERVICES. This agreement incorporates appendices at the end of this Agreement.

This OpenNMS Meridian Agreement, including all referenced appendices and documents is between The OpenNMS Group, Inc. (OpenNMS) and the purchaser or user of Meridian software and services who accepts the terms of the Agreement ("Client"). The effective date of this Agreement (Effective Date) is the earlier of the date that the Client signs or accepts this Agreement or the date that the Client uses OpenNMS Group's software or services.

1. Scope of Agreement

1.1. **Framework.** This Agreement establishes a framework that will enable OpenNMS® to provide Software and Services to Client. "Software" means OpenNMS Meridian™, OpenNMS Horizon™ and other software programs branded by OpenNMS, its Affiliates and/or third parties including all modifications, additions or further enhancements delivered by OpenNMS. The specific services (the "Services") and/or Software that OpenNMS will provide to Client will be described in an Order Form, signed by the parties or otherwise accepted by OpenNMS, which may consist of (a) one or more mutually agreed order forms, statements of work, work orders or similar transaction documents, or (b) an order placed by Client through OpenNMS' online store accessible from an OpenNMS website. The parties agree that the terms of this Agreement will govern all purchases and use by Client of Software and Services unless otherwise agreed by the parties in writing.

1.2. **Affiliates.** OpenNMS and Client agree that Affiliates of Client may acquire Software and Services from OpenNMS or its Affiliates by entering an Order Form with OpenNMS (or an OpenNMS Affiliate) that incorporates the terms and conditions of this Agreement. The parties acknowledge that adjustments to the terms of this Agreement may be made in a particular Order Form (for example, to address disparate tax and/ or legal regimes in other geographic regions). "Affiliate" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "control" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.3. **Business Partners.** OpenNMS has entered into agreements with other organizations ("Business Partners") to promote, market and support certain Software and Services. When Client purchases Software and Services through a Business Partner, OpenNMS confirms that it is responsible for providing the Software and Services to Client under the terms of this Agreement. OpenNMS is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Client, or (c) any products or services that Business Partners supply to Client under any separate agreements between a Business Partner and Client.

2.   Obligations of the Parties

2.1.   On-Site Obligations. If OpenNMS personnel are working on Client's premises (a) Client will provide a safe and secure working environment for OpenNMS personnel, and (b) OpenNMS will comply with all reasonable workplace safety and security standards and policies, applicable to Client's employees, of which OpenNMS is notified in writing by Client in advance.

2.2.   Changes to Work and Delays. Changes to the Services will be made only through a written change order signed by both parties. In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect OpenNMS' ability to perform its obligations under an Order Form, OpenNMS will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services.

2.3.   Assistance. Client may provide OpenNMS access to Client information, systems, and software ("Client Information"), and resources such as workspace, network access, and telephone connections as reasonably required by OpenNMS in order to provide the Services. Client understands and agrees that (a) the completeness, accuracy of, and extent of access to, any Client Information provided to OpenNMS may affect OpenNMS' ability to provide Services, and (b) if reasonable access to Client Information is not provided, OpenNMS will be relieved from providing any Services dependent upon such access. Client will obtain any third party consents necessary to grant OpenNMS access to the Client Information that is subject to the proprietary rights of, or controlled by, any third party, or which is subject to any other form of restriction upon disclosure.

3.   Payment

3.1.   Fees and Expenses. Fees for the Services (the "Fees") will be identified in an Order Form and are (a) due upon OpenNMS' acceptance of an Order Form or, for renewal of Services, at the start of the renewal term, and (b) payable in accordance with Section 3.2. Fees are stated in United States Dollars, British Pounds, or Euros, based on geographical region, and must be paid in United States Dollars, and, unless otherwise specified in writing, do not include out-of-pocket expenses or shipping costs. Client will reimburse OpenNMS for all reasonable expenses OpenNMS incurs in connection with the performance of Services. Client agrees to pay OpenNMS the applicable Fees for each Unit. "Unit" is the measurement of Software or Service usage defined in the applicable Order Form. Any renewal of Subscription Services will be at the same price per Unit listed in the applicable Order Form. "Subscription Services" mean fee-bearing subscriptions for a defined period of time for a certain scope of Services.

3.2.   Invoices

3.2.1. If Client desires credit terms with respect to the payment of Fees, Client will reasonably cooperate with OpenNMS in establishing and periodically re-confirming Client's credit-worthiness. If credit terms are provided to Client, OpenNMS will invoice Client for the Fees upon OpenNMS' acceptance of the applicable Order Form and upon acceptance of any future order. Unless otherwise specified in an Order Form and subject to OpenNMS' approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice; provided, however, that Fees for professional services, training, training credits and other service credits are due prior to delivery. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable. OpenNMS reserves the right to

suspend or cancel performance of all or part of the Services and/or change its credit terms if actual payment has not been received within thirty (30) days of the invoice date.

3.2.2. If Client is paying by credit card, Client (a) authorizes OpenNMS to charge Client's credit card for the Services and for the amount due at the time of renewal of Subscription Services, and (b) agrees to provide updated credit card information to OpenNMS for renewal purposes.

3.3. **Taxes.** All Fees are exclusive of Taxes. Client will pay OpenNMS an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by OpenNMS. "Taxes" means any form of sales, use, value added or other form of taxation and any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of OpenNMS. If Client is required to withhold or deduct any portion of the payments due to OpenNMS, Client will increase the sum payable to OpenNMS by the amount necessary so that OpenNMS receives an amount equal to the sum it would have received had Client made no withholdings or deductions.

4. License and Ownership

4.1. **Software.** Each type of Software is governed by a license grant or an end user license agreement, which license terms are contained or referenced in the appendices to this Agreement or the applicable Order Form.

4.2. **Freedom to Use Ideas.** Subject to Section 9 and Client's rights in Client Information and notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Order Form may be used by OpenNMS, without an obligation to account, in any way OpenNMS deems appropriate, including by or for itself or its clients or customers.

4.3. **Marks.** Unless expressly stated in an Order Form, no right or license, express or implied, is granted in this Agreement for the use of any OpenNMS, OpenNMS Affiliate, Client or third party trade names, service marks or trademarks, including, without limitation, the distribution of the Software utilizing any OpenNMS or OpenNMS Affiliate trademarks.

5. Reporting and Inspection

5.1. **Reporting.** Client will notify OpenNMS (or the Business Partner from whom Client purchased Software or Services) promptly if the actual number of Units of Software or Services utilized by Client exceeds the number of Units for which Client has paid the applicable Fees. In its notice, Client will include the number of additional Units and the date(s) on which such Units were first utilized. OpenNMS (or the Business Partner) will invoice Client for the applicable Services for such Units and Client will pay for such Services no later than thirty (30) days from the date of the invoice.

5.2. **Inspection.** During the term of this Agreement and for one (1) year thereafter, OpenNMS or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from OpenNMS. OpenNMS will give Client written notice of any noncompliance, including the number of underreported Units of Software or Services, and Client will have fifteen (15) days from the date of this notice to make payment to OpenNMS for the applicable Services provided with respect to the

underreported Units. If Client underreports the number of Units utilized by more than five percent (5%) of the number of Units for which Client paid, Client will also pay OpenNMS for the cost of such inspection.

6.   Term and Termination

6.1.   Term and Termination of Agreement. The term of this Agreement will begin on the Effective Date and will terminate at the expiration of ninety (90) days following written notice of termination given by one party to the other. Termination of this Agreement will not operate to terminate any Order Form and the terms and conditions of this Agreement will continue in full force and effect to the extent necessary to give effect to any Order Form in effect at the time of termination of this Agreement and until such time as the applicable Order Form expires or is terminated in accordance with Section 6.2 below.

6.2.   Term and Termination of Order Form
6.2.1.   The term of an Order Form begins on the date the Order Form is executed ("Order Form Effective Date") and continues for the term stated in the Order Form. Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term. Client must use any other Services set forth in an Order Form during the term specified in the Order Form or within one (1) year of the Order Form Effective Date, whichever is shorter; if unused, such Services will be forfeited.

6.2.2.   If Client or OpenNMS materially breaches the terms of an Order Form, and such breach is not cured within thirty (30) days after written notice of the breach is given to the breaching party, then the other party may, by giving written notice of termination to the breaching party, terminate the applicable Order Form and/or this Agreement; provided, however, that no cure period will be required for a breach of Section 9 of this Agreement. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of OpenNMS, in the event either party terminates an Order Form, Client will pay OpenNMS (or the Business Partner from whom Client purchased such Software or Services) for all Services provided up to the effective date of termination.

6.3.   Survival. If this Agreement or an Order Form is terminated for any reason, Sections 3, 4, 5.2, 6.3, 7, 8, 9, 10.2, 12, 13.1, 13.5-13.14, and 14 of this Agreement (as the same are incorporated into each Order Form) will survive such termination.

7.   Continuing Business. Nothing in this Agreement will preclude or limit OpenNMS from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those that might be delivered to Client. The terms of confidentiality in Section 9 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.

8.   Limitation of Liability and Disclaimer of Damages

8.1.   Limitation of Liability. FOR ALL EVENTS AND CIRCUMSTANCES, OPENNMS AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL ORDER FORMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER

IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNTS RECEIVED BY OPENNMS DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR ITEMS (WHETHER SOFTWARE, SERVICES OR OTHERWISE) GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT.

8.2. **Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL OPENNMS OR ITS AFFILIATES BE LIABLE TO CLIENT OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON- COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF OPENNMS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

9. Confidentiality

9.1. **Obligations.** During the term of this Agreement, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "Confidential Information" means all information disclosed by either OpenNMS or Client ("Disclosing Party") to the other party ("Recipient") during the term of this Agreement that is either (i) marked confidential or (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure.

9.2. **Exclusions.** Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

10. Representations and Warranties

10.1.   General Representations and Warranties. OpenNMS represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Client; and (c) to OpenNMS' knowledge, OpenNMS branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

10.2.   Disclaimer of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1 OR BY A THIRD PARTY VENDOR DIRECTLY TO CLIENT UNDER A SEPARATE AGREEMENT, THE SERVICES, SOFTWARE AND ANY HARDWARE ARE PROVIDED BY OPENNMS "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. OPENNMS DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES, SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE OR THAT OPENNMS WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 10.1, CLIENT'S EXCLUSIVE REMEDY, AND OPENNMS' ENTIRE LIABILITY, WILL BE THE RE-PERFORMANCE OF DEFICIENT SERVICES, OR IF OPENNMS CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, CLIENT MAY TERMINATE THE RELEVANT SERVICES AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SERVICES AS OF THE EFFECTIVE DATE OF TERMINATION. Without limiting the generality of the foregoing disclaimer, the Software, Services and any hardware provided are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems, or (c) direct life support systems. Client agrees that it is solely responsible for the results obtained from the use of the Software and Services.

11.   Open Source Assurance Program

For Software that is OpenNMS branded, purchases under this Agreement may entitle Client to participate in OpenNMS' Open Source Assurance Program. The terms for this optional program are subject to a separate agreement which can be viewed in Exhibit 4.

12.   Governing Law/Consent to Jurisdiction

The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the United States and of the State of North Carolina without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the state or federal courts of competent jurisdiction located in Chatham County, North Carolina, and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

13.   Miscellaneous

13.1.   Notices. Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent using a method that provides for positive confirmation of delivery to the respective addresses or facsimile numbers indicated in an Order Form; provided that any notice from Client to OpenNMS includes a copy sent to: The OpenNMS Group, Inc., Attention: General Counsel, 220 Chatham Business Drive, Pittsboro, North Carolina 27312.

13.2. **Assignment.** This Agreement is binding on the parties to this Agreement, and other than the rights conferred on Business Partners in Sections 5.1 and 6.2.2, nothing in this Agreement or in any Order Form grants any other person or entity any right, benefit or remedy of any nature whatsoever, except for the parties' Affiliates as expressly provided in this Agreement. This Agreement is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld, conditioned or delayed; provided, however, either party may, upon written notice and without the prior approval of the other party, (a) assign this Agreement to an Affiliate as long as the Affiliate has sufficient credit to satisfy its obligations under this Agreement and the scope of Service is not affected; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such party's assets or stock.

13.3. **Independent Contractor.** OpenNMS is an independent contractor and nothing in this Agreement or related to OpenNMS' performance of any Order Form will be construed to create an employment or agency relationship between Client (or any Client personnel) and OpenNMS (or any OpenNMS personnel). Each party will be solely responsible for supervision, direction, control and payment of its personnel, including applicable taxes, deductions, other payments and benefits. OpenNMS may subcontract Services under an Order Form to third parties or Affiliates without the approval of Client; provided, however, that (a) subcontractors agree to protect Client Confidential Information, and (b) OpenNMS remains responsible to Client for performance of its obligations hereunder.

13.4. **Force Majeure.** Neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, hurricanes, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control.

13.5. **Non-solicitation.** Client agrees not to solicit or hire any personnel of OpenNMS involved with the delivery of Services in connection with any Order Form during the term of and for twelve (12) months after termination or expiration of such Order Form; provided that Client may hire an individual employed by OpenNMS who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

13.6. **Export and Privacy.** OpenNMS may supply Client with technical data that is subject to export control restrictions. OpenNMS will not be responsible for compliance by Client with applicable export obligations or requirements for this technical data. Client agrees to comply with all applicable export control restrictions. If Client breaches this Section 13.6 or the export provisions of an applicable end user license agreement for the Software, or any provision referencing these sections, OpenNMS may terminate this Agreement and/or the applicable Order Form and its obligations thereunder without liability to Client. Client acknowledges and agrees that to provide the Services, it may be necessary for Client Information to be transferred between OpenNMS, its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide.

13.7. **Dispute Resolution.** Each party agrees to give the other a written description of any problem(s) that may arise and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights. No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

13.8. **Headings.** All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

13.9. Severability. If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.

13.10. Waiver. The delay or failure of either party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.

13.11. Complete Agreement. Each Order Form (a) is a separate agreement and is deemed to incorporate this Agreement, unless otherwise expressly provided in that Order Form; (b) constitutes the exclusive terms and conditions with respect to the subject matter of that Order Form, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Client to place orders or otherwise effect transactions under this Agreement; and (c) represents the final, complete and exclusive statement of the agreement between the parties with respect thereto, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter of the Order Form. In the event of any conflict between this Agreement, any Order Form and any end user license agreement for Software, this Agreement will take precedence unless otherwise expressly provided in the Order Form. Notwithstanding any provision to the contrary in this Agreement, any applicable end user license agreement will be governed by the laws of the State of North Carolina and of the United States, without regard to any conflict of laws provisions. Any claim relating to the provision of the Services by OpenNMS, its Affiliates or their respective personnel will be made against OpenNMS alone.

13.12. Amendment. Neither this Agreement nor any Order Form may be amended or modified except in a writing signed by the parties, which writing makes specific reference to this Agreement or the applicable Order Form.

13.13. Counterparts and Facsimile Signature. In the event this Agreement is executed with signatures, this Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by facsimile and such signatures will be effective to bind the parties to all the terms contained in this Agreement.

13.14. United States Government End Users. The Software and its documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the Software and its documentation subject to the terms of this Agreement.

14. Waiver of Jury Trial
TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT.

Appendix 1

SUBSCRIPTION SERVICES

OpenNMS sells subscriptions that entitle you to receive OpenNMS services and/or Software during the period of the subscription (generally, one or three years). This Appendix to the Order Form describes the "Subscription Services" that OpenNMS provides for:

Software product offerings (these subscriptions are called "Software Subscriptions"); and

Support and maintenance services offerings (these subscriptions are called "Support Subscriptions")

The Exhibits to this Appendix provide additional terms concerning the Subscription Services. Whether you purchase Subscription Services from us or though one of our authorized Business Partners, we agree to provide you with the Subscription Services on the terms described in this Appendix, which includes the Exhibits and documents referred to in this Appendix (together, the "Appendix"). In exchange, you agree to comply with the terms of the Agreement, including this Appendix.

When we use a capitalized term in this Appendix without defining it, the term has the meaning defined in the Agreement to which this Appendix applies, such as the Meridian Enterprise Agreement. In the event of a conflict, inconsistency or difference between this Appendix and an Exhibit to this Appendix, the terms of the Exhibit control.

1.   Subscription Services – An Overview

1.1. Subscription Units: We charge you a fee for our Subscription Services based on the total number of Units of Software or other OpenNMS Products that you deploy, install, use or execute (as described in more detail in Tables 1.4 and 1.5 below and elsewhere in the Appendix). For example, Software Subscriptions for OpenNMS Meridian are priced based on the of number Systems, Virtual Nodes or Physical Nodes on which you install or use the Software. "OpenNMS Products" refers collectively to the Software Subscriptions and Support Subscriptions listed in Tables 1.4 and 1.5. Note that OpenNMS Products do not include generally available open source projects such as OpenNMS Horizon (www.opennms.org).

1.2. Use of Software and Subscription Services: While you have subscriptions entitling you to receive Subscription Services for a OpenNMS Product, you are required to purchase Subscription Services in a quantity equal to the total number of Units of that OpenNMS Product (including variants or components thereof). In addition, if you are using Subscription Services to support or maintain a OpenNMS Product and/or non-OpenNMS Product, then you are required to purchase Subscription Services for each instance of such OpenNMS Product and/or non-OpenNMS Product for which you use Subscription Services. The Agreement (including pricing) is premised on our understanding that you will use the Subscription Services and Software only for your internal use (which includes Affiliates). A Software Subscription provides you with ongoing access to a variety of services for your personal use. Accordingly, providing our services to, or using for the benefit of, a third party is a material breach of the Agreement. The foregoing sentence is not intended to limit your internal use of the Software to run a web site and/or to offer your own software as a service, provided such a web site

or service (a) does not include a distribution of any of the Subscription Services and (b) provides a material value added application or service other than the Software and/or Subscription Services. The Subscription Services may be used under the terms of this Appendix by third parties acting on your behalf, such as contractors, subcontractors or outsourcing vendors provided you remain responsible for all of your obligations under the Agreement and this Appendix and for the activities and omissions of the third parties. Any unauthorized use of the Subscription Services is a material breach of the Agreement, such as (a) only purchasing or renewing Subscription Services based on some, but not all, of the total number of Units of Software or other OpenNMS Products, (b) providing Software Access or Software Maintenance (as defined in paragraph 1.4) to third parties, (c) using Software Access, Software Maintenance, Prime Support and Ultra Support (each defined below) to provide support to third parties, (d) using Subscription Services in connection with any redistribution of Software and/or (e) using Subscription Services to support or maintain any non-OpenNMS Software products without purchasing Subscription Services for each instance of such non-OpenNMS Product for which you use Subscription Services. For the purposes of this paragraph (for example, in calculating the total number of Units of Software), Software includes versions or copies with the OpenNMS trademark(s) and/or logo file(s) removed. The licenses that are applicable to the individual open source software packages are perpetual (subject to your compliance with their terms), but the other benefits of a Software Subscription will expire if not renewed. This Agreement establishes the rights and obligations associated with OpenNMS Products and is not intended to limit your rights to software code under the terms of an open source license.

1.3. **Subscription Start Date:** Unless otherwise agreed in an Order Form, all Subscriptions will begin on the date you purchase the Subscription Services (please note that the foregoing does not limit your obligation to pay for Subscription Services that you previously used but for which you have not paid). Subsequent Subscriptions purchased on a later date will be price adjusted (pro-rated) to either co-terminate on the initial Subscription purchase or the later date as agreed to on an Order Form. In no case, will Subscriptions be purchased and pro-rated for less than sixty (60) calendar days to co-terminate with all other existing subscriptions.

1.4. Software Subscriptions

Benefits of a Software Subscription: For each Software Subscription that you purchase, OpenNMS provides you one or more of the following benefits:

Software Access: Access to the Software.

Software Maintenance: Access to updates, upgrades, corrections, security advisories and bug fixes for the Software, if and when available.

Support: Access to OpenNMS support for issues relating to Software as described below.

Descriptions of OpenNMS Software Subscriptions: Table 1.4 below lists the Software Subscriptions offered by OpenNMS and the Unit descriptions that are used to measure your use of each Software Subscription. The End User License Agreement(s) that govern(s) your use of the Software is/are located Exhibit 2 (note that for certain OpenNMS Products multiple EULAs apply). The Exhibits listed in Table 1.4 contain additional information concerning the scope of the Software Subscriptions and how OpenNMS provides Subscription Services to you.

Table 1.4

Software Subscription	Unit Description	Exhibit Containing Additional Terms
OpenNMS Meridian	**Physical node**: on which you install the Software including, without limitation: a server, a workstation, laptop, blade or other physical system or **Virtual Node**: an instance of the Software executed on a virtual machine.	1,2,3

1.5. Support Subscriptions. Table 1.5 below lists the Support Subscriptions offered by OpenNMS and the Unit description that is used to measure your use of the Support Subscription(s). The End User License Agreement that governs your use of the Software is located at www.opennms.com/licenses/EULAs. The Exhibits listed in Table 1.5 contain additional information concerning the scope of the Support Subscriptions and how OpenNMS provides Subscription Services to you.

Table 1.5

Support Subscription	Unit Description	Exhibit Containing Additional Terms
OpenNMS Prime Support	Support for unlimited instances of the Software on physical or virtual nodes. Three (3) users.	1,3
OpenNMS Ultra Support	Support for unlimited instances of the Software on physical or virtual nodes. Five (5) users.	1,3
OpenNMS 24x7 Emergency Support*	Unlimited instances of the Software on physical or virtual nodes. Two (2) additional users.	1,3

requires either Prime or Ultra Support

1.6. Software Subscription Lifecycle. During the life cycle of OpenNMS Software, the scope of Software Maintenance and Support evolves and, after a number of years, we discontinue Software Maintenance and Support for older versions of Software. The details of the Software Maintenance and Production Support life cycle are set forth at Exhibit 3.

2. Production Support and Development Support Terms

2.1. Definitions. "Development Purposes" means using the Software for the specific purpose of (a) developing, (b) quality assurance or testing and/or (c) demonstrating software or hardware that runs with or on the Software. "Production Purposes" means using the Software (a) in a production environment, (b) generally using live data and/or applications for a purpose other than Development Purposes, (c) for backup instances. "Evaluation Subscriptions" are Subscription Services provided for the sole purpose of evaluating the suitability of the Subscription Services for your future purchase from OpenNMS or through one of our authorized Business Partners ("Evaluation Purposes"), and not for Production Purposes, Development Purposes or any other purpose. "Support Contact(s)" is a person authorized by you to open support requests and/or contact OpenNMS support personnel.

2.2. Use Cases. Subscription Services are provided for Software only when used for its supported purpose ("Use Case"). The Use Case determines which Subscription is required and what fees are charged. If you use or

deploy the Software in a manner contrary to a supported Use Case, you are responsible for purchasing the appropriate Subscription(s) to cover such usage. For example, if you are using a OpenNMS Meridian Subscription as a platform for your own EMS, you are obligated to purchase a PoweredBy OpenNMS Agreement and Support Subscription.

2.3. Evaluations. By requesting an Evaluation Subscription, you represent that you will be using the Subscription Services for Evaluation Purposes only and you understand that OpenNMS is relying on the accuracy of your representation in providing you with access to the Evaluation Subscription(s). If you use the OpenNMS Evaluation Subscription(s) for any other purposes, you are in violation of this Agreement and are required to pay the applicable subscription fees in accordance with Sections 1.1 and 1.2 above, in addition to any and all other remedies available to OpenNMS under applicable law. Examples of such violations include, but are not limited to, using the Subscription Services provided under an Evaluation Subscription for Production Purposes, offering support services to third parties, or complementing or supplementing third party support services with Subscription Services received through an Evaluation Subscription.

2.4. Support from a Business Partner. Some clients obtain support for their Software Subscriptions from an authorized OpenNMS Business Partner, in which case the Business Partner provides support to you. Sections 2.5 - 2.8 apply to you only if you have directly purchased Subscription Services with Production Support provided by OpenNMS. If you have purchased Subscription Services with support provided by a Business Partner, Sections 2.5 – 2.8 do not apply to you and you should work with your Business Partner to obtain support services.

2.5. Support from OpenNMS. "**Production Support**" consists of assistance with installation, configuration, usage, problem diagnosis and bug fixes for Software used for Production Purposes during specific OpenNMS life cycle phases (as referenced in Section 1.6 above). Production Support does not include assistance with code development, system design, network design, architectural design, or any third party software made available with OpenNMS Software.

"**Development Support**" consists of assistance with OpenNMS Java and ReST APIs as well as the build (Maven) and packaging system (RPM and DEB). Development Support also consists of advice on architecture, design, development and the JUnit testing framework. Requests for deployment and maintenance assistance and/or assistance for Production Purposes are not included within the scope of Development Support, but rather are available on a consulting basis under the terms of a separate agreement.

To access and use Support, you must provide OpenNMS with sufficient information to validate your entitlement to the relevant Support. The scope of the Support is based on the level (for example, Self-support, Prime Support or Ultra Support) and type of Subscription Services you purchased. Certain Support is provided only during OpenNMS' local standard business hours.

2.6. Support Coverage. We do not provide Support for Software that (a) you (or a third party) have modified or recompiled or is running in an unsupported Use Case. You are responsible for testing the Software before deploying it in your environment. You should also backup your systems on a regular basis and have those backups available if needed for support purposes.
OpenNMS will use commercially reasonable efforts to provide Support in accordance with the guidelines shown in Table 2.7 below. Support is provided in the English language and may be available in other languages, such

as Spanish and German, based on available resources. OpenNMS Emergency Support telephone number is provided at time of signup and local standard business hours ("Standard Business Hours") are 7 a.m. to 7 p.m. Mon-Fri, local time New York.

2.7. **Service Level Guidelines.** Support is available in one or more of the following support levels, depending on the OpenNMS Product: Self-support, Prime or Ultra, as shown in the table below. Software Access and Software Maintenance are generally provided to you through an OpenNMS hosted Yum/APT repository (OpenNMS Update Infrastructure) and/or OpenNMS Connect (Connect) (collectively, "OpenNMS Portal"). After the Initial Response, OpenNMS will provide status updates on the issue until (i) the issue is resolved; (ii) the issue is downgraded to a lower Severity Level (in which case status updates will be provided in accordance with the update guidelines applicable the new Severity Level); or (iii) the parties agree on an alternative update schedule.

All Meridian subscribers will have access to OpenNMS connect, the self-support forum for moderated user discussion of Meridian products.

Table 2.7

	Self-support	**Prime Support**	**Ultra Support**	**Emergency Support**
Hours of Coverage	Connect	Standard Business Hours	Standard Business Hours	Standard Business Hours and 24x7 for Severity 1
Support Channel	none	Email and Web	Email and Web	Phone
Number of cases	none	Unlimited	Unlimited	Unlimited
Software Maintenance	OpenNMS Update	OpenNMS Update	OpenNMS Update	OpenNMS Update
Response Guidelines	N/A	Initial and Ongoing Response	Initial and Ongoing Response	Initial/Ongoing
Severity 1 (Critical)	N/A	4 hrs.	1 hr.	15 min./1 hr.
Severity 2 (Urgent)	N/A	4 hrs.	1 hr.	N/A
Severity 3 (non-urgent)	N/A	24 hrs.	4 hrs.	N/A

2.8. **Support Contacts.** For the Software Subscriptions, you may contact OpenNMS through your designated Support Contacts. You may designate up to the number of contacts described in Table 2.8 below based on the number of Prime and Ultra Support Subscriptions you have purchased. We will provide Subscription Services to you solely by communicating during the Hours of Coverage with the individual Support Contact(s) you appoint. For Emergency Support, in order to receive 24x7 coverage for Severity 1 issues, you must provide two (2) dedicated points of contact who will be available until the issue is resolved. You may change your designated Support Contacts by notifying us in writing and giving us five business days to process the change. The Support

Contacts should have "read and write" access to the necessary files, English language communication skills and relevant technical knowledge.

For each Meridian Subscription purchased, you receive one OpenNMS Connect Login. You also received additional logins based on the number of Support Logins for which you are entitled. For example, if you purchase one Meridian Subscription and Prime Support, you would get a total of four (4) OpenNMS Connect Logins: One for the Meridian Subscription and three for the Support Logins. The addition of 24x7 support adds two more Support Logins and thus two more Connect Logins.

Table 2.8

Number of Software Subscriptions	Connect Logins	Support Logins
Self Support		
1	1	0
2	2	0
5	5	0
Prime Support		
1	4	3
2	5	3
5	8	3
Ultra Support		
1	6	5
2	7	5
5	10	5

Example of number of contacts authorized to access connect and the support desk with 1, 2 and 5 instances of Software and each combination of either Prime or Ultra Support. For the Emergency, 24x7 Support addition, add 2 to each service.

Exhibit 1

Meridian and Related Software Subscriptions

1. Unit of Measure and Purchasing Requirements for OpenNMS Meridian

You must purchase the appropriate number and type of Software Subscription(s) for each Unit of OpenNMS Meridian.

2. OpenNMS Meridian Server Add-Ons

OpenNMS Meridian Subscriptions may be purchased with one or more add-on options ("Add-On(s)"). Add-Ons require a separate paid and active Software Subscription for each Unit that deploys, installs, uses or executes such Add-On. Each Unit of Add-Ons (i) must match the Unit of Measure and capacity as the underlying OpenNMS Meridian Unit and (ii) inherits the Support Level (Prime or Ultra) of the underlying OpenNMS Meridian Unit.

3. OpenNMS Meridian Server Support Options

OpenNMS Meridian Subscriptions may be purchased with various levels of Production Support including Self-support, Prime and Ultra Support Levels.

4. OpenNMS Meridian Server Use Cases

Subscription Services are provided for Software only when used for its supported purpose ("Use Case") in accordance with the terms of this Exhibit and Table 4 below.

Software	Use Case
OpenNMS Meridian	Monitoring of corporate enterprise and provider networks on when deployed on supported platforms.

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Exhibit 2

OpenNMS Meridian™ Software License Agreement

This Software License Agreement (the "Agreement") is between The OpenNMS Group, Inc., a North Carolina corporation ("OpenNMS"), and you as a licensee of the OpenNMS Meridian software.

1.   DEFINITIONS

1.1.   "Affiliate" means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

1.2.   "Configuration Data" means custom events, notices, data collection, workflows, and reports produced by OpenNMS for use with the Software.

1.3.   "Documentation" means all documentation provided to you by OpenNMS with the Software, including end user manuals, operation instructions, installation guides, release notes, and help files.

1.4.   "Free and Open Source Software" or **"FOSS"** means software licensed under the terms of a license identified as a free software license by the Free Software Foundation and as an open source license by the Open Source Initiative.

1.5.   "Intellectual Property Rights" means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.6.   "License" means a license granted under Section 2 (License Grant).

1.7.   "Order" means a purchase order, online order, or other ordering document issued by you to OpenNMS, or a reseller authorized by OpenNMS, that references and incorporates this Agreement and is accepted by OpenNMS as set forth in Section 8 (Orders).

1.8.   "Service Provider" means a third party delivering information technology services to you pursuant to a written contract with you.

1.9.   "Software" means the OpenNMS Meridian software, including both source code and object code copies of the software, as well as any Updates to the Software made available by OpenNMS during your Subscription Term.

1.10.   "Subscription" means access to Updates from OpenNMS for a single instance of the Software, for a given Subscription Term.

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1.11.   **"Subscription Term"** means the duration of a Subscription, as specified in an Order.

1.12.   **"Updates"** means (a) all updates to the Software and Documentation made available by OpenNMS, including new features, bug fixes, security updates, and performance enhancements, and (b) all new Configuration Data made available by OpenNMS for use with the Software.

2.   LICENSE GRANT

2.1.   **General License Grant.** OpenNMS grants to you a non-exclusive, perpetual, non-transferable (except as set forth in Section 15.1 (Transfer; Assignment)) license to deploy, operate, copy, and modify the Software and Documentation solely for your internal business operations. Your License shall commence upon either the date of your Order or the date upon which OpenNMS delivers the Software to you, whichever is later.

2.2.   **Service Providers.** Your License authorizes you to permit your Service Providers to deploy, access, use, modify, and operate the Software on your behalf for the sole purpose of delivering services to you, provided that you will be fully responsible for your Service Providers' compliance with terms and conditions of this Agreement and any breach of this Agreement by a Service Provider shall be deemed to be a breach by you.

2.3.   **Configuration Data.** Except during the Return Period as described in Section 7.2 (Configuration Data Confidential), your use of the Configuration Data is unrestricted.

3.   LICENSE RESTRICTIONS

3.1.   **No Services to Third Parties.** You may not, and may not allow any Service Provider or other third party to, operate the Software in an application services provider, service bureau, or similar capacity for third parties, except that you may use the Software to deliver hosted services to your Affiliates.

3.2.   **No Sublicensing.** You may not sublicense Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 15.1 (Transfer; Assignment).

3.3.   **Preservation of Notices.** You may not remove any copyright or other proprietary notices on or in any copies of Software.

4.   FOSS LICENSE OPTION

4.1.   After the expiration of the Return Period specified in Section 7.1 (Return for Full Refund), you may elect to have your use of the Software governed by the terms of version 3 of the GNU Affero General Public License (the "AGPLv3") instead of the license described in Sections 2 (License Grant) and 3 (License Restrictions) of this Agreement.

5.   OWNERSHIP

5.1.   **Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and

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shall remain the sole and exclusive property of OpenNMS and its licensors. Your rights to use the Software, Configuration Data, and Documentation shall be limited to those expressly granted in this Agreement and any applicable Order, and no other rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Configuration Data, and Documentation or any portion thereof except as expressly authorized by this Agreement or the applicable Order. OpenNMS reserves all rights not expressly granted to you. OpenNMS does not transfer any ownership rights in any Software to you.

5.2. **Third-Party FOSS.** Notwithstanding anything herein to the contrary, third-party Free and Open Source Software incorporated into the Software is licensed to you under the applicable FOSS license terms, which can be found in the Software's source code. Third-party FOSS components are identified in the LICENSE.md file accompanying the source. OpenNMS represents that the applicable FOSS licenses terms are consistent with the License.

5.3. **OpenNMS Trademarks.** "OpenNMS", "Meridian", and the OpenNMS logo (the "OpenNMS Marks") are trademarks of OpenNMS. Neither this Agreement nor any applicable FOSS license permits you to distribute the Software, modified or unmodified, using the OpenNMS Marks. If you choose, pursuant to Section 4 (FOSS License Option), to distribute the Software to any third party under the AGPLv3, you must first remove or replace any instance of the OpenNMS Marks that in any way suggest OpenNMS's approval of or affiliation with your distribution of the Software. Notwithstanding the above, when you distribute the Software you must preserve any copyright and other proprietary notices referring to OpenNMS and its licensors, as required by Section 3.3 (Preservation of Notices) and any applicable FOSS licenses.

6.   SUBSCRIPTION TO UPDATES

6.1. **Subscription Access.** For each Subscription you purchase, you shall be authorized to access Updates for a single instance of the Software. If you are running multiple instances of the Software, for example on different physical or virtual servers, you must purchase a separate Subscription to access Updates from each of them.

6.2. **Expiration.** Upon expiration or termination of a Subscription Term, you shall no longer be permitted to access new Updates provided by OpenNMS to subscribers. However, your License to the Software shall persist.

6.3. **Support.** Except for Updates to which you are entitled under Section 6.1 (Subscription Access), this Agreement does not entitle you to receive support services for the Software from OpenNMS. If you have placed an Order for support services, those services shall be delivered according to the terms of a separate software support agreement.

7.   EVALUATION AND RETURN PERIOD

7.1. **Return for Full Refund.** For fifteen (15) days beginning on the date of your Order (the "Return Period"), you shall be entitled to return the Software to OpenNMS (or the authorized reseller from which you acquired the Software) and receive a full refund of the fees paid by you for the License. After the Return Period, you shall not be entitled to any refund from OpenNMS except as provided in Section 10.1 (Software Warranty).

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7.2. Configuration Data Confidential. You agree that, during the Return Period, the Configuration Data shall be Confidential Information of OpenNMS subject to the protections described in Section 14 (Confidential Information) of this Agreement. If you do not return the Software as provided in Section 7.1 (Return for Full Refund) then, after the Return Period, the Configuration Data shall no longer be considered Confidential Information.

7.3. Effect of Return. Upon your return of the Software according to the terms of Section 7.1 (Return for Full Refund), this Agreement shall terminate according to the terms of Section 13 (Termination).

8. ORDERS

8.1. All Orders are subject to this Agreement. No Orders are binding on OpenNMS until accepted by OpenNMS. An Order is deemed to be accepted upon OpenNMS's issuance of a receipt to you after receiving your payment in full for the Order (the "Acceptance Date").

9. RECORDS AND AUDIT

9.1. During any Subscription Term and for two (2) years thereafter, you shall maintain accurate records of your Subscription use sufficient to show compliance with the terms of this Agreement. During this period, OpenNMS will have the right to audit your Subscription use to confirm compliance. That audit is subject to reasonable notice by OpenNMS and will not unreasonably interfere with your business activities. OpenNMS may conduct at most one (1) audit in any twelve (12) month period, and only during normal business hours. You will reasonably cooperate with OpenNMS and any third party auditor and will, without prejudice to other rights of OpenNMS, address any non-compliance identified by the audit by promptly paying additional Subscription fees. You will promptly reimburse OpenNMS for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Subscription fees payable by you for the period audited, or that you have materially failed to maintain accurate records of Subscription use.

10. WARRANTIES

10.1. Software Warranty. OpenNMS warrants to you that the Software will, for a period of ninety (90) days following delivery (the "Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by person other than OpenNMS or its authorized representative. OpenNMS will, at its own expense and as its sole obligation and your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to OpenNMS by you in writing during the Warranty Period. If OpenNMS determines that it is unable to correct the error or replace the Software, OpenNMS will refund to you the amount paid by you for that Software, in which case the License for that Software will terminate.

10.2. Software Disclaimer of Warranty. OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OPENNMS AND ITS LICENSORS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS AGREEMENT, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR

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USAGE OF TRADE. OPENNMS AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET YOUR REQUIREMENTS.

11. INDEMNIFICATION

11.1. **Defense and Indemnification.** Subject to the remainder of this Section 11 (Indemnification) and to Section 12 (Limitation of Liability), OpenNMS shall defend you against any third party claim that the Software infringes any patent, trademark or copyright, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of your actions) under the laws of the United States (an "Infringement Claim") and indemnify you from the resulting costs and damages finally awarded against you to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if you: (i) promptly notify OpenNMS in writing of the Infringement Claim; (ii) allow OpenNMS sole control over the defense for the claim and any settlement negotiations; and (iii) reasonably cooperate in response to OpenNMS requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of OpenNMS.

11.2. **Remedies.** If the alleged infringing Software becomes, or in OpenNMS's opinion is likely to become, the subject of an Infringement Claim, OpenNMS will, at OpenNMS's option and expense, do one of the following: (a) procure the rights necessary for you to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon your certified deletion of the affected Software, refund the fees paid by you for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered. Nothing in this Section 11.2 (Remedies) shall limit OpenNMS's obligation under Section 11.1 (Defense and Indemnification) to defend and indemnify you, provided that you promptly replace the allegedly infringing Software with alternative Software provided to you by OpenNMS or, alternatively, discontinue using the allegedly infringing Software upon receiving OpenNMS's notice terminating the affected License.

11.3. **Exclusions.** Notwithstanding the foregoing, OpenNMS will have no obligation under this Section 11 (Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-OpenNMS products; (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer OpenNMS version would have avoided the infringement; (d) any modification to the Software made without OpenNMS's express written approval; or (f) any Software provided on a no-charge, beta, or evaluation basis. THIS SECTION 11 (INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND OPENNMS'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

12. LIMITATION OF LIABILITY

12.1. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL OPENNMS AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE

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SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU.

12.2. **Liability Cap.** THE LIABILITY OF OPENNMS AND ITS LICENSORS UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR $5,000. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER OPENNMS OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. TERMINATION

13.1. **Agreement Term.** The term of this Agreement begins upon the Acceptance Date and continues until this Agreement is terminated in accordance with this Section 13 (Termination).

13.2. **Termination for Breach.** OpenNMS may terminate this Agreement effective immediately upon written notice to you if: (a) you fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from OpenNMS that payment is past due; or (b) you breach any other provision of this Agreement and fail to cure within thirty (30) days after receipt of OpenNMS's written notice thereof.

13.3. **Termination for Insolvency.** OpenNMS may terminate this Agreement effective immediately upon written notice to you if you: (a) terminate or suspend your business; (b) become insolvent, admit in writing your inability to pay your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

13.4. **Effect of Termination.** Upon OpenNMS's termination of this Agreement, your License to the Software will immediately cease and you must cease all use of the Software and return, or if requested by OpenNMS, destroy, any related OpenNMS Confidential Information in your possession or control and certify in writing to OpenNMS that you have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 3 (License Restrictions), 5 (Ownership), 7.2 (Configuration Data Confidential), 9 (Records and Audit), 10.2 (Software Disclaimer of Warranty), 12 (Limitation of Liability), 13 (Termination), 14 (Confidential Information) and 15 (General).

14. CONFIDENTIAL INFORMATION

14.1. **Definition.** "Confidential Information" means information or materials provided by one party ("Disclosing Party") to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, as well as any information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) Configuration Data (during the Return Period only); (b) information regarding OpenNMS's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

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14.2. **Protection.** Recipient may use Confidential Information of Disclosing Party: (a) to exercise its rights and perform its obligations under this Agreement; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of Disclosing Party only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

14.3. **Exceptions.** Recipient's obligations under Section 14.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Disclosing Party; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Disclosing Party's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Disclosing Party of such required disclosure promptly and in writing and cooperates with Disclosing Party, at Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

15. GENERAL

15.1. **Transfers; Assignment.** Except to the extent transfer may not legally be restricted, You will not assign this Agreement, any Order, or any right or obligation herein or delegate any performance without OpenNMS's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by you will be void. OpenNMS may use its Affiliates or other sufficiently qualified subcontractors to provide services to you, provided that OpenNMS remains responsible to you for the performance of the services.

15.2. **Notices.** Any notice delivered by OpenNMS to you under this Agreement will be delivered via mail, email or fax.

15.3. **Waiver.** Failure to enforce a provision of this Agreement will not constitute a waiver.

15.4. **Severability.** If any part of this Agreement is held unenforceable, the validity of all remaining parts will not be affected.

15.5. **Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of

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Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

15.6.   **Governing Law.** This Agreement is governed by the laws of the State of North Carolina (excluding its conflict of law rules) and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Chatham County, North Carolina will be the exclusive jurisdiction for disputes arising out of or in connection with this Agreement. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

15.7.   **No Third-Party Beneficiaries.** Other than as expressly set out in this Agreement, this Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

15.8.   **Order of Precedence.** In the event of conflict or inconsistency between this Agreement and an Order, the terms of this Agreement shall supersede and control over any conflicting or additional terms and conditions of the Order, or of any acknowledgement or confirmation or other document issued by you.

15.9.   **Entire Agreement.** This Agreement, including accepted Orders and any amendments hereto, constitute the entire agreement of the parties with respect to the subject matter of this Agreement and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This Agreement may be amended only in writing signed by authorized representatives of both parties.

15.10. **Contact Information.** Please direct legal notices or other correspondence to The OpenNMS Group, Inc., 220 Chatham Business Drive, Pittsboro, NC 27312, United States.

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Exhibit 3

Support Policy

Overview

OpenNMS provides support and maintenance over stated time periods for the major versions of OpenNMS Meridian and Horizon products (i.e., Meridian versions 2015, 2016 and Horizon versions 14, 15, and 16). The published life cycle calendars for OpenNMS products allow customers and partners to effectively plan, deploy, and support OpenNMS products.

The life cycle associated with an OpenNMS product identifies the various levels of maintenance for each release of that product over a period of time from the initial release—or general availability (GA)—to the end of the maintenance phase. OpenNMS product life cycle is three years (3) in length. An optional add-on Extended Life Cycle Support (ELS) subscription may be purchased to extend the life cycle by two (2) additional years.

Software updates to OpenNMS products, if and when available, are delivered via software package updates. Package updates can be released individually, via a customer branch, on an as-needed basis or included in a minor release (e.g., Meridian version 2015.2.0, 2015.3.0, 2015.3.1 or Horizon version 14.1.0, 15.2.0, 15.2.1). Patches may contain security and/or bug fixes. Feature enhancements are generally introduced in major releases or upgrades—not as updates (e.g. Meridian Version 2016.1.0, 2017.1.0 or Horizon 17.0.1, 18.0.1). OpenNMS' goal is to maintain compatibility across the full life cycle of a product. Updates and minor releases are tested and qualified against prior releases for a given product. OpenNMS will use commercially reasonable efforts to provide compatibility with the initial major release (e.g., 2015.1.0). Where incompatibilities arise, they will be documented in the release notes or may be reported as bugs.

OpenNMS Meridian life cycles are designed to reduce the level of change within each major release over time, increasing predictability and decreasing maintenance costs. Released updates will remain accessible to active subscribers for the entire life cycle of a product. OpenNMS publishes Meridian life cycle calendars in an effort to provide as much transparency as possibly but may make exceptions from these policies if unforeseeable conflicts arise (such as the end-of-life (EOL) of a dependent component or platform, e.g. JDK) that are outside of OpenNMS' control.

Every major version of an OpenNMS product is maintained and supported independently during its life cycle. For each major version of a product, patch updates, if and when available, will be issued serially and will be applicable incrementally to previously released updates. Minor releases will aggregate the contents of individual customer updates and they may add additional new minor functionality. Subsequent updates will be based on and but will not require the installation of minor updates that precede them. During the entire life cycle, OpenNMS makes commercially reasonable efforts to maintain API-level compatibility across all minor updates (e.g., Meridian 2015.1.0 will maintain API-level compatibility with 2015.1.1, 2015.2.0, the parent of the Meridian 2015 family). Possible exceptions to this rule could include fixes introduced to address Critical impact security issues. Furthermore, major versions of OpenNMS Meridian endeavor to maintain significant backward-compatibility with previous versions (e.g., Meridian 2016.1.0 endeavors to maintain significant backward compatibility with Meridian 2015) to aid with the migration of applications from one major release to another.

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Life Cycle Phases

The life cycle for a major release of OpenNMS products is divided into three primary phases: the Full Support Phase, the Maintenance Phase, and the Extended Life Phase.

Phase 1: Full Support

Start Date: General Availability

Full support is provided according to the Scope of Coverage (Exhibit 3A) and Service Level Guidelines in Table 2.7. Likewise, Development Support is provided according to the published Scope of Coverage and Service Level Agreement. All available and qualified patches will be applied via periodic product updates.

Phase 2: Maintenance Support

Start Date: no less than one (1) year after General Availability.

Production support is provided according to the Scope of Coverage (Exhibit 3A) and Service Level Guidelines in Table 2.7. Likewise, Development Support is provided according to the published Scope of Coverage and Service Level Agreement. During the maintenance phase, qualified security patches of Critical or Important impact, as well as select mission-critical bug-fix patches, will be released.

Phase 3: Extended Life Support (Optional)

As an optionally available add-on to an OpenNMS Meridian subscription, OpenNMS offers an Extended Life Cycle Support (ELS) subscription. ELS delivers Critical impact security fixes and selected urgent-priority bug fixes, if and when available. For ELS subscribers, OpenNMS will generally continue to proactively provide the Critical impact security fixes if and when available independent of customer requests.

The following table details each type of software maintenance performed during a typical life cycle:

Description	Full Support	Maintenance Support	Extended Life Support
Unlimited-incident technical support	Yes	Yes	Yes
Software Updates	Yes	Yes	No
Bug Fixes*	Yes	Yes	Yes

Full details of support services are provided as part of the Subscription Agreement.
OpenNMS can choose to address catastrophic issues with significant business impact for the customer through a hotfix (JAR), as a temporary measure while the bug-fix patch is being created.
Major releases are the primary source for software enhancements.

Exhibit 3

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Life Cycle Duration

OpenNMS Meridian product life cycles are generally three (3) years in length as described below.

Standard Product Life Cycle

Phase 1 Full Support	Phase 2 Maintenance Support	Phase 3 Extended Life Support
1 yr.	2 yrs.	2 yrs.
Year 1	Year 2 - 3	Year 4 -5

Life Cycle Dates

Listed below are the life cycle dates for all currently supported OpenNMS Meridian releases.

Family	GA	Full Suport	Maintenance Support
2016	TBD	TBD	TBD
2015	April 2015	4/2015 - 3/2016	4/2016 - 3/2018

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Exhibit 3A

Production Support Scope of Coverage

If we ship it, we support:

1. Installation

2. Usage

3. Diagnosis

4. Bug Reports

5. Bug fixes*

and we do not support:

1. Modified RPMs/DEBs

2. Third-party plugins

3. Community project based on OpenNMS

4. Code development

5. System and network design

6. Snapshot releases

Exhibit 4

OpenNMS' Open Source Assurance Agreement

June 1, 2015

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU AGREE TO THESE TERMS. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT AGREE TO THESE TERMS, YOU WILL CONTINUE TO BE ABLE TO USE THE COVERED SOFTWARE TO THE EXTENT PERMITTED BY OTHER AGREEMENTS WITH THE OPENNMS GROUP; HOWEVER, YOU WILL NOT BE COVERED UNDER THE OPENNMS GROUP'S OPEN SOURCE ASSURANCE PROGRAM AS PROVIDED HEREIN.

This Open Source Assurance Agreement ("Agreement") is between Client (defined below) and The OpenNMS Group, Inc. a North Carolina corporation, with a principal place of business of 220 Chatham Business Drive, Raleigh, North Carolina 27312, U.S.A. ("The OpenNMS Group"). Client is the entity represented by the authorized individual that accepts this Agreement and identified in an OpenNMS Group Support Agreement ("Client"). The effective date of this Agreement ("Effective Date") is the date that the authorized individual accepts an OpenNMS Support Agreement on behalf of Client.

Client is obtaining or has previously obtained from The OpenNMS Group, an OpenNMS Group affiliate or a third party OpenNMS Group reseller certain Covered Software (defined in Section 4 below) and associated The OpenNMS Group maintenance and/or support services ("The OpenNMS Group Services") under the terms of one or more support subscription agreements between Client and The OpenNMS Group and/or a The OpenNMS Group affiliate ("Support Agreement(s)"). Client desires that The OpenNMS Group provide additional intellectual property assurances for the Covered Software as described in Section 1 below. Client accepts these assurances on the terms outlined in this Agreement and agrees, in consideration of these assurances, that these terms are fair and reasonable and that if Client does not want to agree to these terms and conditions, Client has the option to use the Covered Software and receive the The OpenNMS Group Services under the Support Agreement(s) without agreeing to this Agreement or other assurances/indemnifications.

1. Open Source Assurance Program

If an unaffiliated third party initiates a legal action against Client alleging that Client's use of Covered Software directly infringes the third party's copyrights, patents or trademarks, or misappropriates the third party's trade secret rights ("Third Party Rights") (such action, a "Claim") and Client has complied with the terms of this Agreement and the Support Agreement(s), then:

Subject to the other terms in this Agreement, The OpenNMS Group will (i) defend Client against the Claim and (ii) pay costs, damages and/or attorneys fees that are included in a final judgment against Client (without right of appeal) or in a settlement approved by The OpenNMS Group that are attributable to Client's use of the Covered Software; and

If Client's use of Covered Software is found by a court to infringe Third Party Rights (or The OpenNMS Group believes that such a finding is likely), then The OpenNMS Group will, at its expense and option: (i) obtain the rights necessary

Exhibit 4   30

for Client to continue to use the Covered Software consistent with the Support Agreement(s); (ii) modify the Covered Software so that it is non-infringing; or (iii) replace the infringing portion of the Covered Software with non-infringing code of similar functionality (subsections (i), (ii) and (iii) are the "IP Resolutions"); provided that if none of the IP Resolutions is available on a basis that The OpenNMS Group finds commercially reasonable, then The OpenNMS Group may terminate the Support Agreement(s) without further liability under this paragraph, and, if Client then returns the Covered Software that is subject to the Claim, The OpenNMS Group will refund any prepaid subscription fees related to Covered Software.

As conditions precedent to The OpenNMS Group's obligations to Client under this Section 1, Client must comply with the following conditions. Client must (i) be current in the payment of all applicable fees prior to a Claim or threatened Claim; (ii) notify The OpenNMS Group promptly, but in no event later than ten (10) days of receipt of any Claim for which relief is sought under this Agreement (including evidence of the Claim brought); (iii) provide The OpenNMS Group with the right to control and conduct the defense of the Claim with counsel of its choice and to settle such Claim at The OpenNMS Group's sole discretion; and (iv) cooperate with The OpenNMS Group in the defense of the Claim. Notwithstanding the foregoing, The OpenNMS Group will have no obligations under Section 1 with regard to any Claim that is based upon (I) a modification of Covered Software made by Client (other than at The OpenNMS Group's written direction); (II) The OpenNMS Group's compliance with any designs, specifications or instructions provided by Client; (III) use of the Covered Software in combination with products, data or business methods not provided by The OpenNMS Group, if the infringement or misappropriation would not have occurred without the combined use; (IV) facts or circumstances constituting a breach of any Support Agreement; (V) use of any release of the Covered Software if, as of the date of a Claim or threatened Claim, the infringement or misappropriation would not have occurred through use of a more recent release of the Covered Software; (VI) any use of the Covered Software by Client other than for Client's internal use (such use not to include web hosting services, managed services, Internet service provider (ISP) services or similar uses); (VII) use by Client after notice by The OpenNMS Group to discontinue use of all or a portion of the Covered Software; or (VIII) a Client's claim or lawsuit against a third party.

2.   Term, Warranties, Governing Law

The term of this Agreement will begin on the Effective Date and will terminate upon the expiration or termination of Client's Support Agreement(s); provided that if The OpenNMS Group updates or amends its Open Source Assurance program, (i) this Agreement will apply only until the end of the current annual subscription period for any active Client Subscriptions and (ii) Client will have the opportunity, if it so elects, to participate in the updated or amended Open Source Assurance program for any additional Subscriptions or renewal Subscriptions. If this Agreement is terminated for any reason, Sections 2 - 5 will survive termination. No express or implied warranties by The OpenNMS Group or its affiliates are created as a result of this Agreement.

THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES AND OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PROVISIONS THEREOF OR THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL BE SUBMITTED TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS OF COMPETENT JURISDICTION LOCATED IN RALEIGH, NORTH CAROLINA, U.S.A. AND EACH PARTY IRREVOCABLY CONSENTS TO PERSONAL JURISDICTION IN SUCH COURTS AND WAIVES ALL OBJECTIONS TO THIS VENUE.

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In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

3.   Limitations on Liability

The OpenNMS Group will not be obligated to pay any amounts in connection with a Claim related to any period of time during which Client does not have active, fully-paid Subscriptions related to the Covered Software. The OpenNMS Group will have no obligation to Client under this Agreement if, as of the Effective Date, Client has received notice of allegations of infringement or is engaged in litigation concerning the subject matter of what would otherwise be a Claim under this Agreement or with respect to a product substantially similar to the Covered Software.

IT IS THE OPENNMS GROUP'S INTENT TO PROVIDE CLIENT A SET OF PROTECTIONS UNDER THIS AGREEMENT RELATED TO CLAIMS (AS DEFINED ABOVE). IT IS NOT, HOWEVER, THE OPENNMS GROUP'S INTENT TO EXPAND THE OPENNMS GROUP'S TOTAL LIABILITY TO CLIENT IN EXCESS OF THE LIABILITY LIMITATIONS SET FORTH UNDER EXISTING SUPPORT AGREEMENT(S) WITH CLIENT. IN THIS REGARD, THE OPENNMS GROUP'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY UNDER BOTH THIS AGREEMENT AND THE SUPPORT AGREEMENT(S) SHALL BE SUBJECT TO THE LIMITATIONS OF LIABILITY CONTAINED IN THE SUPPORT AGREEMENT(S) IN EFFECT AS OF THE DATE OF A CLAIM; PROVIDED, HOWEVER, IN NO EVENT WILL THE OPENNMS GROUP'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY TO CLIENT ARISING OUT OF OR RELATING TO ANY AND ALL CLAIMS UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID TO THE OPENNMS GROUP IN RESPECT OF CLIENT'S PURCHASES OF SUBSCRIPTIONS (DIRECTLY OR INDIRECTLY FROM A THE OPENNMS GROUP RESELLER) DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE OPENNMS GROUP FOR CLAIMS UNDER THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR THE SUPPORT AGREEMENT(S), IN NO EVENT WILL THE OPENNMS GROUP OR ITS AFFILIATES BE LIABLE TO CLIENT OR ITS AFFILIATES FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF THE OPENNMS GROUP OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

This Agreement sets forth Client's exclusive remedies and The OpenNMS Group's sole obligations for claims arising from or related to copyrights, patents, trademarks and trade secrets and supersedes any other The OpenNMS Group obligation related to the subject matter of this Agreement (including, but not limited to, indemnification, breach of warranty, and/or breach of contract under the Support Agreement(s) or otherwise). For the avoidance of doubt, the terms of Section 1 above shall apply in the place of, and the Client expressly waives any rights and releases The OpenNMS Group from, any obligations under the terms of any other warranties or terms relating to intellectual property rights or remedies, including without limitation Open Source Assurance terms or conditions that may be included in the Support Agreement(s). If there are any other applicable indemnity coverage or remedies available to Client related to intellectual property infringement, Client agrees that the total of all benefits payable under all such provisions will not exceed the total damages, costs, and expenses incurred by Client, and that The OpenNMS Group will pay only its proportional share of such total damages, costs, and expenses, subject to the immediately preceding paragraph above.

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4.   Covered Software, Covered Systems, Subscription

The "Covered Software" is The OpenNMS Group Enterprise Linux and other The OpenNMS Group branded software programs (including modifications and enhancements) generally released to its customers by The OpenNMS Group and/or its subsidiaries that Client installs or executes on Covered Systems, where "Covered Systems" are those computer systems on which Client has an active Subscription at the time of the Claim or threatened Claim. A "Subscription" is a services subscription purchased from The OpenNMS Group and/or its affiliates or a The OpenNMS Group reseller that entitles Client to receive The OpenNMS Group Services. Covered Software does not include the Third Party Programs or the Excluded Programs.

5.   Miscellaneous

(i) Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent using a method that provides for positive confirmation of delivery to Client at the address indicated on Client's The OpenNMS Group Network account registration form or to The OpenNMS Group at: The OpenNMS Group, Attention: General Counsel, 1801 Varsity Drive, Raleigh, North Carolina 27606, U.S.A.; Facsimile: (919) 754-3704. (ii) This Agreement is binding on the parties to this Agreement, and nothing in this Agreement confers upon any other person or entity any right, benefit or remedy of any nature whatsoever. This Agreement is assignable by either party only with the other party's prior written consent; provided that The OpenNMS Group may assign this Agreement to an affiliate or pursuant to a merger or a sale of all or substantially all of its assets or stock without the prior approval of Client. (iii) The delay or failure of either party to exercise any rights hereunder will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced. (iv) This Agreement represents the final, complete and exclusive statement of the agreement between the parties with respect to the subject matter of this Agreement, and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter of this Agreement are merged herein. If any provision of this Agreement is held invalid or unenforceable for any reason, this Agreement will be deemed invalid in its entirety. Except as set forth in Section 2 above, this Agreement may not be amended, supplemented or modified except by a written instrument signed by the parties hereto, which instrument makes specific reference to this Agreement.

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