

## ZENOSS, INC. SILVER LEVEL SUBSCRIPTION AND LICENSE AGREEMENT

IMPORTANT- READ CAREFULLY BEFORE USING THIS SOFTWARE- THIS IS A LEGAL AGREEMENT BETWEEN YOU AND ZENOSS, INC. ("ZENOSS") COVERING YOUR USE OF ANY ZENOSS SOFTWARE APPLICATION, HARDWARE APPLIANCE AND/OR ZENOSS SUPPORT. YOU ACKNOWLEDGE UPON INSTALLATION OF ANY ZENOSS SOFTWARE, THAT YOU HAVE REVIEWED AND AGREE TO ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS DOCUMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT INSTALL OR USE THE SOFTWARE. IF YOU HAVE ALREADY INSTALLED THE SOFTWARE, AND DO NOT AGREE TO THESE TERMS, PLEASE IMMEDIATELY DISCONTINUE ITS USE AND UNINSTALL THE SOFTWARE. BY CLICKING THE "I ACCEPT" BUTTON, DOWNLOADING THE SOFTWARE, USING THE SOFTWARE OR USING ANY PRODUCT ON WHICH THE SOFTWARE IS INSTALLED, YOU AGREE ON BEHALF OF THE ENTITY ("CUSTOMER" OR "YOU") THAT IS PURCHASING THE LICENSE AND SUPPORT THAT: (1) THE FOLLOWING TERMS AND CONDITIONS ("AGREEMENT") GOVERN THE CUSTOMER'S SUBSCRIPTION AND FORM A LEGAL AGREEMENT BETWEEN THE CUSTOMER AND ZENOSS, INC. ("ZENOSS" or "US") REGARDING OUR LICENSE AND SUPPORT; AND, (2) THAT YOU HAVE AUTHORITY TO BIND THE CUSTOMER.

### 1. Definitions

All terms that are used herein but not defined herein shall have the meaning given to such terms in the Agreement. The following terms shall have the following definitions:

"Authorized Number of Managed Resources" means the authorized number of Managed Resources identified on the Zenoss Price Quotation which Customer is authorized to manage pursuant to this Agreement.

"Commercial Software" means the software other than Core Software that Zenoss may make available to you pursuant to the terms of this Agreement and its Schedules, including any Updates to that commercial software.

"Core Software" means the Zenoss Core™ Monitoring Platform specifically identified on the Price Quote

"Managed Resource" is any machine, component or virtual machine or component, or URL: (a) that has, or is capable of having, an IP Address, such as a computer, a time server, environmental control, power unit, switch, router, fax machine, web site, telephone or other network Managed Resource; and (b) is, or has been, monitored by the Software. Any single physical component or machine that is, or has been monitored by the Software, and is operating one or more virtual machines or components that have an IP Address, constitutes multiple Managed Resources, as determined by the number of IP Addresses assigned to that machine or component and its virtual machines and components at any one time. For example, a server that is running 4 virtual machines would constitute 5 Managed Resources in total (i.e., the server itself plus the 4 virtual machines).

"Error" means any failure of the Zenoss Core Software or Zenoss Commercial Software to conform to or operate in accordance with the publicly available product documentation for such Software.

"Hardware appliance" means the server box(es) that may be made available to the Customer pursuant to this Agreement and its Schedules, if any.

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

"Price Quotation" means the price quote document prepared by Zenoss during the ordering process.

"Regular Business Hours" means 7:00 am - 9:00 pm Eastern Standard Time, Monday through Friday, excepting U.S. national holidays.

"Software" means the unmodified, certified, commercially available Core Software and Commercial Software.

"Services" means those services described on the Price Quotation.

“Support” means analysis, troubleshooting and similar efforts to diagnose and correct any Error reported by you, provided in accordance with the terms of this Agreement and its Schedules.

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

“Updates” means bug fixes, updates, and/or enhancements to the current version of the Software that are made generally available during the term of this Agreement and that Zenoss may provide to you.

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

"Workaround" means a temporary workaround, patch or bypass supplied by Zenoss in order to temporarily correct an Error.

## 2. Price and Payment; Taxes.

2.1 In exchange for the license rights and Support, you must timely pay to Zenoss those fees described in the Zenoss Price Quotation. Fees: (a) for the initial term, are due and payable immediately upon the execution of this Agreement; (b) for each renewal term, thirty days prior to the renewal term; and (c) in the event you increase the number of Managed Resources in excess of the Authorized Number of Managed Resources, within thirty days of any such increase. Fees for any renewal term shall be subject to change based on Zenoss' then current pricing in effect. Zenoss invoices shall be paid in full by you no later than thirty (30) calendar days from the date of invoice. Payment shall be made without any right of set-off or deduction. All payments made pursuant to this Agreement shall be made in U.S. Dollars.

2.2 Failure by you to pay any amount when required to be paid under this Agreement within thirty (30) days of due date shall make you liable to pay Zenoss interest at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) on the remaining amount required to be paid, or at the highest amount permitted by applicable law (if lower), such interest to accrue on a daily basis from the payable date until the remaining amount is paid. Without limiting any other remedies, Zenoss may elect to discontinue Services (including Updates) and terminate Commercial Software license rights if timely payment is not received.

2.3 All fees and other prices are exclusive of local, state, federal and international sales, value added, excise and other taxes and duties of any kind. You shall be responsible for payment of taxes and duties of any kind payable with respect to the licensing of Software or the purchase of Services arising out of or in connection with this Agreement, other than taxes levied or imposed based upon Zenoss's net income.

## 3. Term and Termination.

3.1 This Agreement shall commence on the Effective Date and continue for a one year period unless terminated earlier as set forth below. Thereafter, this Agreement shall renew for successive one-year renewal terms, unless either party provides written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.

3.2 Zenoss may terminate this Agreement immediately in the event you: (a) fail to pay an invoice when due, (b) use Support in connection with Managed Resources in excess of the Authorized Number of Managed Resources (except to the minimum extent that the use of Managed Resources in excess of the Authorized Number of Managed Resources is expressly permitted in the Agreement), or (c) commit a material breach of this Agreement and fail to remedy that breach within thirty (30) days of receipt of written notice of material breach. You may terminate this Agreement in the event Zenoss commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of written notice of material breach.

3.3 Upon termination of this Agreement, you shall have no further right to (a) receive or use Support, (b) use the Commercial Software in any manner, or (c) receive further Updates under this Agreement. Sections 2, 3, 5, 12, 13, 14, 15, 16 and 17 of this Schedule to the Agreement and shall survive the termination of this Agreement for any reason.

## 4. License Grant.

4.1 GPL. The Core Software is made available to you pursuant to version 2 of the GNU General Public License (the “GPL”).

4.2 Commercial. Subject to the payment and other terms and conditions of this Agreement and its schedules and attachments, the Commercial Software is licensed to you on a limited, revocable, non-exclusive, non-transferable basis during the term of this Agreement solely for use in connection with operation of the Core Software to monitor the Authorized Number of Managed Resources in connection with your internal business operations. If Zenoss makes source code for any Commercial Software available to you, you may use that source code solely for internal testing purposes in connection with the Authorized Number of Managed Resources. You shall not: (a) make copies of Commercial Software, except for reasonable numbers of copies made for backup or archival purposes; (b) copy Commercial Software onto any public or distributed network or otherwise distribute or disclose Commercial Software to any third party; (c) use Commercial Software as a stand alone application or with applications other than the Core Software; (d) use the Commercial Software in connection with the operation of Managed Resources other than Authorized Number of Managed Resources; (e) change any proprietary rights notices that appear in Commercial Software; or (f) “frame”, “fork”, “mirror”, modify, reverse engineer, disassemble, de-compile, create derivative works based on the Commercial Software or distribute the Commercial Software.

4.3 Delivery. You shall obtain your copy of Zenoss Core by download from the Zenoss website. If the Agreement entitles you to a Commercial Software license(s), then you must download the Commercial Software from a password-protected site within fifteen (15) days of the Effective Date, and Zenoss will provide you with instructions and a password within five business days after the later of the date of the last signature on this Agreement or the Effective Date. If you have purchased a Hardware appliance from Zenoss, your copy of the Software will be preinstalled on the Hardware appliance. All Software shall be deemed accepted by you upon the earlier to occur of download, copying, or receipt from Zenoss, or fifteen (15) days following the Effective Date.

If you have purchased a Hardware Appliance, Zenoss agrees to deliver the Hardware Appliance to a nationally recognized and reputable carrier. You agree to pay all shipping charges associated with any order placed under this Agreement. The Hardware Appliance will be shipped F.O.B. Zenoss’ manufacturing plant to the Customer location specified on the Order Form. Subject to Zenoss’ rights as set forth in this Agreement, and except to the extent the Hardware Appliance contains or consists of intellectual property rights of Zenoss or other third parties, title and risk of loss will pass to You upon delivery of the ordered Hardware Appliance to the designated carrier.

## 5 Managed Resources; Audit Rights.

5.1 Current Number of Managed Resources. You represent and warrant to Zenoss that: (a) as of the Effective Date, you use the Software to manage no more than the Authorized Number of Managed Resources; and (b) during the first one-year term of this Agreement, you plan to use the Software to manage no more than the Authorized Number of Managed Resources, plus ten percent (10%).

5.2 Additional Managed Resources. For each Managed Resource managed by all or any part of the Software in excess of the Authorized Number of Managed Resources, you must provide Zenoss with written notice no later than thirty (30) days after such Managed Resource was first managed by all or any part of the Software. During the one-year term in which a Managed Resource is added, no additional fees are due for the Managed Resource provided that the total number of Managed Resources managed by the Software exceeds the Authorized Number of Managed Resources by less than ten percent (10%). During the one-year term in which a Managed Resource is added, Zenoss’ then-current per-Managed Resource fee is due and payable for that Managed Resource, on a pro rata basis, for every Managed Resource monitored by the Software that exceeds the Authorized Number of Managed Resources by ten percent (10%) or more. On the first day of each one-year term of this Agreement, the Authorized Number of Managed Resources shall automatically be increased to the then-current number of Managed Resources being monitored by all or a part of the Software, and the per-Managed Resource fee shall apply to each such Managed Resource. Subject to the foregoing, all additional Managed Resources will be covered under this Agreement coterminous with the then-current term.

5.3 Audit Rights. During the term of this Agreement and for a three year period following termination, Zenoss shall have the right (at Zenoss’ own expense) to conduct periodic reviews of your records and

systems for the purpose of verifying the number of Managed Resources being monitored by the Software and otherwise to determine your compliance with the terms and conditions of this Agreement. Zenoss shall exercise this right upon no fewer than thirty (30) days' prior written notice. Zenoss shall deliver to you a copy of the results of any such review. In addition to any due and owing fees, you shall pay Zenoss the cost of any audit, including (without limitation) travel expenses and the costs of any attorneys and consultants, if the amount you underpaid Zenoss is three percent (3%) or more of the amount actually paid by you. Complete and accurate documents shall be retained by you during the term and for three (3) years following termination of this Agreement.

6. Support. Subject to the terms and conditions of this Agreement, during the term of this Agreement Zenoss will provide Support to you and you agree to use or apply that Support solely in connection with managing the Authorized Number of Managed Resources for your internal business operations. Zenoss will be available to provide Support during Regular Business Hours via the method provided in the Schedules to this Agreement.

6.1 Zenoss will provide Support in accordance with the severity level of the Error as reasonably assigned by Zenoss as follows:

- a) **Critical Severity Level.** An Error has caused a catastrophic failure of the Software that severely impacts the System.
- b) **Medium Severity Level.** An Error in the form of a bug or administrative issue is preventing one of the System's non-critical functions from working.
- c) **Low Severity Level.** An Error in the form of a bug or administrative issue that makes a function of the System difficult to use but some Workaround is known.

6.2 The parties agree and understand that the foregoing Support obligations do not include correction of Errors not under the control of Zenoss, including, but not limited to, Errors due to the non-availability of your Internet service provider or any telecommunications service provider, failure of your hardware, or failure of any third-party software.

6.3 Notwithstanding anything contained in the GPL, Zenoss will not be required to provide Support for third party modifications or customizations of the Software.

6.4 Zenoss will provide Support for each version of the Software provided hereunder for a period of up to one (1) year after the general availability of the subsequent version of the Software.

6.5 Any training provided pursuant to this Agreement must be taken during the sixty (60) day period following the Effective Date.

7. Services. Subject to the terms and conditions of this Agreement, and as provided below, during the term of this Agreement Zenoss will provide Services to you and you agree to use or apply those Services solely in conjunction with managing the Authorized Number of Managed Resources for your internal business operations. The scope of Services provided to you under this Agreement is subject to the terms and conditions set forth in a separate Professional Services Agreement and the Statement of Work executed by you and Zenoss. Any Services provided pursuant to this Agreement must be taken during the sixty (60) day period following the effective date.

8. Bug Fixes. Bugs within code written by Zenoss will be found in the Zenoss system occasionally. Zenoss will use its best efforts to resolve the bugs or provide Workarounds in accordance with the levels of response time listed above.

9. System Updates. From time to time Zenoss may, but is under no obligation to, make available to you Updates to the Core Software and the Commercial Software. Zenoss shall make any Updates that are released to its commercial customers in general available to you.

10. New Features. Requests by you for new features are not covered by the Agreement or the Price Quotation. Zenoss may provide requested new features in accordance with a mutually agreed upon professional services contract and detailed statement of work.

## 11. Your Requirements.

11.1 You shall be solely responsible for obtaining, installing, maintaining and paying for: (a) any designated third party software (including updated versions of designated third party software); (b) server and system capabilities necessary to meet the minimum hardware and software requirements for the Software as set forth in the product documentation for the Software; and (c) all Software updates, modifications and corrections made available by Zenoss.

11.2 You agree that all requests for Support must be made by and coordinated through a single point of contact (a "Support Point of Contact"). Your Support Point of Contact must be properly trained in applications technical support and qualified to submit requests for Support to Zenoss. When contacting Zenoss, your Support Point of Contact must provide his or her name and phone number and your name, and provide a detailed description of the Error.

11.3 You represent and warrant that you possess server and system capabilities which meet or exceed the minimum hardware and software requirements for the Software as set forth in the product documentation accompanying the Software.

11.4 You will provide Zenoss with all access, information, documentation and assistance that Zenoss may require to provide Support hereunder.

11.5 You agree that Zenoss shall have the right to identify you as a Zenoss customer, and you grant Zenoss a license to use your name, logo(s), and trademark(s) for promotional and publicity purposes including, without limitation, press announcements, advertisements in trade and other publications, marketing collateral and media kits, listings on web pages and links to your website subject to any of your trademark and or style guidelines then in effect.

11.6 Any suggested changes, clarifications, additions, modifications or improvements (collectively "Improvements") to the Software which you suggest to Zenoss shall constitute an assignment to Zenoss (without charge) of all right, title and interest in such Improvements. Zenoss shall have the right, but not the obligation, to incorporate Improvements into the Software as it deems advisable. Zenoss shall be the exclusive owner of the Improvements, including all intellectual property rights related thereto.

12. Proprietary Rights. The intellectual property and proprietary rights of whatever nature in the Software and related documentation, including derivative works, are and shall remain the exclusive property of Zenoss and/or its suppliers, and nothing in this Agreement should be construed as transferring any aspects of those rights to you or any third party. Zenoss and its suppliers reserve any and all rights not expressly granted in this Agreement and the GPL License. Zenoss and Zenoss Core are trademarks of Zenoss, and shall not be used by you without Zenoss' express authorization.

12.1 You agree: (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, or organization of any Zenoss Software, or any part thereof, from any object code or information that may be made available to You, or aid, abet or permit others to do so; (ii) not to reverse engineer, disassemble or decompile any other Zenoss Software (iii) not to remove, alter or obliterate any identification or notices of any proprietary or copyright restrictions from any product, software, service, Documentation or support material; (iv) not to copy any Software, including without limitation Zenoss Software, Service, Documentation or support material, develop any derivative works thereof or include any portion of any Zenoss Software in any other software program; (v) except as expressly permitted herein, not to provide use of Zenoss Software in a computer service business, rental or commercial timesharing arrangement; (vi) not to develop any other products containing any of the concepts and ideas contained in the Software that are not readily apparent from normal use pursuant to the license(s) granted hereunder; and (vii) not to develop methods to enable unauthorized parties to use any Zenoss Software, Service, Documentation or support material.

### 12.2 Forking of the Zenoss Core Software

“Forking” and “to Fork” means create derivative works of the object or source code for a product, or to distribute a product or a derivative work of a product under a new or different brand, regardless of any right to do so under any license.

During the term of this Agreement and the twelve (12) month period after expiration or termination thereof, and notwithstanding any rights under the terms and conditions of any license, you agree that you shall abide by the following rules of conduct:

(a) Neither you nor any entity controlling, controlled by, or under common control with you (an Affiliate”) shall offer, promote, distribute or otherwise make available any Forked version of any software product released by Zenoss, including without limitation the Zenoss monitoring platform, the Zenoss client libraries and any component thereof.

(b) You understand that Zenoss may make some or all of its software—which may include, without limitation, the Software—available in versions that are distributed without charge under the terms of the Free Software Foundation’s General Public License (“GPL”) (such versions the “Zenoss Core Software”). Zenoss Core Software may, at Zenoss’ sole discretion, be identical to one or more of the Software. This Agreement does not prevent You from distributing Zenoss Core Software pursuant to the terms and conditions of the GPL, provided that You comply with the Forking prohibition in subsection (a), above.

13. Disclaimer of Warranties. THE SOFTWARE AND SUPPORT ARE PROVIDED TO YOU "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF THE SOFTWARE. ZENOSS AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, NON-INTERFERENCE AND/OR ACCURACY OF INFORMATIONAL CONTENT. ZENOSS AND ITS SUPPLIERS DO NOT WARRANT THAT ANY ZENOSS SOFTWARE, HARDWARE APPLIANCE OR SUPPORT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR ITS SCHEDULES, THE HARDWARE APLIANCE IS PROVIDED TO YOU “AS IS” WITHOUT ANY ADDITIONAL WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF THE HARDWARE APPLIANCE.

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

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

15. Confidentiality.

15.1 Except for (a) disclosures to legal and financial advisors as necessary; or (b) as required by governmental or judicial order, provided prompt written notice is given to the other party prior to such disclosure and the disclosing party complies with any protective order or equivalent imposed on such disclosure, during the

term of this Agreement and for two years following its termination neither party shall disclose to any third party any information that is clearly marked as “Confidential” or identified in writing to the receiving party as confidential at the time of disclosure, or which would appear, to a reasonable person, to be of a confidential nature (“Confidential Information”). In protecting Confidential Information, a receiving party agrees to use the same care which it takes for its own confidential information. Without limiting the generality of the foregoing, any and all Commercial Software and the financial and other terms and conditions of this Agreement shall be Confidential Information, and you represent and warrant to Zenoss that you are permitted to disclose to Zenoss any information which you so disclose. Notwithstanding the foregoing, Zenoss shall have the right to identify you as a commercial customer, including by making reference to you on the Zenoss Website.

15.2 The non-disclosure obligations of Section 15.1 shall not apply if the information shall have: (a) first become generally known and published through no fault of the receiving party; (b) been learned by the receiving party from a third party; (c) been already known to the receiving party; or (d) been developed by or for the receiving party, independent of activities under this Agreement. Further, the terms of confidentiality under this Agreement shall not be construed to limit either party’s right to independently develop or acquire products without use of the other party’s confidential information.

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

17. Miscellaneous.

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

17.2 Assignment. You may not assign this Agreement or its rights or obligations under this Agreement to any person or party, whether by operation of law or otherwise, without Zenoss’ prior consent (at Zenoss’ sole discretion). Any attempt by you to assign this Agreement without Zenoss’ prior consent shall be null and void. Subject to the foregoing conditions, this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns. There are no intended third party beneficiaries of this Agreement.

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

17.4 Governing Law; Dispute Forum.

(a) This Agreement shall be deemed to have been consented to in, and shall be governed by the laws of, the State of Maryland, U.S.A., excluding its conflict of law provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act. You shall comply at your own expense with all relevant and applicable laws related to the use of Software as permitted in this Agreement.

(b) In the event that either party initiates an action in connection with this Agreement or any other dispute between the parties (a "Dispute"), the exclusive jurisdiction of such Dispute shall be in a state court located in Anne Arundel County, Maryland, U.S.A or a federal court located in Maryland, U.S.A.

(c) Notwithstanding Section 17.4(b), if you are located in a country that does not have a bilateral or multilateral ruling enforcement treaty with the U.S.A., the Dispute shall be exclusively and finally resolved by arbitration conducted in Annapolis, Maryland, U.S.A., in the English language by a sole arbitrator ("Arbitrator") in accordance with the International Arbitration Rules of the American Arbitration Association ("AAA"). The Arbitrator shall be appointed by agreement of the parties; if the parties fail to agree upon the Arbitrator within fourteen (14) days of written notice of arbitration provided by either party, the AAA shall appoint the Arbitrator. The Arbitrator, and every person named on all lists of potential arbitrators, shall be a neutral and impartial lawyer with excellent academic and professional credentials (i) who has practiced law for at least ten (10) years, with experience in the field of software development and intellectual property law, and (ii) who has had experience, and is generally available to serve, as an arbitrator. The Arbitrator shall be bound by the provisions of this Agreement and base the award on applicable law and judicial precedent. Upon rendering a decision, the Arbitrator shall state in writing the basis for the decision, including the findings of fact and conclusions of law upon which the decision is based. The Arbitrator shall not grant any remedy or relief that a court could not grant under applicable law. The Arbitrator's decision shall be final and binding upon the parties, and shall not be subject to appeal. Judgment on the award or any other final or interim decision rendered by the Arbitrator may be entered, registered or filed for enforcement in any court having jurisdiction thereof. The arbitrator shall have the right to issue equitable relief, including (without limitation) preliminary injunctive relief.

(d) Notwithstanding anything to the contrary in this Section 9.4, either party may enforce any judgment rendered in accordance with Section 17.4(b) or (c) in any court of competent jurisdiction, and Zenoss may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

(e) Except as required by law, the controlling language of this Agreement is English, and any Dispute brought under this Agreement shall be conducted in the English language. In addition, if you are located in Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement be drafted in English. Les parties contractantes confirment qu'elles ont exigé que le présent contrat et tous les documents associés soient rédigés en anglais.

17.5 Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent required or permitted to be given or delivered under this Agreement shall be in writing and addressed and delivered to the other party's address set forth on the Zenoss Price Quotation. Notice shall be deemed to have been received by a party, and shall be effective: (a) on the day given, if sent by confirmed facsimile transmission; (b) on the third day after which such notice is deposited prepaid in the local postal system; or (c) on the day received, if sent with a reputable, expedited overnight or international courier. Either party may change its address for notice purposes upon issuance of notice thereof in accordance with this Section.

17.6 Independent Contractors. The parties enter into this Agreement as, and shall remain, independent contractors with respect to one another. Nothing in this Agreement shall create a partnership, joint venture, agency, or employment relationship between the parties.

17.7 Export Law Assurances. You acknowledge that the Software may be subject to U.S. and/or Canadian export and import control laws, and agree to comply fully with those laws in connection with the Software. You agree that the Software is not being, and will not be, acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor will it be used for: nuclear activities, chemical or biological weapons, or missile projects unless authorized by the U.S. government. You hereby certify that you are not prohibited by the U.S. government from participating in export or re-export transactions.

17.8 U.S. Government Restricted Rights. If Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense ("DOD") acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in such Software and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose Software or any documentation, will be subject in all respects to the license rights and restrictions provided in this Agreement.

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

17.10 Entire Agreement. This Agreement (including any and all attachments hereto), together with the Zenoss Price Quotation comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any other document submitted by you to Zenoss, the terms and conditions of this Agreement will control. Zenoss' acceptance of any such document shall not be construed as an acceptance of provisions which are in any way in conflict or inconsistent with, or in addition to, this Agreement, unless such terms are separately and specifically accepted in writing by an authorized officer of Zenoss.

**SCHEDULE 1**  
**ZENOSS, INC. SILVER LEVEL SUBSCRIPTION AND LICENSE AGREEMENT**

**Description of Support: Zenoss Enterprise Subscription Program**

This Schedule is attached to, made a part of, and is subject to the terms and conditions of the ZENOSS, INC. SILVER LEVEL SUBSCRIPTION AND LICENSE AGREEMENT (the "Agreement") between Zenoss, Inc. and the Customer indicated on the Zenoss Price Quotation.

The purpose of this Description of Support is to establish the terms, conditions and levels of support that Zenoss will provide to you in connection with your enrollment in the Zenoss Enterprise Subscription plan.

**Zenoss Enterprise Subscription Program**

**Overview**

The Zenoss Enterprise 2.0 Subscription Program ("Zenoss Enterprise Subscription") provides direct support from the Zenoss engineering and support teams to ensure timely access to the Zenoss personnel required to keep your Zenoss deployment running smoothly and to ensure best practices and full utilization of its enterprise management capabilities.

**Zenoss Enterprise 2.0 Subscription (Silver Level)**

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***Features include:***

***Software***

- Zenoss Core™
  - C MDB
  - Inventory & Change Tracking
  - Availability Monitoring
  - Performance Monitoring
  - Event Management
  - Core Reports
- Zenoss Enterprise Edition
  - Certified Build of Zenoss Core
  - Synthetic Transactions
  - Certified Application Monitors
  - Enterprise Report Library
  - Global Dashboard

***Support***

- Support by Zenoss Inc. certified engineers
- Access to support via web, email, and telephone
- 8 Regular Business Hour response time to critical issues
- Unlimited cases

***Intellectual Property Assurance***

If Customer has complied with all of the terms of this Agreement, and if any portion of the Software is found by a court of competent jurisdiction to infringe any unrelated third party patent, trademark, or copyright or to misappropriate a third party trade secret (together, referred to as "intellectual property rights"), then for each Managed Resource for which Customer is current in subscription fees, Zenoss will, at our expense and option:

- (i) obtain the rights necessary for Customer to continue to use the Software consistent with this Agreement;
- (ii) modify the Software so that it is non-infringing (in which case, Customer will immediately stop running the allegedly infringing Software);
- (iii) replace the infringing portion of the Software with non-infringing code; or,

(iv) refund all of Customer's money paid in the then-current calendar quarter under this Agreement and all of Customer's rights and licenses under this Agreement shall automatically terminate.

The foregoing will not apply to claims arising from: the combination of the Software with products or services not provided by Zenoss; the modification of the Software by Customer or pursuant to Customer's direction; the modification of the Software other than as directed by Zenoss; Customer's distribution of the Software to, or its use for the benefit of, any third party; or use of the Software in a manner not permitted or contemplated hereunder. Notwithstanding anything contained in this Section to the contrary, Zenoss' liability under this Section shall be limited to an amount equal to one hundred twenty-five percent (125%) of the amount of compensation paid by Customer to Zenoss under this Agreement.

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

**SCHEDULE 2**  
**TO**  
**ZENOSS, INC. ENTERPRISE 2.0 SUBSCRIPTION AGREEMENT**

**HARDWARE APPLIANCE PROGRAM**

This Schedule is attached to, made a part of, and is subject to the terms and conditions of the ZENOSS, INC. SILVER LEVEL SUBSCRIPTION AND LICENSE AGREEMENT (the “Agreement”) between Zenoss, Inc. and the Customer indicated on the Zenoss Price Quotation.

The purpose of this Schedule is to establish the terms, conditions and levels of support that Zenoss will provide to Customer in connection with Customer’s purchase of a Zenoss Hardware Appliance if applicable.

**Zenoss Hardware Appliance**

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***Overview***

The Zenoss Hardware Appliance and Enterprise Subscription provides a deployment ready Zenoss Server hardware appliance and direct access to the Zenoss, Inc. engineering and support teams to ensure that Customer has timely access to the expertise Customer needs to succeed with enterprise IT management.

***Features include:***

***Hardware***

- Hardware Appliance configured as described in the Zenoss Price Quotation
- Remote and Onsite Support Services (48 hour repair or replace)
- 1 year hardware limited warranty

***Software***

- Zenoss Core™
- Zenoss Enterprise 2.0 and above Commercial Software
- Zenoss Server fully configured on hardware appliance

***Support***

- Support by Zenoss Inc. certified engineers in accordance with service level purchased and described in Schedule 1 of this agreement and the Zenoss Price Quotation