

OPENNMS COMMERCIAL SERVICE TERMS

These OpenNMS Commercial Service Terms (this “**Agreement**”) apply to services provided by OpenNMS Group, Inc. (“**OpenNMS**”) to each user or recipient thereof (“**Client**”). OpenNMS and Client are referred to individually as a “**Party**” and collectively as the “**Parties.**”

THIS AGREEMENT CONSTITUTES A BINDING LEGAL AGREEMENT BETWEEN OPENNMS AND CLIENT. IF YOU ARE AN INDIVIDUAL ACTING IN YOUR CAPACITY AS AN EMPLOYEE OF A COMPANY OR OTHER ENTITY, THE TERM “CLIENT” WILL INCLUDE THAT ENTITY, AND BY ACCEPTING THIS AGREEMENT, YOU ARE BINDING THAT ENTITY TO THIS AGREEMENT, AND YOU ARE REPRESENTING TO OPENNMS THAT YOU ARE DULY AUTHORIZED BY THAT ENTITY TO DO SO.

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION THAT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH THE PARTIES CAN SEEK RELIEF FROM EACH OTHER.

1. INTRODUCTION

1.1 OpenNMS Software. OpenNMS offers various services to users of the OpenNMS network monitoring platform (“**OpenNMS Software**”), which is available in two distributions: OpenNMS Meridian (“**Meridian**”) and OpenNMS Horizon (“**Horizon**”). Each distribution contains three components: Core, Minion, and Sentinel (each a “**Component**”).

1.2 Subscription Services. OpenNMS’s services include the following subscription-based services (“**Subscription Services**”):

- “**Software Maintenance Services**” (or “**Maintenance**”): access to an online repository containing the complete software code distribution for Meridian and all updates, upgrades, corrections, security advisories, and bug fixes for Meridian that are released by OpenNMS (collectively, “**Meridian Updates**”). Software Maintenance Services are offered separately for each Meridian Component.
- “**Support Services**” (or “**Support**”): technical support services for Meridian and Horizon, as described [The OpenNMS Group's Support Description Page](#). Support Services are offered separately for each Meridian Component and are provided at multiple service levels (“**Support Levels**”). In addition, Support Services for certain features, functions, and technologies require separate add-on packages (“**Support Add-Ons**”), as specified on [The OpenNMS Group's Support Description Page](#).
- “**Zero-Touch Appliance Services**”: (1) access to the online Appliance Management Console for configuration, and (2) access to the Appliance update service where updates are made available to Appliances via the package management functionality of the Appliance’s operating system. “**Appliance**” means a hardware device or virtual machine provided by OpenNMS which provides the Minion Component of Meridian.

1.3 Consulting Services. OpenNMS also offers implementation, software development, training, and other professional services in connection with OpenNMS Software (“**Consulting Services**”).

1.4 Covered Services. This Agreement governs Client's access to and use of all Subscription Services and Consulting Services purchased by Client from OpenNMS or any OpenNMS Resellers (collectively, "**OpenNMS Services**"). "**OpenNMS Reseller**" means a third party that has been authorized by OpenNMS to resell or distribute OpenNMS Services.

2. SUBSCRIPTION SERVICES

2.1 Performance; Subscription Periods. For each subscription to a Subscription Service purchased by Client from OpenNMS or an OpenNMS Reseller ("**Subscription**"), OpenNMS will provide the Subscription Service during the following periods (each a "**Subscription Period**"):

- (a) the stated service period for the Subscription, which, unless otherwise specified in the applicable order form (if any), will start on the date of purchase of the Subscription ("**Initial Subscription Period**"); and
- (b) except as otherwise specified in the applicable order form (if any), consecutive one (1) year renewal periods thereafter (each a "**Renewal Subscription Period**"), provided that either Party may stop renewal at the end of any Subscription Period by giving written notice of non-renewal to the other Party at least thirty (30) days before the end of such Subscription Period.

2.2 Restrictions.

- (a) Permitted Uses. Client may purchase Subscription Services only for, and use Subscription Services only in support of, OpenNMS Software that is used by Client to monitor any networks (including networks operated by or for third parties), and not for any other purposes. Without limiting the foregoing, Client may not use any Subscription Service for, or in support of, any OpenNMS Software that is used by third parties to monitor any networks other than Client's networks.
- (b) No Transfers. Client will not rent, lease, sublicense, distribute, sell or otherwise transfer, in whole or in part, any Subscriptions to any third parties, and Client will not timeshare or otherwise allow any third parties to access or use any Subscription Services.

2.3 Software Maintenance Services. Client agrees that if Client purchases, or has previously purchased, any Maintenance Subscriptions for any Meridian Component, then for as long as any such Subscriptions are in effect, Client will purchase and maintain Maintenance Subscriptions for all then-current Instances of such Meridian Component. "**Instance**" means an installation of a Meridian Component made by or for Client on a physical system (which may be, without limitation, a server, a workstation, laptop, or blade) or a virtual machine.

2.4 Support Services. If Client purchases any Subscriptions for Support Services, Client will designate at least two (2) Support Contacts, but no more than the maximum number of Support Contacts specified on the Support Page corresponding to the applicable Support Level. "**Support Contact**" means any individual authorized by Client to use the Support Services, e.g., to open support requests and contact OpenNMS support personnel. Support Services may only be requested and accessed by Support Contacts, and Client's accounts on OpenNMS's online support portal may only be assigned to and used by Support Contacts.

3. CONSULTING SERVICES

- 3.1 Statements of Work. The Parties may from time to time execute one or more statements of work covering Consulting Services to be performed by OpenNMS for Client (each an “**SOW**”). OpenNMS will perform the Consulting Services specified in each SOW. Changes to any SOW or the Consulting Services specified therein may be made only through written change orders signed by both Parties.
- 3.2 On-Site Services. Whenever OpenNMS personnel are performing Consulting Services at Client's premises, OpenNMS will comply with all reasonable workplace safety and security policies that are applicable to all Client's employees and other contractors equally, which policies are provided to OpenNMS in writing and in advance of OpenNMS personnel arriving at Client's premises.

4. PAYMENTS

- 4.1 Subscription Fees. For each Subscription purchased by Client directly from OpenNMS, Client will pay to OpenNMS (a) the subscription fee for the Initial Subscription Period, as specified in the applicable order form executed by the Parties (“**Order Form**”) or online checkout screen, and (b) an annual subscription fee for each Renewal Subscription Period, which will be communicated to Client at least sixty (60) days before the start of such Renewal Subscription Period, or if not so communicated, will be the same as the annual subscription fee for the previous Subscription Period).
- 4.2 Consulting Fees and Expenses. For any Consulting Services purchased by Client directly from OpenNMS, Client will (a) pay to OpenNMS the fees specified in the applicable SOWs and (b) reimburse OpenNMS for all reasonable out-of-pocket travel expenses incurred in the performance of such Consulting Services, except as otherwise specified in the applicable SOWs. OpenNMS will invoice Client in accordance with the invoicing terms specified in each applicable SOW, provided that if no invoicing terms are so specified, OpenNMS may invoice all fees on the execution of such SOW as follows: (i) when Consulting Services are scoped by time by person-hours or person-days, invoices may be generated upon completion of the specified scope/time period or upon each calendar month, whichever is the shortest period and (ii) when Consulting Services are scoped by project milestones, invoices may be generated upon completion of all milestones or monthly when milestone completion spans multiple calendar months.
- 4.3 Payment Terms. Client will pay each OpenNMS invoice within forty-five (45) days of the invoice date. Client will make all payments in U.S. dollars, without offset, abatement, or deduction of any kind, including for or on account of any Taxes. If Client pays any amounts to OpenNMS by credit card, Client authorizes OpenNMS to charge Client's credit card for all amounts due and agrees to provide updated credit card information to OpenNMS as needed to pay any amounts due. If any invoiced amount not paid to OpenNMS by the applicable due date, interest will accrue at the rate that is the lesser of one and one-half percent (1.5%) per month or the highest rate permitted by applicable law, starting on the due date, and Client will be liable to OpenNMS for any reasonable costs incurred by OpenNMS to engage an attorney or collection agency to collect such amount. All fees, expenses, and other amounts paid under this Agreement are non-refundable except as otherwise specified in this Agreement.
- 4.4 Taxes. All amounts payable under this Agreement are exclusive of any sales and use taxes, value added tax (VAT), goods and services tax (GST), and similar taxes and legally imposed fees, duties, and contributions based on such amounts (collectively, “**Taxes**”), all of which are the sole responsibility of Client. OpenNMS may invoice Client for any Taxes that OpenNMS is required to

collect. If Client is required by law to withhold or deduct any portion of any amounts payable to OpenNMS, such amounts will be increased as may be necessary so that after Client makes all required withholdings or deductions, OpenNMS will receive amounts equal to the amounts it would have received had no such deductions or withholdings been required.

- 4.5 Reseller Purchases. Sections 4.1-4.4 applies only to OpenNMS Services purchased directly from OpenNMS. If Client purchases any OpenNMS Services from an OpenNMS Reseller, Client will pay the OpenNMS Reseller for such purchases. No agreements between Client and any OpenNMS Reseller will be binding on OpenNMS.
- 4.6 Audit. During the period in which Maintenance is being provided to Client and for one (1) year thereafter, and no more frequently than once per year, OpenNMS or its designee may inspect Client's documents, records and systems to verify Client's compliance with Section 2.3. 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. If such inspection reveals any Instances for which Client did not purchase Maintenance Subscriptions in breach of Section 2.3 ("**Uncovered Instances**"), then within fifteen (15) days from Client's receipt of notice, Client will (a) purchase Maintenance Subscriptions for the Uncovered Instances and (b) pay to OpenNMS an amount equal to the fees that would have been owed by Client if Client had purchased Maintenance Subscriptions for the Uncovered Instances in compliance with Section 2.3. In addition, if the inspection reveals that, at any time, more than five percent (5%) of the total number of Instances were Uncovered Instances, Client will also reimburse OpenNMS for the reasonable cost of such inspection.

5. OTHER PROVISIONS

- 5.1 Client Cooperation. Client will provide to OpenNMS all of the following that are reasonably requested by OpenNMS to enable or assist in the performance of any Support Services or Consulting Services (collectively, "**Client Resources**"): (a) information, data, or other materials of Client; (b) access to computing systems or networks of Client; and (c) with respect to any Consulting Services performed at Client's premises, a safe and secure working environment, together with network access, Internet access and telephone connections. OpenNMS will be entitled to rely on the accuracy and completeness of any information or data provided by Client without verification by OpenNMS. Client will obtain any third party consents necessary to grant OpenNMS access to the Client Resources that are subject to the proprietary rights of, or are owned or controlled by, any third parties. If Client fails to provide Client Resources, or perform any tasks assigned to Client in any SOWs, in a timely manner, OpenNMS will not be liable for any resulting deficiency, delay or failure in performing its obligations, and OpenNMS will be entitled to appropriate relief, which may include schedule and fee adjustments.
- 5.2 Online Accounts. Certain Subscription Services include online functionality that can be accessed and used through user accounts. Each such user account that is created by or on behalf of Client ("**Client Account**") may only be assigned to and used by a single individual, and Client will not permit use of such Client Account (whether concurrently or non-concurrently) by any other individual; provided that Client may discontinue an individual's access of a Client Account and re-assign such Client Account to another individual.
- 5.3 Access Credentials. Client will ensure that all login and other credentials that are provided to Client for accessing any Client Accounts or Subscription Services ("**Client Access Credentials**") are kept confidential. Client will be solely responsible all use of all Client Accounts and Subscription Services

through any Client Access Credentials, whether or not Client has knowledge of, or consented to, such use. Client will notify OpenNMS immediately upon becoming aware of any unauthorized use of any Client Account or Subscription Services through any Client Account Credentials.

- 5.4 Service Suspension. Without limiting any other rights or remedies that OpenNMS may have, OpenNMS may suspend performance of and access to any OpenNMS Service without liability if OpenNMS reasonably believes that: (a) such suspension is required by applicable laws or regulations or by any governmental authority; (b) the OpenNMS Service is being used to engage in fraudulent activities or violations of any applicable laws or regulations; (c) the OpenNMS Service is being used in breach of this Agreement; (d) such suspension is reasonably necessary or prudent to prevent material disruptions in the OpenNMS Service, or to protect the OpenNMS Service (or the computing infrastructure used to provide the OpenNMS Service), any users thereof, or OpenNMS from harm or liability; or (e) any amounts payable by Client to OpenNMS are more than fifteen (15) days overdue.
- 5.5 Pre-Release Offerings. If OpenNMS makes available to Client any beta or otherwise pre-general release version of any OpenNMS Service or any other product or service ("**Pre-Release Offering**"), the terms of this paragraph will govern Client's use of such Pre-Release Offering and will control over any conflicting provisions of this Agreement. Pre-Release Offerings are Confidential Information of OpenNMS, and Client may not provide access to, or disclose the existence of, Pre-Release Offerings to any third party. Client may not use Pre-Release Offerings for any purposes other than internal testing and evaluation. Pre-Release Offerings are provided "AS IS," without any warranties, and without support, indemnification, or other obligations to Client of any kind. Certain features or functionality of the OpenNMS Services may not be available in Pre-Release Offerings. Providing any Pre-Release Offering to Client does not constitute a commitment by OpenNMS to offer the Pre-Release Offering on a generally available basis or to continue to provide Client with access to the Pre-Release Offering. OpenNMS may modify Pre-Release Offering or terminate Client's access to it at any time in OpenNMS's discretion. The aggregate liability of OpenNMS for any claim arising from or in connection with Pre-Release Offerings will not exceed ten thousand U.S. dollars (US\$10,000).
- 5.6 Open Source Assurance Program. Purchases of Subscriptions under this Agreement may entitle Client to participate in OpenNMS's Open Source Assurance Program, which provides certain protections in the event of third party infringement claims. Participation in this optional program is subject to the terms of the agreement located at [OpenNMS Open Source Assurance Agreement](#).
- 5.7 Publicity. Neither Party will refer to the other Party in promotional materials, publications or other forms of publicity without the other Party's prior written consent, except that OpenNMS may use Client's name and logo for the limited purpose of identifying Client as a customer on OpenNMS's websites and other promotional materials (which may include emails and other web and print materials).

6. CONFIDENTIALITY

- 6.1 Confidential Information. "**Confidential Information**" means all confidential information disclosed by a Party ("**Discloser**") to the other Party ("**Recipient**"), whether orally or in writing, during the term of this Agreement, which information: (a) is marked confidential; (b) is disclosed orally, clearly described as confidential at the time of the oral disclosure, and subsequently set forth in writing, marked confidential, and sent to Recipient within thirty (30) days following the oral disclosure; or

(c) should reasonably be understood to be confidential based on the nature of the information and the circumstances of its disclosure. Notwithstanding the foregoing, Confidential Information will not include any information that (i) is or becomes publicly available other than as a result of Recipient's breach of this Agreement, (ii) is known to the Recipient at the time of disclosure by the Discloser, without obligation of confidentiality, (iii) is obtained by Recipient from a third party without breach by such third party of any obligation owed to Discloser, (iv) is independently developed by Recipient without use of Discloser's Confidential Information, (v) is generally known or easily ascertainable by persons of ordinary skill in the business of Recipient, or (vi) is licensed under an Open Source License (as defined by the Open Source Initiative (<https://opensource.org/>)).

6.2 Protections. Recipient will protect Discloser's Confidential Information using the same degree of care to as it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care. Recipient will not use Discloser's Confidential Information except in connection with exercising its rights and performing its obligations under this Agreement. Recipient will not disclose Discloser's Confidential Information to any third party except: (i) to its contractors with a need to know and to its financial and legal advisors, in each case who are bound by obligations of confidentiality that no less restrictive than those specified in this Section 6; (ii) with Discloser's prior written approval; (iii) if required to do so by applicable law, regulation or court order, provided that Recipient will provide advance notice to the Discloser to the extent legally permissible; or (iv) as permitted elsewhere in this Agreement. Recipient's obligations under this paragraph with respect to each item of Confidential Information will remain in effect for two (2) years following Discloser's initial disclosure of such Confidential Information to Recipient.

7. REPRESENTATIONS AND WARRANTIES

7.1 OpenNMS Services. OpenNMS warrants that (a) Support Services and Consulting Services purchased by Client from OpenNMS or an OpenNMS Reseller will be performed in a professional and workmanlike manner by qualified personnel, and (b) to OpenNMS's knowledge, OpenNMS Software delivered to Client in connection with OpenNMS Services under this Agreement does not, at the time of such delivery, include malicious mechanisms or code for the purpose of damaging or corrupting the OpenNMS Software. Client's sole and exclusive remedy, and OpenNMS's entire liability, for any breach of the foregoing warranty will be that, if Client promptly gives to OpenNMS written notice describing such breach in reasonable detail, OpenNMS will re-perform the non-compliant Support Services or Consulting Services or re-deliver the non-compliant OpenNMS Software, as applicable, in compliance with such warranty.

7.2 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, THE OPENNMS SERVICES AND ANY SOFTWARE (INCLUDING MERIDIAN UPDATES AND OTHER OPENNMS SOFTWARE), DOCUMENTATION OR OTHER ITEMS PROVIDED BY OPENNMS TO CLIENT IN CONNECTION WITH THE OPENNMS SERVICES (collectively, "**Delivered Items**") ARE PROVIDED "AS IS," AND OPENNMS DOES NOT MAKE (AND HEREBY DISCLAIMS) ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND (WHETHER EXPRESS OR IMPLIED), INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITATION OF THE FOREGOING, OPENNMS DOES NOT WARRANT THAT THE OPENNMS SERVICES WILL BE UNINTERRUPTED, OR THAT ANY OPENNMS SERVICES OR DELIVERED ITEMS WILL BE ERROR-FREE.

7.3 Hazardous Environments. The OpenNMS Services and Delivered Items have not been tested in all situations under which they may be used. OpenNMS will not be liable for the results obtained through use of the OpenNMS Services or Delivered Items, and Client will be solely responsible for determining appropriate uses for the OpenNMS Services and Delivered Items and for all results of such use. Without limiting the generality of the foregoing, the OpenNMS Services and Delivered Items are not specifically designed, manufactured or intended for use in (a) the design, planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft control, navigation, or communication systems, (c) weapons systems, (d) direct life support systems, or (e) other similar hazardous environments.

8. TERMINATION

8.1 Term. This Agreement will commence on the Effective Date and will remain in effect until terminated in accordance with any other provision of this Agreement. “**Effective Date**” means earlier of (a) the date of the first Order Form incorporating the terms of this Agreement or (b) Client’s first online acceptance of this Agreement.

8.2 Termination.

(a) For Cause. Either Party may terminate this Agreement with written notice to the other Party if the other Party (i) commits a material breach of this Agreement and does not cure such breach within thirty (30) days of receiving written notice from the terminating Party describing such breach in reasonable detail, or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

(b) For Convenience. Client may terminate this Agreement at any time for convenience with written notice to OpenNMS, provided that (i) Client will not be entitled to a refund of any prepaid fees, and (ii) all amounts specified in any Subscriptions or SOWs that are unpaid as of such termination will become due and payable immediately upon such termination. In addition, this Agreement shall automatically terminate upon the expiration/termination of all of Client’s Subscriptions and SOWs (i.e. there are no longer any Subscriptions or SOWs in effect).

8.3 Effect of Termination. Upon any expiration or termination of this Agreement, all Subscriptions and SOWs then in effect will terminate, Client will discontinue all use of the OpenNMS Services, and without prejudice to any other right or remedy of OpenNMS, Client will pay OpenNMS for all OpenNMS Services provided up to the effective date of such expiration or termination. Neither Party will be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms.

8.4 Survival. Sections 4 5.5, 6, 8.3, 9, 10, and 11 of this Agreement will survive any expiration or termination of this Agreement.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Ownership. Except as specified in any SOWs, OpenNMS will own all right, title and interest (including all copyrights and other intellectual property rights) in and to (a) all software code, documentation, and other items that are authored, developed, or otherwise created by OpenNMS personnel in

connection with any OpenNMS Services, and (b) all ideas, concepts, methods, techniques, processes, and know-how that are conceived of, discovered, or developed by any OpenNMS personnel in connection with any OpenNMS Services.

- 9.2 Software Licenses. For avoidance of doubt, any OpenNMS Software (including any updates, upgrades, corrections, and bug fixes thereto) that Client obtains in connection with any OpenNMS Services will be subject to the terms of the open source software license agreements under which OpenNMS distributes such software, and any other software that Client obtains in connection with any OpenNMS Services will be subject to (a) the license agreements that are provided therewith, or (b) if no such license agreements are so provided, the license agreements under which such software is generally distributed. No licenses to any of the foregoing software are granted under this Agreement, and this Agreement is not intended to limit, expand, or otherwise affect Client's rights to any such software under any of the foregoing license agreements.
- 9.3 Marks. Except as otherwise specified in writing, neither Party grants to the other Party any right or license to use any of its trade names, service marks or trademarks.
- 9.4 Feedback. If OpenNMS receives any ideas, suggestions, comments, proposals or other feedback about OpenNMS Software, OpenNMS Services, Pre-Release Offerings, or any other products or services (collectively, "**Feedback**") from Client, OpenNMS will have the right to incorporate such Feedback into OpenNMS's products and services, to disclose such Feedback to third parties, and otherwise to use and exploit such Feedback, in each case without restriction and without any payment, attribution or other obligations to Client.

10. LIMITATIONS OF LIABILITY

- 10.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT THEORY) FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, ANY DAMAGES FOR LOST PROFITS, REVENUE, OR DATA, OR ANY DAMAGES FOR BUSINESS OR SERVICE INTERRUPTION, IN EACH CASE ARISING OUT OF OR RELATING TO THE OPENNMS SERVICES OR THIS AGREEMENT, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR CLIENT'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, THE CUMULATIVE, AGGREGATE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATING TO THE OPENNMS SERVICES OR THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CLIENT TO OPENNMS UNDER THIS AGREEMENT FOR THE OPENNMS SERVICES GIVING RISE TO SUCH LIABILITY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY.

11. MISCELLANEOUS

- 11.1 Governing Law. This Agreement will be governed by, and construed in accordance with, the internal laws of the State of North Carolina without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of North Carolina to the rights and duties of the Parties. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act (UCITA), the application of which is hereby expressly excluded.

11.2 Dispute Resolution.

- (a) Good Faith Negotiations. In the event of any dispute or claim arising from or related to this Agreement (“**Dispute**”), the Parties will attempt in good faith to settle such Dispute before commencing any proceeding. If the Parties are unable to reach a resolution after sixty (60) days, then upon written notice given by one Party to the other Party, the Dispute will be subject to arbitration as provided below.
- (b) Binding Arbitration. Any Dispute not resolved by negotiation as provided above will be finally resolved by binding arbitration by the American Arbitration Association in accordance with the Commercial Arbitration Rules, using a single arbitrator. The arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§1 *et seq.*) and judgment upon the award rendered by the arbitrator may be entered by any court of competent jurisdiction. The exclusive venue for the arbitration will be Wake County, North Carolina.
- (c) Dispute Resolution. No claim or action, regardless of form, arising out of this Agreement may be brought by either Party, in arbitration or otherwise, more than one (1) year after such Party first became aware of, or reasonably should have been aware of, the basis for the claim or action.

11.3 Notices. Any notice required or permitted to be given under this Agreement must be in writing and will be deemed given when received by the recipient Party; provided that any such 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.

11.4 Assignment. Neither Party will, or will have the right to, assign, delegate or otherwise transfer (whether voluntarily, by operation of law or otherwise) this Agreement or any of its rights or obligations under this Agreement to any third party without the prior written consent of the other Party; except that OpenNMS may (without any requirement to obtain Client’s consent) assign this Agreement, together with all of its rights and obligations hereunder, to (a) any third party that acquires (whether by asset purchase, merger or other transaction or series of transactions) all or substantially all of the assets of the business of OpenNMS or (b) any corporate affiliate of OpenNMS. Subject to the foregoing, this Agreement will be binding on, and will inure to the benefit of, the Parties and their respective successors and permitted assigns.

11.5 Independent Contractor. OpenNMS’s relationship with Client under this Agreement is that of an independent contractor, and nothing in this Agreement will be construed as creating a partnership, joint venture, agency or employment relationship between Client (or any Client personnel) and OpenNMS (or any OpenNMS personnel). OpenNMS may use third party contractors to perform all or part of any OpenNMS Services, provided that such contractors agree to protect Client’s Confidential Information and OpenNMS remains responsible to Client under this Agreement for performance of OpenNMS’s obligations. Neither Party will have any obligation or duty to the other Party under this Agreement except as expressly and specifically set forth herein, and no such obligation or duty shall be implied by or inferred from this Agreement or the conduct of the Parties hereunder.

11.6 Force Majeure. Neither Party will be liable for nonperformance or delays in performance of its obligations (excluding payment obligations) due to causes beyond its reasonable control.

- 11.7 Non-solicitation. During the term of this Agreement and for twelve (12) months after the termination or expiration of this Agreement, Client will not, directly or indirectly, solicit for employment any personnel of OpenNMS involved with the performance of OpenNMS Services under this Agreement; provided, however, that Client will not be deemed to have breached this obligation due to Client (a) using general employment solicitations, such as via internet job sites, the newspaper, advertising of open positions, participating in job fairs and comparable activities, (b) responding to unsolicited inquiries about employment or contract opportunities or possibilities from headhunters or other agents, or (c) responding to unsolicited inquiries about employment or contract opportunities from any individual.
- 11.8 Export and Privacy. OpenNMS may supply Client with software or technical information that is subject to the United States Export Administration Regulation (“**Controlled Materials**”). Client agrees to comply with all applicable export and import laws or regulations, including any local laws in Client’s jurisdiction concerning Client’s right to import, export or use Controlled Materials, and Client agrees that OpenNMS is not responsible for Client’s compliance. Without limiting the foregoing, Client will not export, disclose, re-export, transfer or make available (by download or otherwise) the Controlled Materials, directly or indirectly, to: (a) any U.S. embargoed destination; (b) any party who Client knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, or sounding rockets, unmanned air vehicle systems, or any other restricted end-use; or (c) anyone on (or controlled by a person or entity on) a U.S. government restricted persons list, including those who have been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. Client will not provide to OpenNMS any data or engage OpenNMS in any activity, in each case, that could constitute the development of a “defense article” or provision of a “defense service” to Client, as these terms are defined in Section 120 of the International Traffic in Arms Regulations (ITAR). In addition, Client will not, and will not allow third parties under Client’s control, (i) to provide OpenNMS with Client Information that requires an export license under applicable export control laws or (ii) to process or store any Client Information that is subject to the ITAR. If Client breaches (or OpenNMS believes Client has breached) this Section 11.8 or the export provisions of any applicable end user license agreement for the OpenNMS Software, or OpenNMS is prohibited by law or otherwise restricted from providing OpenNMS Services to Client, OpenNMS may terminate this Agreement and its obligations hereunder without liability to Client. Client acknowledges and agrees that to provide the OpenNMS Services, it may be necessary for Client Information to be transferred between OpenNMS, its corporate affiliates, OpenNMS Resellers, and/or subcontractors, which may be located worldwide.
- 11.9 Construction. 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. The words “include” and “including” will not be construed as terms of limitation and will mean “including but not limited to.”
- 11.10 Severability. If any provision of this Agreement is held to be unenforceable, (a) such provision will be enforced to the maximum extent permissible by law so as to effect the intent of the Parties, and (b) the other provisions of this Agreement will not be affected and will remain in full force and in effect in accordance with their terms.
- 11.11 Waiver. No delay or failure of either Party to exercise any rights under this Agreement will 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.

11.12 Complete Agreement. This Agreement sets forth the entire understanding and agreement between the Parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, proposals or communications, whether oral or written, between the Parties relating to such subject matter. Any terms contained or referred to in any Customer-generated purchase order or any other document provided by Customer that are in any way inconsistent with or in addition to this Agreement are hereby rejected by OpenNMS and will not be binding on OpenNMS or otherwise have any force or effect.

11.13 Order of Precedence. If any provision of any Order Form or SOW conflicts with any provision of this Agreement, the provision of this Agreement will prevail and control, except that the provision of the Order Form or SOW will prevail and control if it specifies that it is intended to override the provision of this Agreement.

11.14 Amendment. No amendment to this Agreement will be effective unless such amendment is set forth in writing and signed by both Parties.