

# Zenoss End User License Agreement

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

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

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

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

1. License. You may use the Software as stated in this Section and the Order / Order Form to monitor up to the quantity of Managed Resources stated on the Order/Order Form(s), subject to the conditions stated in this Section and the Order or Order Form. You are granted a license to use the Software, Support, and Services in the quantities of Managed Resources authorized in the applicable Order or Order Form (“Authorized Quantity”), for your 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 or Order Form and at the same applicable pro-rated Software License and Support fee.

Your license is a subscription license having an initial term as stated in the Order or, if no term is stated in the Order, one year. On expiration of the initial subscription license term, your license will automatically renew for consecutive renewal terms of one year each until either you, the Reseller or Zenoss gives a written notice of non-renewal at least thirty (30) days prior to the expiration of the initial term, or then current renewal term, as applicable, provided that if your Order or Order Form states different renewal terms, the Order or Order Form will control. You may not transfer or sublicense the Software to, or make the Software available for use by, any person except your employees and your permitted contractors as described in Section 7 (Assignment, Contractors). You may copy the Software as necessary to use the Software in accordance with this EULA, and you may make a reasonable number of backup or archival copies of the Software, but you may not otherwise copy the Software. Your license is non-exclusive and worldwide, subject to applicable export laws. You may not modify the Software or create any derivative works of the Software. You may not reverse engineer, disassemble or de-compile the Software except as permitted by applicable law notwithstanding this

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

2. Services. If you elect to purchase Services from Zenoss or the Reseller and the Services include the creation or delivery of Deliverables, then you agree that, unless otherwise expressly stated in a written agreement signed by you and Zenoss, Zenoss owns all rights in intellectual property in Deliverables, whether created by you, Zenoss, or the Reseller, excluding only Your Data and IP. You hereby assign your rights in Deliverables, excluding Your Data and IP, to Zenoss and agree that you will take all actions reasonably requested by Zenoss to evidence or perfect its rights in the Deliverables. You grant Zenoss a power of attorney to take any actions on your behalf that are required by this Section. Unless otherwise expressly stated in a written agreement signed by you and Zenoss, you are licensed to use Deliverables on the license terms applicable to the Software under this EULA. “Deliverables” herein means all works of authorship and other intellectual property, whether in hard copy or electronic form, including but not limited to programs, program listings, programming tools, designs, analyses, reports, manuals, supporting materials, test results, recommendations and drawings provided by Zenoss to you pursuant to the terms of any SOW (defined below) issued under this Agreement.

3. Termination. This EULA terminates automatically if you violate any license restriction stated in Section 1 (License). Zenoss may terminate this EULA on written notice if you violate any term of this EULA other than the terms stated in Section 1 (License), and you do not cure the failure within thirty (30) days of the notice. In addition, if you have purchased a subscription license, Zenoss may terminate this EULA on thirty (30) days notice if you violate the terms of any Order for Support or Services related to the your subscription license, including failing to pay fees when due to Zenoss or the Reseller, and do not cure the failure within thirty (30) days of the notice. On termination of this EULA your license to use the Software to monitor your system elements terminates. Within two (2) business days of termination of this EULA you must run a final Managed Resources Usage Report as described in the Section 1 above, uninstall the Software from your systems, and destroy or render unusable all copies of the Software. On Zenoss’ request, you will certify in writing that you have complied with this Section. Sections 4-8 will survive expiration or termination of this EULA and any Support Plan or Services engagement.

4. Warranty and Warranty Disclaimers.

Zenoss warrants that it will provide Support and Services in a good and professional manner.

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

5. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT SHALL ZENOSS, RESELLER, OR THEIR RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR HARM YOU SUFFER THAT COULD HAVE BEEN AVOIDED BY YOUR REASONABLY PROMPT IMPLEMENTATION OF A MAINTENANCE RELEASE, OR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFIT OR LOST SAVINGS (WHETHER RESULTING FROM IMPAIRED OR LOST DATA, SOFTWARE OR COMPUTER FAILURE, SUPPORT FAILURE, OR ANY OTHER CAUSE), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF ZENOSS, RESELLER AND ANY OF THEIR RESPECTIVE LICENSORS OR SUPPLIERS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT PAID FOR THE LICENSES OR SERVICES GIVING RISE TO THE CLAIM DURING THE TWELVE MONTHS PRECEEDING THE CLAIM.

6. Confidential Information.

6.1 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.

6.2 The non-disclosure obligations of Section 6.1 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.

6.3 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.

7. Assignment, Contractors. You may not assign this EULA or sublicense the Software without Zenoss' prior written consent. The warranties stated above are for your benefit only, notwithstanding Zenoss

consent to an assignment or sublicense. You may not allow any person to use the Software other than: (i) your employees and individual contractors acting under your direct supervision, and (ii) the personnel of outsourcers who are performing an internal business function for you and on the condition that the outsourcer has expressly agreed that its use of the Software is subject to this EULA. You remain responsible your contractors and outsourcers' use of the Software in violation of the terms of this EULA.

8. General. Except for the license rights expressly granted in this EULA, Zenoss reserves all rights in the Software and its other intellectual property. If you are a government agency, you acknowledge that the Software has been developed at private expense and is provided with RESTRICTED RIGHTS. The parties confirm that they have requested that this agreement be drafted in English. (Les parties contractantes conferment qu'elles ont exigé quele présent contrat et tout les documents associés soient redigés en anglais.) Any notices under this EULA must be given in English. You may not use or transfer the Software in violation of applicable law or regulation, such as export law and regulation. The term "person" refers to any legal person, and may mean a natural person (individual), a legally created person (such as an entity, trustee, or executor), or an entity (such as a corporation, partnership, or limited liability company). The use of the word "including" shall be read to mean "including, without limitation." All references to monetary amounts shall mean United States Dollars unless otherwise indicated. The term "parties," either in lower- or upper-case form, refers to Zenoss and the person who accepts this EULA. A reference to "day" shall mean a calendar day, unless expressly designated as a "business" day. Any requirement in this EULA that a statement be written, in writing, or a like requirement is satisfied by an email or other digital form of writing unless expressly stated otherwise. Nouns stated in the singular shall imply the plural as indicated by the context, and pronouns that are gender specific shall be read to refer to either gender. The Section captions in this EULA are for convenience only; they are not part of this EULA and may not be used to interpret the terms of this EULA. In the event one or more of the terms of this EULA are adjudicated invalid, illegal, or unenforceable, the adjudicating body may either interpret this EULA as if such terms had not been included, or may reform such terms to the limited extent necessary to make them valid, legal or enforceable, consistent with the economic and legal incentives underlying the EULA. This EULA may be modified only by a written document that expressly refers to this EULA and is signed by the parties. No right or remedy arising in connection with this EULA shall be waived by a course of dealing between the parties, or a party's delay in exercising the right or remedy. A party may waive a right or remedy only by signing a written document that expressly identifies the right or remedy waived. Unless expressly stated in the waiver, a waiver of any right or remedy on one occasion will not be deemed a waiver of that right or remedy on any other occasion, or a waiver of any other right or remedy. The pre-printed terms on the parties' purchase orders or other business forms shall have no effect whatsoever. There are no third-party beneficiaries to this EULA. This EULA will be governed by the laws of Texas and United States of America, as applicable. Exclusive venue for an action arising under or in connection with this EULA shall be in Travis County, Texas. This EULA is the complete and exclusive agreement between the parties regarding its subject matter and supersedes and replaces in its entirety any prior or contemporaneous agreement or understanding regarding the subject matter of this EULA, written or oral.