ZENOSS MASTER LICENSE AND SERVICES AGREEMENT

This Zenoss Master License and Services Agreement ("*Agreement*") is made by and between Zenoss, Inc. a Delaware corporation ("*Zenoss*") and the undersigned customer ("*Customer*" or "*you*"). This Agreement, and any corresponding executed Order Form, or purchase order accepted by Zenoss ("*Order Form*"), set forth the terms and conditions under which Customer may use the Zenoss Products set forth in the applicable Order Form.

Customer Contact & Notice Information.

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

Signatures:

Zenoss, Inc.   **Customer**

By: _____   **By:** _____

Printed Name: _____   **Printed Name:** _____

Title: _____   **Title:** _____

Date: _____   **Date:** _____

1. License and Services

1.1   Software License.   Customer is granted a License to use the Zenoss Software, Support, and Services in the quantities of Managed Resources authorized in the applicable Order Form ("**Authorized Quantity**"), for Customer's own internal business use, as well as to provide services to its clients. Customer is not authorized to resell, distribute, or transfer Software Licenses to any third party. Customer has no other grants or rights to use, in any way, the Software, Support, and Services. Upon request by Zenoss, and not more frequently than once per calendar quarter, Customer will produce a Managed Resources Usage Report and provide it to Zenoss in unaltered form. If the number of Managed Resources being managed by the Software is found to be more than the Authorized Quantity, Customer agrees to purchase the additional necessary Managed Resources capacity for a term ending co-terminus with the then-current Order Form and at the same applicable pro-rated Software License and Support fee.

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

1.3   Professional Services. You agree to use or apply any Services solely in conjunction with managing the Authorized Quantity of Managed Resources for purposes permitted by your particular license grant. Zenoss will make available and manage Services as described in the DOSSS, or Statement of Work ("**SOW**") executed between you and Zenoss. Each SOW will become part of your agreement with Zenoss by reference when signed by Zenoss and you, and shall include (a) a detailed description of Zenoss' and your respective responsibilities; (b) an estimated performance schedule including milestones, if applicable; (c) specific completion criteria that Zenoss is required to meet to fulfill its obligations under the SOW; (d) pricing and payment terms; and (e) identification of Zenoss and your contacts. A SOW may only be amended or modified by a written document signed by authorized representatives of Zenoss and you. You shall reimburse Zenoss for all reasonable travel and other related expenses incurred by Zenoss in connection with performance of the Services. Zenoss agrees to use reasonable efforts to mitigate expenses. Services may be provided by Zenoss or individuals or organizations employed by or under contract with Zenoss, at the discretion of Zenoss.

2. Payment

2.1   Customer will be invoiced the amount in any Order Form or SOW upon acceptance by Zenoss, and will pay any Invoice within thirty (30) days of the Invoice Date.

2.2   Customer will pay to renew the Software License thirty (30) days before the anniversary of the Effective Date of this Agreement.

2.3   Zenoss may increase the renewal cost by up to 5% each year and will notify Customer of any such increase sixty (60) days before the anniversary of the Effective Date.

2.4   Customer will pay a late fee of one and half percent (1.5%) each month that a payment is late.

3. Term and Termination

3.1   The Term of the Software License is indicated on the applicable Order Form, and renews until either party elects to terminate the license.

3.2   The Software License will renew in increments of one year (1 year) starting on the anniversary of the Effective Date,   unless either party provides written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term. Payment of the renewal fee for the continued use of the Service or Software will constitute agreement to renew the Software License.

3.3   Zenoss may terminate this Agreement immediately in the event that Customer: (a) fails to pay an invoice when due, (b) uses Support in connection with Managed Resources in excess of the Authorized Quantity of Managed Resources or in violation of the license terms stated in the DOSSS, or (c) 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.

3.4   Customer 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.

3.5   Upon termination, Customer shall lose all rights to use the Support, Services, Software, and Updates under this Agreement and Customer shall immediately stop all use. Upon termination, Customer shall certify that

Customer has uninstalled all copies of the Software from all servers under Customer's control and return all copies to Zenoss. Sections 1,2,3,4,5, 6, and 8 of this Agreement shall survive the termination of this Agreement for any reason.

4. Warranties and Limitations on Liability

4.1   NO WARRANTY. THE SOFTWARE, SERVICES, DOCUMENTATION, DELIVERABLES 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 OR SUPPORT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. 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.

4.2   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.

4.3   INTELLECTUAL PROPERTY LIABILITY. THE IP ASSURANCE TERMS OF THE ZENOSS, INC. SOFTWARE SUBSCRIPTION POLICIES STATE ZENOSS' ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

5. Confidentiality

5.1   During the term of this Agreement, and for two years following its termination, neither party shall disclose to any third party any information that is clearly marked as "Confidential" or identified in writing to the receiving party as confidential at the time of disclosure, or which would appear, to a reasonable person, to be of a confidential nature ("***Confidential Information***"). In protecting Confidential Information, a receiving party agrees to use the same care that it takes for its own confidential information. All Software, financial information, and other terms and conditions of this Agreement, are Confidential Information. Either party may disclose Confidential Information if (a) disclosures to legal and financial advisors as necessary; or (b) as required by governmental or judicial order. The disclosing party will notify the other party of the disclosure.
5.2   The non-disclosure obligations of Section 5.1 shall not apply if the information shall have: (a) first become generally known and published through no fault of the receiving party; (b) been learned by the receiving party from a third party; (c) been already known to the receiving party without violating this or any other confidentiality obligation; or (d) been developed by or for the receiving party, independent of activities under this Agreement. Further, the terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information.

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

6. Proprietary Rights.

6.1   Intellectual Property Rights. Zenoss shall own all right, title and interest in all Zenoss intellectual property provided to you under any agreement or any SOW which includes without limitation any derivatives, improvements or modifications of Zenoss intellectual property developed, designed or discovered by you or Zenoss under any agreement or any SOW. You agree to assign and do hereby assign to Zenoss all rights you may have or acquire in all such intellectual property. Zenoss shall have the exclusive right to apply for or register any patents, mask work rights, copyrights, and such other proprietary rights protections with respect thereto. You shall execute such documents, render such assistance, and take such other actions as Zenoss may reasonably request, at Zenoss' expense, to apply for, register, perfect, confirm and protect Zenoss' rights in any intellectual property. Without limiting the foregoing, Zenoss shall have the exclusive right to commercialize, prepare and sell products based upon, sublicense, prepare derivative works from, or otherwise use or exploit the intellectual property rights granted to Zenoss. Nothing in any agreement shall be construed as to preclude Zenoss from developing, using, marketing or otherwise exploiting software programs or other materials that may be competitive with that prepared for you, irrespective of whether such programs are similar or related to the programs developed under any agreement. Any technology developed pursuant to any agreement or any SOW which is jointly created by the parties pursuant to any agreement or created by you as a direct result of your activities relating to any agreement or a SOW, shall be owned by Zenoss unless otherwise mutually agreed in the SOW covering the effort which led to the development of the technology. You hereby waive any and all moral rights, including without limitation any right to identification of authorship or limitation on subsequent modification that you (or its employees, agents, subcontractors or consultants) has or may have in the Services, or Deliverables, and in any other intellectual property that is or becomes the property of Zenoss. 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 any 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 any agreement. Zenoss is the trademark of Zenoss, and shall not be used by you without Zenoss' express authorization.

6.2   Reverse Engineering. 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, Deliverable 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 or Deliverable (iii) not to remove, alter or obliterate any identification or notices of any proprietary or copyright restrictions from any product, Software, Service, Deliverable, 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 ; (vii) not to develop methods to enable unauthorized parties to use any Zenoss Software, Service, Documentation or support material; (viii) not to publish any results of benchmark tests on the Software; and (ix) not to utilize any method, including tools developed to scan code or file headers, to determine the presence or authors of any third party component software contained within the Software.

7. IP Assurance.

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

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

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

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

8. Miscellaneous

8.1   <u>Interpretation; Severability; Survival</u>. 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.

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

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

8.4   <u>Governing Law; Dispute Forum</u>.

(a) This Agreement shall be deemed to have been consented to in, and shall be governed by the laws of, the State of Texas, 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. Customer shall comply at Customer 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 Travis County, Texas, U.S.A or a federal court located in Travis County, Texas, U.S.A.

(c) 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 Customer 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 quele présent contrat et tous les documents associés soient redigés en anglais_.

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

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

8.7   Export Law Assurances. Customer 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, including "anti-boycott", "deemed export" and "deemed re-export" regulations. Customer will not, and have not, acquired, shipped, transferred, or re-exported, directly or indirectly, the Software to proscribed or embargoed countries or their nationals, or to the People's Republic of China or Russia, nor will it be used for: nuclear activities, chemical or biological weapons, or missile projects unless authorized by the U.S. government. Customer hereby certify that Customer are not prohibited by the U.S. government from participating in export or re-export transactions.

8.8   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.

8.9   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.

8.10   Entire Agreement. This Agreement comprises an entire agreement and supersedes all previous agreements. The Agreement may only be modified in writing by agreement of both parties. The Agreement may be signed in counterparts. Without limiting this Section 8.10 (Entire Agreement), Customer's purchase order terms and conditions will not apply to or modify this Agreement.